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WASHINGTON, DC

WHEN: December 10, 1996 at 9:00 a.m.
WHERE: Office of the Federal Register
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RESERVATIONS: 202–523–4538

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Contents

Federal Register

Vol. 61, No. 231

Friday, November 29, 1996

Separate Parts In This Issue

Parts II through LXI
The Unified Agenda of Federal Regulatory and Deregulatory Actions, 62002–62689

Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 61, No. 231
Friday, November 29, 1996

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AE45

1996–Crop Peanuts Amended National Poundage Quota

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This document affirms the announcement by the Secretary of Agriculture on April 17, 1996, of the basic national peanut quota for the 1996 crop of 1,100,000 short tons. The April 17 announcement was issued after new legislation and amended an earlier announcement of the quota. The new legislation eliminated the floor on the national quota and separated seed use from the establishment of the basic quota. This document amends the regulations which were published on July 16, 1996.

EFFECTIVE DATE: April 17, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth Robison, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0514, P.O. Box 2415, Washington, DC, 20013–2415, telephone 202–720–9255.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

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

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

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

Paperwork Reduction Act

Information collection requirements pertaining to poundage quotas and marketing of peanuts have previously been approved by the Office of Management and Budget (OMB) and assigned OMB number 0560–0006 under the provisions of the Paperwork Reduction Act of 1995.

The amendments to 7 CFR part 729 set forth in this final rule do not change the information collection requirements previously approved.

On December 6, 1995, the Secretary announced a preliminary national quota for the 1996 crop of peanuts under existing provisions of the Agricultural Adjustment Act of 1938 (1938 Act). The Secretary also announced that a referendum would be held on December 11–14 to determine, as provided for in the 1938 Act, whether a quota would be in effect for the 1996 crop. Ninety-seven percent of the voting producers voted for the quota, thereby approving a quota. The Secretary, thereafter, announced the quota level under existing provisions of the 1938 Act. That announcement was amended on April 17, 1996, based on provisions in the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). Effective with the 1996 crop, the 1996 amendments eliminated the quota floor and separated seed use from other quota uses. Section 358–1(a) (1) of the 1938 Act, as now amended, requires that the Secretary set a basic national quota for peanuts for the 1996 through 2002 marketing years (MY's) at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) provides that a temporary allocation of quota pounds for the marketing year only in which the crop is planted shall be made to producers for each of the 1996 through 2002 marketing years and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. Regulations implementing the quota amendments to the 1938 Act were published in the Federal Register on July 16, 1996 (61 FR 36997). Because of the onset of the production year it was necessary to make the amended quota effective immediately. Further, under section 162 of the 1996 Act, provision was made by Congress for immediate implementation of 1996 commodity program amendments without advance notice and comment. The December announcement proposed a quota of 1,215,000 tons which included an estimate of about 100,000 for expected seed use. In the April 17 notice, the basic 358–1 (a) quota amount (which excludes the 358–1 (b) ''seed'' quota) was set by the Secretary at 1,100,000 tons, based on the following data:

The national poundage quota for the MY for the 1996 crop was established at 1,100,000 tons, based on the following data:

ESTIMATED DOMESTIC EDIBLE, AND RELATED USES FOR 1996–CROP PEANUTS

Item	Farmer stock equivalent (short tons)
Domestic Edible Use:	
Domestic food use	903,000
On-farm and local sales	9,000
Related Uses:	
Crushing residual	123,000
Shrinkage and other losses	36,000
Segregation 2 and 3 loan:	
Transfers to quota loan	5,000
Underproduction	24,000
Total	1,100,000

Estimates of *domestic production for domestic food use* peanuts are developed in two steps. First, the farmer stock equivalent of peanuts for edible food use is projected by USDA's Interagency Commodity Estimates Committee (ICEC). Secondly, the ICEC food use estimate is reduced by the amount of peanut butter exports, edible

peanut imports, and peanut butter imports. This is because the ICEC food use estimate is an aggregate which includes peanut product exports and is derived from total supply that includes imports of peanuts and peanut butter. Peanut product exports are in most instances made from, or otherwise credited under Section 358(e)(1) of the 1938 Act as being made from, additional peanuts.

Farm use and local sales are estimated at 1 percent of ICEC's production estimate. This percentage reflects the average difference between USDA production estimates and inspection data. However, only about one half of the amount is included in the quota determination because of farmer held peanuts used for seed.

The *crushing residual* is the portion of farmer stock quota peanuts suitable only for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. Therefore, a crushing residual representing the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts is included under the ''related uses'' category. The crushing residual is estimated under the assumption that crushing peanuts will be approximately 12 percent, on a farmer stock basis, of total domestic food and seed production.

Shrinkage and other losses is an estimate of reduced kernel weight available for marketing as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. The utilized factor is an FSA estimate equal to the minimum allowable shrinkage used in calculating a handler's obligation to export or crush additional peanuts as set forth in Section 358e(d)(2)(iv) of the 1938 Act. Excessive moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered since such factors are accounted for at buying points and do not impact quota marketing tonnage.

Segregation 2 and 3 loan transfers to quota loan represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support at the quota loan rate, if it were not for quality problems. In such cases, for price support purposes only, these peanuts may be pledged as collateral for price support loans at a discounted quota loan rate.

In addition, an allowance has been made for underproduction because the 1996 quota amendments also ended the ability of producers to carry forward undermarketings as a supplement to their current quotas. The allowance takes into account normal undermarketings. Also, it takes into account that the change in law should reduce the amount of undermarketings by eliminating the compensatory quota increase formerly available to individual producers.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 729 is amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

§ 729.216 [Amended]

2. Section 729.216(a) is amended by adding after the words ''and related uses'' the words: ''as may be set out in paragraph (c) of this section.''

3. Section 729.216 is amended further by adding paragraph (c) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) *Quota determination for individual marketing years.* The basic national poundage quota for peanuts for marketing year 1996, exclusive of the temporary quota allocation for seed use provided for in section 358–1 (b) of the Act, is 1,100,000 short tons.

Signed at Washington, DC, on November 15, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–30087 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV96–966–1 IFR]

Tomatoes Grown in Florida; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Florida Tomato Committee (Committee) under Marketing Order No. 966 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess Florida tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by December 30, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Assistant, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770; FAX 941–299–5169, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to

administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 90 producers of Florida tomatoes in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The Florida tomato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on September 5, 1996, and unanimously recommended 1996–97 expenditures of $1,189,000 and an assessment rate of $0.03 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were $2,025,000. The assessment rate of $0.03 is $0.01 less than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period compared to those budgeted for 1995–96 (in parentheses) include: $500,000 for education and promotion ($1,225,000), $5,000 for miscellaneous promotion ($5,000), $284,650 for office salaries ($319,100), $180,000 for research ($245,000), $45,500 for employees' retirement program ($50,500), $30,000 for employees' travel ($30,000), $24,500 for office rent ($24,500), $22,150 for payroll taxes ($22,150), $20,000 for employees' health insurance ($29,500), $19,150 for depreciation on the office furniture and automobiles ($19,000), $14,000 for communications ($12,000), $12,000 for Committee member travel ($12,000), $9,000 for supplies and printing ($8,500), $8,000 for insurance and bonds ($8,000), and $7,000 for postage, ($7,000).

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 40,000,000 25-pound containers which should provide $1,200,000 in assessment income, which will be adequate to cover projected expenses.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

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

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

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled ''Assessment Rates'' consisting of a new § 966.234 and a new subpart heading titled ''Handling Regulations'' are added immediately preceding § 966.323, to read as follows:

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

Subpart—Assessment Rates

§ 966.234 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.03 per 25-pound container is established for Florida tomatoes.

Subpart—Handling Regulations

Dated: November 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–30485 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 984

[Docket No. FV96–984–1 IFR]

Walnuts Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1996–97 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by December 30, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901; FAX 209–487–5906, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

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

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

There are approximately 5,000 producers of California walnuts in the production area and approximately 55 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Board met on September 6, 1996, and unanimously recommended 1996–97 expenditures of $2,301,869 and an

assessment rate of $0.0117 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were $2,280,175. The assessment of $0.0117 is $0.0001 higher than last year's established rate. Major expenditures recommended by the Board for the 1996–97 marketing year include $232,684 for general expenses, $150,508 for office expenses, $1,840,677 for research expenses, $48,000 for a production research director, and $30,000 for the reserve. Budgeted expenses for these items in 1995–96 were $246,847, $140,908, $1,828,420, $34,000, and $30,000, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Walnut shipments for the year are estimated at 198,000,000 kernelweight pounds which will yield $2,316,600 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1996–97 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

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

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

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled ''Assessment Rates'' and a new § 984.347 are added to read as follows:

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

Subpart—Assessment Rates

§ 984.347 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.0117 per kernelweight pound is established for California merchantable walnuts.

Dated: November 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–30484 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: These regulations govern the provision of agricultural commodities by Commodity Credit Corporation pursuant to section 416(b) of the Agricultural Act of 1949 or the Food for Progress Act of 1985 for distribution in foreign countries.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Director/CCCPSD, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031; Washington, D.C. 20250–1031; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

This rule deals primarily with requirements imposed upon foreign governments and non-profit entities distributing humanitarian grant food supplies overseas. Therefore, the rule does not have a significant impact upon a substantial number of small business

entities and a Regulatory Impact Statement was not prepared. A copy of this rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

The information collection requirements imposed by this final rule have been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). OMB has assigned control number 0051–0035 for this information collection. This regulation does not change any of the information collection requirements. A submission to extend this approval will be submitted to OMB.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Background

On February 14, 1994, the Commodity Credit Corporation (CCC) published a proposed rule (59 FR 6916) to govern its donation of agricultural commodities for distribution in foreign countries pursuant to section 416(b) of the Agricultural Act of 1949 (section 416(b)) or the Food for Progress Act of 1985. Comments on the proposed rule were received from private entities which are most affected by these regulations: private voluntary organizations (PVOs), shippers, and freight forwarders. Their comments are discussed below, except for those dealing with issues outside of the scope of the proposed rule, making editorial suggestions, or simply expressing support for the proposed rule.

Commodity Availability

Comment: The PVO community requested that the CCC make a commodity availability determination for the Food for Progress Program (FFP) similar to the one required for the section 416(b) program.

Response: As a general matter, only commodities in CCC uncommitted inventory are available for donation under section 416(b). Consequently, CCC annually reviews its inventory to determine commodity availability and publicizes the results to assist PVO's in planning donation activities. By contrast, FFP donations are not limited to CCC inventory; CCC may purchase commodities for FFP donations to meet justified needs. Therefore, there is no reason to announce yearly availability of commodities in connection with the FFP or to establish a specific list of eligible commodities.

Method of Payment to PVOs

Comment: PVOs requested that CCC delete the requirement in section 1499.7 of the proposed rule that a portion of the funds provided PVOs be paid on a reimbursement basis. The PVO's stated that they were unable to finance many expenses out-of-pocket.

Response: In CCC's experience, this requirement has not constrained PVO participation in CCC grant food aid programs. CCC has determined that, to maintain adequate program management, it is necessary to maintain a minimal 15% reimbursement requirement.

Recipient Agency Agreements

Comment: PVOs requested that section 1499.10 of the proposed rule be revised to delete the requirement that agreements with local recipient agencies include by reference the terms of these regulations. The PVOs suggested that such agreements need only be consistent with these regulations.

Response: CCC agrees. The final rule, therefore, has been revised to require that recipient agency agreements be consistent with these rules.

Private sector involvement

Comment: PVOs suggested that the requirement in § 1499.5(b)(6)(d) of the proposed rule that PVOs use private sector channels to sell commodities provided under section 416(b) is inappropriate because section 416(b) unlike FFP, does not specify support for the private sector.

Response: CCC will maintain this requirement because economic development is one of the goals of section 416(b). Development of private sector selling mechanisms is an element of economic development.

Other comments from PVOs

Comment: The PVO community proposed a number of changes which it asserted would ease its administrative burden without affecting CCC's ability to review and monitor the programs. The PVOs suggested that: the plan of operations be submitted to the Agricultural Counselor or Attache only if the Counselor or Attache is resident in the country targeted for assistance; the priorities governing decisions to enter into section 416(b) and FFP agreements be refined to better reflect the different purposes of each program; CCC allow flexibility in shifting funds among approved expenditure categories within the total CCC-approved commodity distribution budget in order to facilitate management of the programs by the PVOs; and a quarterly, rather than monthly, financial statement from the PVO will provide CCC sufficient and timely information with which to monitor the programs.

Response: CCC agrees with these suggestions and the final rule has been revised accordingly.

Commissions

Comment: Shippers and shipping agents expressed concern regarding section 1499.8(e)(1) of the proposed rule which allows commissions to be paid only on the ocean portion of any transportation arranged for the commodities even if the movement of the commodities involves inland transportation after discharge. A number of freight forwarders noted that they were section 8(a) qualified small businesses and that this proposed rule would have an adverse impact on their businesses as a result of reducing the amount of commissions that they could receive. Comments also noted that the Shipping Act of 1984 mandates that conference carriers pay to shipping agents a commission based on the aggregate of all rates and charges for a movement which would include both ocean and inland charges. Finally, they suggested that this proposal was unreasonable because it ignored the fact that shipping agents did a considerable amount of work with shipments after cargo is discharged and moves inland.

Response: CCC has determined that the complexity of arranging inland transportation warrants continued financing of commissions for that service when CCC is financing this movement.

Comment: Section 1499.8(e)(2) proposed a limit on the amount of commission payable to a shipping agent. The limit proposed was 2/3 of the maximum commission payable (2 1/2 percent of the total freight). A number of comments characterized the proposed change as arbitrary and unduly

restrictive and argued that it would not result in overall savings for CCC.

Response: In view of the issues raised by these comments, CCC has concluded not to proceed with the proposed 2/3's limitation.

Freight payments

Comments: Several parties suggested that CCC make full freight payment upon loading, stating this would be consistent with standard commercial practice.

Response: In CCC's experience, payment upon discharge is necessary to assure proper handling and discharge of the commodities provided and to protect CCC's programmatic interests. These programs are not commercial; they often provide commodities that would not otherwise be moved in normal international trade to recipients facing emergency food needs.

Agents

Comment: Section 1499.8(c) of the proposed rule extends conflict of interest requirements currently applicable to title I, P.L. 480 and section 416(b) to the FFP. Comments argued that this provision would punish status rather than address any actual conflict of interest, and would reduce competition and increase costs.

Response: The provisions complained of are legislatively required in connection with shipments under title I and section 416(b). CCC has determined to extend the conflict of interest provisions to the FFP in order to maintain consistency between these food donation programs.

Other Changes to Proposed Rule

The final rule also incorporates the changes to the section 416(b) and Food for Progress (FFP) programs mandated by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127. That Act allows the use of generated local currency in section 416(b) for administrative expenses, extends the time period to expend such currency; authorizes the participation of international organizations in the FFP; expands CCC's authority to provide commodities on credit terms under the FFP; and to fund technical assistance for monetization programs in the FFP. Finally, the final rule makes a number of editorial and organizational changes to the text of the proposed rule.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, title 7 of the Code of Federal Regulations is amended by adding a new Part 1499 to read as follows:

PART 1499—FOREIGN DONATION PROGRAMS

Sec.

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

§ 1499.1 Definitions.

Activity—a Cooperating Sponsor's use of agricultural commodities provided under Program Agreements or use of sale proceeds.

Agricultural Counselor or *Attache*—the United States Foreign Agricultural Service representative stationed abroad, who has been assigned responsibilities with regard to the country into which the commodities provided are imported, or such representative's designee.

CCC—the Commodity Credit Corporation.

Commodities—agricultural commodities or products.

Director, P.L. 480–OD—the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA.

Director, CCCPSD—the Director, CCC Program Support Division, Foreign Agricultural Service, USDA.

Director, PDD—the Director, Program Development Division, Foreign Agricultural Service, USDA.

Deputy Administrator—Deputy Administrator for Export Credits, Foreign Agricultural Service, USDA.

Force Majeure—damage caused by perils of the sea or other waters; collisions; wrecks; standing without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, princesses, rulers of peoples without the fault of the carrier; wars; public disorders; captures; or detention by public authority in the interest of public safety.

General Sales Manager—General Sales Manager and Associate Administrator, Foreign Agricultural Service, USDA, who is a Vice President, CCC.

KCCO—Kansas City Commodity Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

KCFMO—Kansas City Financial Management Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

Ocean freight differential—the amount, as determined by CCC, by which the cost of ocean transportation is higher than would otherwise be the case by reason of the requirement that the commodities be transported on U.S.-flag vessels.

Program Agreement—an agreement entered into between CCC and Cooperating Sponsors.

Program income—interest on sale proceeds and money received by the Cooperating Sponsor, other than sales proceeds, as a result of carrying out approved activities.

Recipient agency—an entity located in the importing country which receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities.

Sale proceeds—money received by a Cooperating Sponsor from the sale of commodities.

Section 416(b)—Section 416(b) of the Agricultural Act of 1949.

USDA—the United States Department of Agriculture.

§ 1499.2 General purpose and scope.

This part establishes the general terms and conditions governing CCC's donation of commodities to Cooperating Sponsors under the section 416(b) and Food for Progress programs. This does not apply to donations to intergovernmental agencies or organizations (such as the World Food Program) unless CCC and such intergovernmental agency or organization enters into an agreement incorporating this part.

§ 1499.3 Eligibility requirements for Cooperating Sponsor.

A Cooperating Sponsor may be either:

(a) A foreign government;

(b) An entity registered with the Agency for International Development (AID) in accordance with AID regulations; or

(c) An entity that demonstrates to CCC's satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance or sale of commodities for economic development activities;

(2) Experience working in the targeted country; and

(3) Experience and knowledge on the part of personnel who will be responsible for implementing and managing the program. CCC may require that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

§ 1499.4 Availability of commodities from CCC inventory.

CCC will periodically announce the types and quantities of agricultural commodities available for donation from CCC inventory for the section 416(b) program.

§ 1499.5 Program Agreements and Plans of Operation.

(a) *Plan of Operation.* (1) Prior to entering into a section 416(b) Program Agreement, a Cooperating Sponsor shall submit a Plan of Operation to the Director, PDD and to the Agricultural Counselor or Attache, if an Agricultural Counselor or Attache is resident in the country where activities are to be implemented. After approval by CCC, the Plan of Operation will be incorporated into the section 416(b) Program Agreement as ''Attachment A.''

(2) CCC may require Cooperating Sponsors to submit a Plan of Operation in connection with the Food for Progress program.

(3) A Plan of Operation shall be in the following format and provide the following information:

1. Name and Address of Applicant:

2. Country of Donation:

3. Kind and Quantity of Commodities Requested:

4. Delivery Schedule:

5. Program Description:

Provide the following information:

(a) Activity objectives, including a description of any problems anticipated in achieving the activities' objectives;

(b) Method for choosing beneficiaries of activities;

(c) Program administration including, as appropriate, plans for administering the distribution or sale of commodities and the expenditure of sale proceeds, and identification of the administrative or technical personnel who will implement the activities;

(d) Activity budgets, including costs that will be borne by the Cooperating Sponsor, other organizations or local governments;

(e) The recipient agency, if any, that will be involved in the program and a description of each recipient agency's capability to perform its responsibilities as stated in the Plan of Operation;

(f) Governmental or nongovernmental entities involved in the program and the extent to which the program will strengthen or increase the capabilities of such entities to further economic development in the recipient country;

(g) Method of educating consumers as to the source of the provided commodities and, where appropriate, preparation and use of the commodity; and

(h) Criteria for measuring progress towards achieving the objectives of activities and evaluating program outcome.

6. Use of Funds or Goods and Services Generated:

When the activity involves the use of sale proceeds, the receipt of goods or services from the barter of commodities, or the use of program income, the following information must be provided:

(a) the quantity and type of commodities to be sold or bartered;

(b) extent to which any sale or barter of the agricultural commodities provided would displace or interfere with any sales that may otherwise be made;

(c) the amount of sale proceeds anticipated to be generated from the sale, the value of the goods or services anticipated to be generated from the barter of the agricultural commodities provided, or the amount of program income expected to be generated;

(d) the steps taken to use, to the extent possible, the private sector in the process of selling commodities;

(e) the specific uses of sale proceeds or program income and a timetable for their expenditure; and

(f) procedures for assuring the receipt and deposit of sale proceeds and program income into a separate special account and procedures for the disbursement of the proceeds and program income from such special account.

7. Distribution Methods:

(a) a description of the transportation and storage system which will be used to move the agricultural commodities from the receiving port to the point at which distribution is made to the recipient;

(b) a description of any reprocessing or repackaging of the commodities that will take place; and

(c) a logistics plan that demonstrates the adequacy of port, transportation, storage, and warehouse facilities to handle the flow of commodities to recipients without undue spoilage or waste.

8. Duty Free Entry:

Documentation indicating that any commodities to be distributed to recipients, rather than sold, will be imported and distributed free from all customs, duties, tolls, and taxes.

9. Economic Impact:

Information indicating that the commodities can be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products within the importing country.

(b) *Agreements.* CCC and the Cooperating Sponsor will enter into a written Program Agreement which will incorporate the terms and conditions set forth in this part. The commodities provided by CCC, and any packaging, will meet the specifications set forth in such Program Agreement. A Program Agreement may contain special terms or conditions, in addition to or in lieu of, the terms and conditions set forth in the regulations in this part when CCC determines that such special terms or conditions are necessary to effectively carry out the particular Program Agreement.

§ 1499.6 Usual marketing requirements.

(a) A foreign government Cooperating Sponsor shall provide to the Director, PDD, data showing commercial and non-commercial imports of the types of agricultural commodities requested during the prior five years, by country of origin, and an estimate of imports of such commodities during the current year.

(b) CCC may require that a Program Agreement with a foreign government include a ''usual marketing requirement'' that establishes a specific level of imports for a specified period. The Program Agreement may also include a prohibition on the export of provided commodities, as well as of other similar commodities specified in the Program Agreement.

§ 1499.7 Apportionment of costs and advances.

(a) CCC will bear the costs of processing, packaging, transportation, handling and other incidental charges incurred in delivering commodities to Cooperating Sponsors. CCC will deliver bulk grain shipments f.o.b. vessel, and shipments of all other commodities f.a.s. vessel or intermodal points. CCC will choose the point of delivery based on lowest cost to CCC.

(b) When the General Sales Manager approves in advance and in writing, CCC may agree to bear all or a portion of reasonable costs associated with:

(1) Transportation from U.S. ports to designated ports or points of entry abroad, maritime survey costs, and in cases of urgent and extraordinary relief requirements, transportation from designated ports or points of entry abroad to designated storage and distribution sites;

(2) In cases of urgent and extraordinary relief requirements,

reasonable storage and distribution costs; and

(3) Under the Food for Progress Program, administration or monitoring of food assistance programs, or technical assistance regarding sales of commodities provided by CCC.

(c) CCC will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to CCC's delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by CCC to bear the costs identified in paragraphs (b)(2) or (b)(3) of this section shall submit to the Director, PDD, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 20 percent of the total amount approved or $1,000, whichever is less, without any further approval. Adjustments beyond these limits must be specifically approved by the Controller and the General Sales Manager.

(f) The Cooperating Sponsor may request advance of up to 85 percent of the amount of an approved Program Operating Budget. However, CCC will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned may be used only for the purposes for which the funds were advanced.

(h) The Cooperating Sponsor shall return to CCC any funds not obligated as of the 180th day after being advanced, together with any interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, CCCPSD, accounting for all funds advanced and all interest earned.

(j) CCC will pay all other costs for which it is obligated under the Program Agreement by reimbursement. However, CCC will not pay any cost incurred after the final date specified in the Program Agreement.

§ 1499.8 Ocean transportation.

(a) *Cargo preference.* Shipments of commodities provided under either the section 416(b) or Food for Progress programs are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. CCC will endeavor to meet these requirements separately for each program for each 12-month compliance period. A Cooperating Sponsor shall comply with the instructions of CCC regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* In all cases where the Cooperating Sponsor arranges ocean transportation, whether by U.S. or non-U.S. flag vessel and CCC is financing any portion of the ocean freight:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the offices specified in the Program Agreement prior to issuance.

(2) Invitations for bids shall be issued through the Transportation News Ticker (TNT), New York, and at least one other comparable means of trade communication.

(3) Freight invitations for bids shall include specified procedures for payment of freight, including the party responsible for the freight payments, and expressly require that:

(i) Offers include a contract canceling date no later than the last contract layday specified in the invitation for bids;

(ii) Offered rates be quoted in U.S. dollars per metric ton;

(iii) If destination bagging or transportation to a point beyond the discharge port is required, the offer separately state the total rate and the portion thereof attributable to the ocean segment of the movement;

(iv) Any non-liner U.S. flag vessel 15 years or older offer, in addition to any other offered rate, a one-way rate applicable in the event the vessel is scrapped or transferred to foreign flag registry prior to the end of the return voyage to the United States;

(v) In the case of packaged commodities, U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) Vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) Offers be received by a specified closing time, which must be the same for both U.S. and non-U.S. flag vessels.

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation, clarification, or submission of additional information. Late offers shall not be considered or accepted.

(5) All responsive offers received for both U.S. flag and foreign flag service shall be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(6) The Cooperating Sponsor shall promptly furnish the Director, Public Law 480–OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, Public Law 480–OD, or other official specified in the Program Agreement, will approve all vessel fixtures. The Cooperating Sponsor may fix vessels subject to the required approval; however, the Cooperating Sponsor shall not confirm a vessel fixture until advised of the required approval and the results of the Maritime Administration's guideline rate review. The Cooperating Sponsor shall not request guideline rate advice from the Maritime Administration. The Cooperating Sponsor will, promptly after receipt of vessel approval, issue a public notice of the fixture details on the TNT or other means of communication approved by the Director, Public Law 480–OD.

(7) Non-Vessel Operating Common Carriers may not be employed to carry shipments on either U.S. or foreign-flag vessels.

(8) The Cooperating Sponsor shall promptly furnish the Director Public Law 480–OD, a copy of the signed laytime statement and statement of facts at the discharge port.

(c) *Shipping agents.* (1) The Cooperating Sponsor may appoint a shipping agent to assist in the procurement of ocean transportation. The Cooperating Sponsor shall nominate the shipping agent in writing to the Deputy Administrator, Room 4077–S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1031, and include a copy of the proposed agency agreement. The Cooperating Sponsor shall specify the time period of the nomination.

(2) The shipping agent so nominated shall submit the information and

certifications required by 7 CFR 17.5 to the Deputy Administrator.

(3) A person may not act as a shipping agent for a Cooperating Sponsor unless the Deputy Administrator has notified the Cooperating Sponsor in writing that the nomination is accepted.

(d) *Commissions.* (1) When any portion of the ocean freight is paid by CCC, total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, shall not exceed 2½ percent of the total freight costs.

(2) Address commissions are prohibited.

(e) *Contract terms.* When CCC is paying any portion of the ocean freight, charter parties and liner booking contracts must conform to the following requirements, as applicable:

(1) Packaged commodities on liner vessels shall be shipped on the basis of full berth terms with no demurrage or despatch;

(2) Shipments of bulk liquid commodities may be contracted in accordance with trade custom. Other bulk commodities, including shipments that require bagging or stacking for the account of the vessel, shall be shipped on the basis of vessel load, free out, with demurrage and despatch applicable at load and discharge ports; except that, if bulk commodities require further inland distribution, they shall be shipped on the basis of vessel load with demurrage and despatch at load and berth terms discharge, *i.e.,* no demurrage, despatch, or detention at discharge. Demurrage and despatch shall be settled between the ocean carrier and commodity suppliers at load port and between the ocean carrier and charterers at discharge ports. CCC is not responsible for resolving disputes involving the calculation of laytime or the payment of demurrage or despatch.

(3) If the Program Agreement requires the Cooperating Sponsor to arrange an irrevocable letter of credit for ocean freight, the Cooperating Sponsor shall be liable for detention of the vessel for loading delays attributable solely to the decision of the ocean carrier not to commence loading because of the failure of the Cooperating Sponsor to establish such letter of credit. Charter parties and liner booking contracts may not contain a specified detention rate. The ocean carrier shall be entitled to reimbursement, as damages for detention for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or liner booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or liner booking contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(4) Charges including, but not limited to charges for inspection, fumigation, and carrying charges, attributable to the failure of the vessel to present before the canceling date will be for the account of the ocean carrier.

(5) Ocean freight is earned under a charter party when the vessel and cargo arrive at the first port of discharge, *Provided,* That if a *force majeure* prevents the vessel's arrival at the first port of discharge, 100% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, not more than 85% of the ocean freight is payable, at the time the General Sales Manager determines that such *force majeure* was the cause of nonarrival; and

(6) When the ocean carrier offers delivery to destination ports on U.S.-flag vessels, but foreign-flag vessels are used for any part of the voyage to the destination port without first obtaining the approval of the Cooperating Sponsor, KCCO, and any other approval that may be required by the Program Agreement, the ocean freight rate will be reduced to the lowest responsive foreign-flag vessel rate offered in response to the same invitation for bids and the carrier agrees to pay CCC the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

(f) *Coordination between CCC and the Cooperating Sponsor.* When a Program Agreement specifies that the Cooperating Sponsor will arrange ocean transportation:

(1) KCCO will furnish the Cooperating Sponsor, or its agent, with a Notice of Commodity Availability (Form CCC–512) which will specify the receiving country, commodity, quantity, and date at U.S. port or intermodal delivery point.

(2) The Cooperating Sponsor shall complete the Form CCC–512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port; and shall sign and return the completed form to KCCO, with a copy to the Director, P.L. 480–OD. If CCC agrees to pay any part of the ocean transportation for liner cargoes, the Cooperating Sponsor shall also indicate on the Form CCC–512 the applicable Federal Maritime Commission tariff rate, and tariff identification.

(3) KCCO will issue instructions to have the commodity delivered f.a.s. or f.o.b. vessel, U.S. port of export or intermodal delivery point, consigned to the Cooperating Sponsor.

(g) Documents required for payment of freight—(1) General rule. To receive payment for ocean freight, the following documents shall be submitted to the Director, CCCPSD:

(i) One copy of completed Form CCC–512;

(ii) Four copies of the original on-board bills of lading indicating the freight rate and signed by the originating carrier;

(iii) For all non-containerized grain cargoes,

(A) One copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(B) One copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(C) One copy of the National Cargo Bureau Certificate of Loading;

(iv) For all containerized grain and grain product cargoes, one copy of the FGIS Container Condition Inspection Certificate;

(v) One signed copy of liner booking note or charter party covering ocean transportation of cargo;

(vi) For charter shipments, a notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) Four copies of either:

(A) A request by the Cooperating Sponsor for reimbursement of ocean freight or ocean freight differential indicating the amount due, and accompanied by a certification from the ocean carrier that payment has been received from the Cooperating Sponsor; or

(B) A request for direct payment to the ocean carrier, indicating amount due; or

(C) A request for direct payment of ocean freight differential to the ocean carrier accompanied by a certification from the carrier that payment of the Cooperating Sponsor's portion of the ocean freight has been received.

(2) *In cases of force majeure.* To receive payment in cases where the General Sales Manager determines that circumstances of *force majeure* have prevented the vessel's arrival at the first port of discharge, the Cooperating

Sponsor shall submit all documents required by paragraph (g)(1) of this section except for the notice of arrival required by paragraph (g)(1)(vi) of this section.

(h) *CCC payment of ocean freight or ocean freight differential*—(1) *General rule.* CCC will pay, not later than 30 days after receipt in good order of the required documentation, 100 percent of either the ocean freight or the ocean freight differential, whichever is specified in the Program Agreement.

(2) *Additional requirements after discharge.* Where the charter party or liner booking note provide for the completion of additional services after discharge, such as bagging, stacking or inland transportation, CCC will pay, not later than 30 days after receipt in good order of the required documentation, either not more than 85 percent of the total freight charges or 100 percent of the ocean freight differential, whichever is specified in the Program Agreement. CCC will pay the remaining balance, if any, of the freight charges not later than 30 days after receipt of notification from the Cooperating Sponsor that such additional services have been provided; except that CCC will not pay any remaining balance where the GSM determines that the vessel's arrival at first port of discharge was prevented by *force majeure.*

(3) *No demurrage.* CCC will not pay demurrage. *§ 1499.9 Arrangements for entry and handling in the foreign country.*

(a) The Cooperating Sponsor shall make all necessary arrangements for receiving the commodities in the recipient country, including obtaining appropriate approvals for entry and transit. The Cooperating Sponsor shall store and maintain the commodities from time of delivery at port of entry or point of receipt from originating carrier in good condition until their distribution, sale or barter.

(b) When CCC has agreed to pay costs of transporting, storing, and distributing commodities from designated points of entry or ports of entry, the Cooperating Sponsor shall arrange for such services, by through bill of lading, or by contracting directly with suppliers of services, as CCC may approve. If the Cooperating Sponsor contracts directly with the suppliers of such services, the Cooperating Sponsor may seek reimbursement by submitting documentation to CCC indicating actual costs incurred. All supporting documentation must be sent to the Director, CCCPSD. CCC, at its option, will reimburse the Cooperating Sponsor for the cost of such services in U.S. dollars at the exchange rate in effect on the date of payment by CCC, or in foreign currency.

§ 1499.10 Restrictions on commodity use and distribution.

(a) The Cooperating Sponsor may use the commodities provided only in accordance with the terms of the Program Agreement.

(b) Commodities shall not be distributed within the importing country on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliations of the potential consumers or recipients.

(c) Commodities shall not be distributed, handled or allocated by military forces without specific CCC authorization.

§ 1499.11 Agreement between cooperating sponsor and recipient agencies.

(a) The Cooperating Sponsor shall enter into a written agreement with a recipient agency prior to the transfer of any commodities, sale proceeds or program income to the recipient agency. Copies of such agreements shall be provided to the Agricultural Counselor or Attache, and the Director, PDD. Such agreements shall require the recipient agency to pay the Cooperating Sponsor the value of any commodities, sale proceeds or program income that are used for purposes not expressly permitted under the Program Agreement, or that are lost, damaged, or misused as result of the recipient agency's failure to exercise reasonable care;

(b) CCC may waive the requirements of paragraph (a) of this section where it determines that such an agreement is not feasible or appropriate.

§ 1499.12 Sales and barter of commodities provided and use of proceeds.

(a) Commodities may be sold or bartered without the prior approval of CCC where damage has rendered the commodities unfit for intended program purposes and sale or barter is necessary to mitigate loss of value.

(b) A Cooperating Sponsor may, but is not required to, negotiate an agreement with the host government under which the commodities imported for a sale or barter may be imported, sold, or bartered without assessment of duties or taxes. In such cases and where the commodities are sold, they shall be sold at prices reflecting prevailing local market value.

(c) The Cooperating Sponsor shall deposit all sale proceeds into an interest-bearing account unless prohibited by the laws or customs of the importing country or CCC determines that to do so would constitute an undue burden. Interest earned on such deposits shall only be used for approved activities.

(d) Except as otherwise provided in this part the Cooperating Sponsor may use sale proceeds and resulting interest only for those purposes approved in the applicable Plan of Operation.

(e) CCC will approve the use of sale proceeds and interest to purchase real and personal property where local law permits the Cooperating Sponsor to retain title to such property, but will not approve the use of sale proceeds or interest to pay for the acquisition, development, construction, alteration or upgrade of real property that is;

(1) Owned or managed by a church or other organization engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes; *except that,* a Cooperating Sponsor may use such sale proceeds or interest to pay for repairs or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of provided commodities but only if such structure is not used in whole or in part for any religious or sectarian purposes while the provided commodities are stored in such structure. When not approved in the Plan of Operation, such use may be approved by the Agricultural Counsellor or Attache.

(f) The Cooperating Sponsor shall follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with the approved Plan of Operation. Such practices shall include procedures to prevent fraud, self-dealing and conflicts of interest, and shall foster free and open competition to the maximum extent practicable.

(g) To the extent required by the Program Agreement, the Cooperating Sponsor shall submit to the Controller, CCC, and to the Director, PDD, an inventory of all assets acquired with sale proceeds or interest or program income. In the event that its participation in the program terminates, the Cooperating Sponsor shall dispose, at the direction of the Director, PDD, of any property, real or personal, so acquired.

§ 1499.13 Processing, packaging and labeling of section 416(b) commodities in the foreign country.

(a) Cooperating Sponsors may arrange for the processing of commodities provided under a section 416(b) Program Agreement, or for packaging or repackaging prior to distribution. When a third party provides such processing, packaging or repackaging, the

Cooperating Sponsor shall enter into a written agreement requiring that the provider of such services maintain adequate records to account for all commodities delivered and submit periodic reports to the Cooperating Sponsor. The Cooperating Sponsor shall submit a copy of the executed agreement to the Agricultural Counselor or Attache.

(b) If, prior to distribution, the Cooperating Sponsor arranges for packaging or repackaging commodities provided under section 416(b), the packaging shall be plainly labeled in the language of the country in which the commodities are to be distributed with the name of the commodity and, except where the commodities are to be sold or bartered after processing, packaging or repackaging, to indicate that the commodity is furnished by the people of the United States of America and not to be sold or exchanged. If the commodities are not packaged, the Cooperating Sponsor shall, to the extent practicable, display banners, posters or other media containing the information prescribed in this paragraph.

(c) CCC will reimburse Cooperating Sponsors that are nonprofit private voluntary organizations or cooperatives for expenses incurred for repackaging if the packages of commodities provided under section 416(b) are discharged from the vessel in damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the Agricultural Counselor or Attache in advance of repackaging.

§ 1499.14 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to Cooperating Sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to a governmental Cooperating Sponsor at discharge port or point of entry overseas, the Agricultural Counselor or Attache will immediately arrange for inspection by a public health official or other competent authority. If the commodity is damaged prior to delivery to a nongovernmental Cooperating Sponsor at the discharge port or point of entry, the nongovernmental Cooperating Sponsor shall arrange for such inspection. If inspection discloses the commodity to be unfit for the use authorized in the Program Agreement, the Agricultural Counselor or Attache or the nongovernmental Cooperating Sponsor shall dispose of the commodities in accordance with the priority set forth in paragraph (b) of this section. Expenses incidental to the handling and disposition of the damaged commodity will be paid by CCC from the sale proceeds or from an appropriate CCC account designated by CCC. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer, American Embassy, for the credit of CCC in an appropriate CCC account designated by CCC; however, if the commodities are provided for a sales program, the net sale proceeds, net of expenses incidental to handling and disposition of the damaged commodity, shall be deposited to the special account established for sale proceeds. The Cooperating Sponsor shall consult with CCC regarding the inspection and disposition of commodities and accounting for sale proceeds in the event the Cooperating Sponsor executed a sales agreement under which title passed to the purchaser prior to delivery to the Cooperating Sponsor.

(b) *After delivery to Cooperating Sponsor.* (1) If after arrival in a foreign country and after delivery to a Cooperating Sponsor, it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Program Agreement, the Cooperating Sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by the Agricultural Counselor or Attache. If no competent local authority is available, the Agricultural Counselor or Attache may determine whether the commodities are unfit for the use authorized in the Program Agreement and, if so, may direct disposal in accordance with this paragraph (b) of this section. The Cooperating Sponsor shall arrange for the recovery of that portion of the commodities designated during the inspection as suitable for authorized use. If, upon inspection, the commodity (or any part thereof) is determined to be unfit for the authorized use, the Cooperating Sponsor shall notify the Agricultural Counselor or Attache of the circumstances pertaining to the loss or damage. With the concurrence of the Agricultural Counselor or Attache, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(i) By transfer to an approved section 416(b) program for use as livestock feed. CCC shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(ii) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated or removed;

(iii) By donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iv) If the commodity is unfit for any use or if disposal in accordance with paragraph (b)(1) (i), (ii) or (iii) of this section is not possible, the commodity shall be destroyed under the observation of a representative of the Agricultural Counselor or Attache, if practicable, in such manner as to prevent its use for any purpose.

(2) Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sale proceeds and, if the commodities were intended for direct distribution, the Cooperating Sponsor shall deposit the net proceeds with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to an appropriate CCC account as designated by CCC. If the commodities were intended to be sold, the Cooperating Sponsor shall deposit the gross proceeds into the special interest bearing account and, after approved costs related to the handling and disposition of damaged commodities are paid, shall use the remaining funds for purposes of the approved program. The Cooperating Sponsor shall promptly furnish to the Agricultural Counselor or Attache a written report of all circumstances relating to the loss and damage on any commodity loss in excess of $5,000; quarterly reports shall be made on all other losses. If the commodity was inspected by a public health official or other competent authority, the report and any supplemental report shall include a certification by such public health official or other competent authority as to the condition of the commodity and the exact quantity of the damaged commodity disposed. Such certification shall be obtained as soon as possible after the discharge of the cargo. A report must also be provided to the Chief, Debt Management Division, KCFMO, of action taken to dispose of commodities unfit for authorized use.

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

(a) *Fault of Cooperating Sponsor prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify KCCO, Chief, Export Operations Division if the Cooperating Sponsor will not have a vessel for loading at the U.S. port of export in accordance with the

agreed shipping schedule. CCC will determine whether the commodity will be: moved to another available outlet; stored at the port for delivery to the Cooperating Sponsor when a vessel is available for loading; or disposed of as CCC may deem proper. The Cooperating Sponsor shall take such action as directed by CCC and shall reimburse CCC for expenses incurred if CCC determines that the expenses were incurred because of the fault or negligence of the Cooperating Sponsor.

(b) *Fault of others prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify the Chief, Debt Management Office, KCFMO, when any damage or loss to the commodity occurs that is attributable to a warehouseman, carrier, or other person between the time title is transferred to a Cooperating Sponsor and the time the commodity is loaded on board vessel at the designated port of export. The Cooperating Sponsor shall promptly assign to CCC any rights to claims which may arise as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate claims, and retain the proceeds of all claims, for such loss or damage.

(c) *Survey and outturn reports related to claims against ocean carriers.* (1) If the Program Agreement provides that CCC will arrange for an independent cargo surveyor to attend the discharge of the cargo, CCC will require the surveyor to provide a copy of the report to the Cooperating Sponsor.

(2)(i) If the Cooperating Sponsor arranges for an independent cargo surveyor, the Cooperating Sponsor shall forward to the Chief, Debt Management Office, KCFMO, any narrative chronology or other commentary it can provide to assist in the adjudication of ocean transportation claims and shall prepare such a narrative in any case where the loss is estimated to be in excess of $5,000.00. The Cooperating Sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the Cooperating Sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the Cooperating Sponsor shall provide to the Chief, Debt Management Office, KCFMO, the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. For bulk grain shipments, in those cases where the Cooperating Sponsor is responsible for survey and outturn reports, the Cooperating Sponsor shall obtain the services of an independent surveyor to:

(A) Observe the discharge of the cargo;

(B) Report on discharging methods including scale type, calibrations and any other factor which may affect the accuracy of scale weights, and, if scales are not used, state the reason therefore and describe the actual method used to determine weights;

(C) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(D) Advise on the quality of sweepings;

(E) Obtain copies of port or vessel records, if possible, showing quantity discharged;

(F) Provide immediate notification to the Cooperating Sponsor if additional services are necessary to protect cargo interests or if the surveyor has reason to believe that the correct quantity was not discharged; and

(G) In the case of shipments arriving in container vans, list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying as container vans are opened.

(iii) Cooperating Sponsors shall send copies to KCFMO, Chief, Debt Management Office of all reports and documents pertaining to the discharge of commodities.

(iv) CCC will reimburse the Cooperating Sponsor for costs incurred upon receipt of the survey report and the surveyor's invoice or other documents that establish the survey cost. CCC will not reimburse a Cooperating Sponsor for the costs of a delivery survey unless the surveyor also prepares a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless CCC determines that such action was justified in the circumstances.

(3) Survey contracts shall be let on a competitive bid basis unless CCC determines that the use of competitive bids would not be practicable. CCC may preclude the use of certain surveyors because of conflicts of interest or lack of demonstrated capability to properly carry out surveying responsibilities.

(4) If practicable, all surveys shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties.

(d) *Ocean carrier loss and damage.* (1) Notwithstanding transfer of title, CCC shall have the right to file, pursue, and retain the proceeds of collection from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental Cooperating Sponsors; however, when the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged. CCC will pay general average contributions for all valid general average incidents which may arise from the movement of commodity to the destination ports. CCC shall receive and retain all allowances in general average.

(2) Nongovernmental Cooperating Sponsors shall: file notice with the ocean carrier immediately upon discovery of any cargo loss or damage; promptly initiate claims against the ocean carriers for such loss and damage; take all necessary action to obtain restitution for losses, and (iv) provide CCC copies of all such claims. Notwithstanding the preceding sentence the nongovernmental Cooperating Sponsor need not file a claim when the cargo loss is less than $100, or in any case when the loss is between $100 and $300 and the nongovernmental Cooperating Sponsor determines that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental Cooperating Sponsor shall transmit to KCFMO, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. When General Average has been declared, Cooperating Sponsors need not file or collect claims for loss of, or damage to, commodities.

(3) Amounts collected by nongovernmental Cooperating Sponsors on claims against ocean carriers which are less than $200 may be retained by the nongovernmental Cooperating Sponsor. On claims involving loss or damage of $200 or more, nongovernmental Cooperating Sponsors may retain from collections received by them, either $200 plus 10 percent of the difference between $200 and the total amount collected on the claim, up to a maximum of $500; or the actual administrative expenses incurred in collection of the claim, provided retention of such administrative expenses is approved by CCC. Allowable collection costs shall not include attorneys fees, fees of collection agencies, and similar costs. In no event

will CCC pay collection costs in excess of the amount collected on the claim.

(4) A nongovernmental Cooperating Sponsor also may retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling and packing costs, which the nongovernmental Cooperating Sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(5) A nongovernmental Cooperating Sponsor may redetermine claims on the basis of additional documentation or information not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(6) A nongovernmental Cooperating Sponsor may negotiate compromise settlements of claims of any amount, provided that proposed compromise settlements of claims having a value of $5,000 or more shall require prior approval in writing by CCC. When a claim is compromised, a nongovernmental Cooperating Sponsor may retain from the amount collected, the amounts authorized in paragraph (d)(3) of this section, and in addition, an amount representing such percentage of the special charges described in paragraph (d)(4) of this section as compromised amount is to the full amount of the claim. When a claim is less than $600, a nongovernmental Cooperating Sponsor may terminate collection activity when it is determined that pursuit of such claims will not be economically sound. Approval for such termination by CCC is not required; however, the nongovernmental Cooperating Sponsor shall notify KCFMO, Chief, Debt Management Division when collection activity on a claim is terminated.

(7) All amounts collected in excess of the amounts authorized in this section to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by a nongovernmental Cooperating Sponsor from the proceeds of claims filed against ocean carriers, the word ''claim'' shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier.

(8) If a nongovernmental Cooperating Sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the party alleged responsible for the damage, the nongovernmental Cooperating Sponsor shall assign its rights to the claim to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Generally, a nongovernmental Cooperating Sponsor should assign claim rights to CCC no later than 60 days prior to the expiration of the period of limitation or any extension thereof. In all cases, a nongovernmental Cooperating Sponsor shall keep CCC informed of the progress of its collection efforts and shall promptly assign their claim rights to CCC upon request. Subsequently, if CCC collects on or settles the claim, CCC shall, except as indicated in this paragraph pay to a nongovernmental Cooperating Sponsor the amount to which it would have been entitled had it collected on the claim. The additional 10 percent on amounts collected in excess of $200 will be payable, however, only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is determined to be commensurate with the extra efforts exerted in further documenting the claim. If documentation requirements have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC will deny payment of all allowances to the nongovernmental Cooperating Sponsor.

(9) When a nongovernmental Cooperating Sponsor permits a claim to become time-barred, or fails to take timely actions to insure the right of CCC to assert such claims, and CCC determines that the nongovernmental Cooperating Sponsor failed to properly exercise its responsibilities under the Agreement, the nongovernmental Cooperating Sponsor shall be liable to the United States for the cost and freight value of the commodities lost to the program.

(e) *Fault of Cooperating Sponsor in country of distribution.* If a commodity, sale proceeds or program income is used for a purpose not permitted by the Program Agreement, or if a Cooperating Sponsor causes loss or damage to a commodity, sale proceeds, or program income through any act or omission or failure to provide proper storage, care and handling, the cooperating sponsor shall pay to the United States the value of the commodities, sale proceeds or program income lost, damaged or misused. CCC will consider normal commercial practices in the country of distribution in determining whether there was a proper exercise of the Cooperating Sponsor's responsibility. Payment by the Cooperating Sponsor shall be made in accordance with paragraph (g) of this section.

(f) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey or outturn reports to determine ocean carrier loss and damage, the Cooperating Sponsor shall, in the case of landlocked countries, arrange for an independent survey at the point of entry into the recipient country and make a report as set forth in paragraph (c)(1) of this section. CCC will reimburse the Cooperating Sponsor for the costs of survey as set forth in paragraph (c)(2)(iv) of this section.

(2) Where any damage to or loss of the commodity or any loss of sale proceeds or program income is attributable to a warehouseman, carrier or other person, the Cooperating Sponsor shall make every reasonable effort to pursue collection of claims for such loss or damage. The Cooperating Sponsor shall furnish a copy of the claim and related documents to the Agricultural Counselor or Attache. Cooperating Sponsors who fail to file or pursue such claims shall be liable to CCC for the value of the commodities or sale proceeds or program income lost, damaged, or misused: *Provided*, however, that the Cooperating Sponsor may elect not to file a claim if the loss is less than $500. The Cooperating Sponsor may retain $150 of any amount collected on an individual claim. In addition, Cooperating Sponsors may, with the written approval of the Agricultural Counselor or Attache, retain amounts to cover special costs of collection such as legal fees, or pay such collection costs with sale proceeds or program income. Any proposed settlement for less than the full amount of the claim requires prior approval by the Agricultural Counselor or Attache. When the Cooperating Sponsor has exhausted all reasonable attempts to collect a claim, it shall request the Agricultural Counselor or Attache to provide further instructions.

(3) The Cooperating Sponsor shall pursue any claim by initial billings and at least three subsequent demands at not more than 30 day intervals. If these efforts fail to elicit a satisfactory response, the Cooperating Sponsor shall pursue legal action in the judicial system of country unless otherwise agreed by the Agricultural Counselor or Attache. The Cooperating Sponsors

must inform the Agricultural Counselor or Attache in writing of the reasons for not pursuing legal action; and the Agricultural Counselor or Attache may require the Cooperating Sponsor to obtain the opinion of competent legal counsel to support its decision prior to granting approval. If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall provide to CCC all documentation relating to the claim.

(4) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the Cooperating Sponsor and the cooperating country may agree in writing to settle disputed claims by an appropriate administrative procedure or arbitration.

(g) *Determination of value.* The Cooperating Sponsor shall determine the value of commodities misused, lost or damaged on the basis of the domestic market price at the time and place the misuse, loss or damage occurred. When it is not feasible to determine such market price, the value shall be the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss or damage claims, the Cooperating Sponsor may request the Agricultural Counselor or Attache to approve a commercially reasonable alternative basis to value the claim.

(h) *Reporting losses to the Agricultural Counselor or Attache or CCC designated representative.* (1) The Cooperating Sponsor shall promptly notify the Agricultural Counselor or Attache or CCC designated representative, in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the country of distribution or intermediate country. The report shall be made as soon as the Cooperating Sponsor has adequately investigated the circumstances, but in no event more than ninety days from the date the loss became known to the Cooperating Sponsor. The report shall identify the party in possession of the commodities and the party responsible for the loss, damage or misuse; the kind and quantities of commodities; the size and type of containers; the time and place of misuse, loss, or damage; the current location of the commodity; the Program Agreement number, the CCC contract numbers, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the Cooperating Sponsor with respect to recovery or disposal; and the estimated value of the commodity. The report shall explain why any of the information required by this paragraph cannot be provided. The Cooperating Sponsor shall also report the details regarding any loss or misuse of sale proceeds or program income.

(2) The Cooperating Sponsor shall report quarterly to the Agricultural Counselor or Attache any loss, damage to or misuse of commodities resulting in loss of less than $500. The Cooperating Sponsor shall inform the Agricultural Counselor or Attache or CCC designated representative if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report as described in paragraph (h)(1) of this section, together with any other relevant information the Cooperating Sponsor has available to it. The Agricultural Counselor or Attache may require additional information about any commodities lost, damaged or misused.

(i) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in the currency in which freight is paid) and shall be remitted (less amounts authorized to be retained) by Cooperating Sponsors to CCC. Claims against Cooperating Sponsors shall be paid to CCC in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by Cooperating Sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably in U.S. dollars with instructions to credit the deposit to an appropriate CCC account as determined by CCC, or in local currency at the highest rate of exchange legally obtainable on the date of deposit with instructions to credit the deposit to an appropriate CCC account as determined by CCC. With respect to sale proceeds and program income, amounts recovered may be deposited in the same account as the sale proceeds and may be used for purposes of the program.

§ 1499.16 Records and reporting requirements.

(a) *Records and reports—general requirements.* The Cooperating Sponsor shall maintain records for a period of three (3) years from the date of export of the commodities that accurately reflect the receipt and use of the commodities and any proceeds realized from the sale of commodities. The Government of the Exporting Country may, at reasonable times, inspect the Cooperating Sponsor's records pertaining to the receipt and use of the commodities and proceeds realized from the sale of the commodities, and have access to the Cooperating Sponsor's commodity storage and distribution sites and to locations of activities supported with proceeds realized from the sale of the commodities.

(b) *Evidence of export.* The Cooperating Sponsor's freight forwarder shall, within thirty (30) days after export, submit evidence of export of the agricultural commodities to the Chief, Export Operations Division, KCCO. If export is by sea or air, the Cooperating Sponsor's freight forwarder shall submit five copies of the carrier's on board bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export, and the destination country.

(c) *Reports.* (1) The Cooperating Sponsor shall submit a semiannual logistics report to the Agricultural Counselor or Attache and to the Director, CCC Program Support Division, FAS/USDA, Washington, DC 20250–1031, covering the receipt of commodities. The first report shall be submitted by the date specified in the Program Agreement, and cover the time period specified in the Program Agreement. Reports thereafter will cover each subsequent six (6) month period until all commodities have been distributed or sold. The report must contain the following data:

(i) Receipts of agricultural commodities including the name of each vessel, discharge port(s) or point(s) of entry, the date discharge was completed, the condition of the commodities on arrival, any significant loss or damage in transit; advice of any claim for, or recovery of, or reduction of freight charges due to loss or damage in transit on U.S. flag vessels;

(ii) Estimated commodity inventory at the end of the reporting period;

(iii) Quantity of commodity on order during the reporting period;

(iv) Status of claims for commodity losses both resolved and unresolved during the reporting period;

(v) Quantity of commodity damaged or declared unfit during the reporting period; and

(vi) Quantity and type of the commodity that has been directly distributed by the Cooperating Sponsor, distribution date, region of distribution, and estimated number of individuals benefiting from the distribution.

(2) If the Program Agreement authorizes the sale or barter of commodities by the Cooperating Sponsor, the Cooperating Sponsor shall also submit a semiannual monetization report to the Agricultural Counselor or Attache and to the Director, CCC Program Support Division, FAS/USDA, Washington, DC 20250–1031, a monetization report covering the deposits into and disbursements from the special account for the purposes specified in the Program Agreement. The first report shall be submitted by the date specified in the Program Agreement, and cover the time period specified in the Program Agreement. Reports thereafter will cover each subsequent six (6) month period until all commodities have been distributed, bartered, or sale proceeds disbursed. The report must contain the following information and include both local currency amounts and U.S. dollar equivalents:

(i) Quantity and type of commodities sold;

(ii) Proceeds generated from the sale;

(iii) Proceeds deposited to the special account including the date of deposit;

(iv) Interest earned on the special account;

(v) Disbursements from the special account, including date, amount and purpose of the disbursement;

(vi) Any balance carried forward in the special account from the previous reporting period; and

(vii) In connection with a section 416(b) Program Agreement only, a description of the effectiveness of sales and barter provisions in facilitating the distribution of commodities and products to targeted recipients, and a description of the extent, if any, that sales, barter or use of commodities:

(A) Affected the usual marketings of the United States;

(B) Displaced or interfered with commercial sales of the United States;

(C) Disrupted world commodity prices or normal patterns of trade with friendly countries;

(D) Discouraged local production and marketing of commodities in the recipient country;

(E) Achieved the objectives of the Program Agreement; and

(F) Could be improved in future agreements.

(3) The Cooperating Sponsor shall furnish the Government of the Exporting Country such additional information and reports relating to the agreement as the Government of the Exporting Country may reasonably request.

§ 1499.17 Audits.

Nongovernmental Cooperating Sponsors shall assure that audits are performed to assure compliance with Program Agreements and the provisions of this part. An audit undertaken in accordance with OMB Circular A–133, shall fulfill the audit requirements of this section. Audits shall be performed at least annually until all commodities have been distributed and sale proceeds expended. Both the auditor and the auditing standards to be used by the Cooperating Sponsor must be acceptable to CCC. The Cooperating Sponsor is also responsible for auditing the activities of recipient agencies that receive more than $25,000 of provided commodities or sale proceeds. This responsibility may be satisfied by relying upon independent audits of the recipient agency or upon a review conducted by the Cooperating Sponsor.

§ 1499.18 Suspension of the program.

All or any part of the assistance provided under a Program Agreement, including commodities in transit, may be suspended by CCC if:

(a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;

(b) CCC determines that the continuation of such assistance is no longer necessary or desirable; or

(c) CCC determines that storage facilities are inadequate to prevent spoilage or waste, or that distribution of commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

§ 1499.19 Sample documents and guidelines for developing proposals and reports.

CCC has developed guidelines to assist the Cooperating Sponsors in developing proposals and reporting on program logistics and commodity sales. Cooperating Sponsors may obtain these guidelines from the Director, PDD.

§ 1499.20 Paperwork reduction requirement.

The paperwork and record keeping requirements imposed by this part have been previously submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995. OMB has assigned control number 0551–0035 for this information collection.

Signed this November 18, 1996, in Washington, D.C.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 96–30032 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–8]

Establishment of Class E Airspace; Grafton, ND, Grafton Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Grafton, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 35 has been developed for the Grafton Municipal Airport. 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, March 27, 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 Wednesday, July 10, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Grafton, ND (61 FR 36315). 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 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 E airspace at Grafton, ND to accommodate aircraft executing the GPS Runway 35 SIAP at Grafton Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AFL 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 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

AGL ND E5 Grafton, ND [New]
Grafton Municipal Airport, ND
(Lat. 48°24′17″N., long. 97°22′15″W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Grafton Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on November 22, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–30370 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–20]

Amendment to Class E Airspace, Imperial, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Imperial Municipal Airport, Imperial, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at Imperial Municipal Airport.

DATES: *Effective date.* March 27, 1997.

Comment date: Comment must be received on or before January 26, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–20, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

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

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Imperial Municipal Airport, Imperial, NE. The amendment to Class E airspace at Imperial, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending 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 Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–20.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—AMENDED

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, 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.

* * * * *

ACE NE E5 Imperial, NE [Revised]

Imperial Municipal Airport, NE
(Lat. 40°30′37.79″N., long. 101°37′12.21″W.)
Imperial NDB
(Lat. 40°30′42″N., long 101°37′39″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Imperial Municipal Airport and within 2.6 miles each side of the 129° bearing from the Imperial NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 6, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–30519 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ACE–11]

Amendment to Class E Airspace, Sioux City, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This rule amends the Class E airspace area at Sioux Gateway Airport, Sioux City, IA. The effect of this rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at Sioux Gateway Airport and departing aircraft to transition into controlled airspace. In addition, this action corrects an inadvertent editorial error in the description of Class E5 airspace, deletes the reference to the Gateway NDB and adds the word Sioux to Gateway NDB in the Class 4 airspace that was published in the Federal Register on August 6, 1996 (61 FR 40719), Airspace Docket No. 96–ACE–11, Direct final rule, request for comments.

EFFECTIVE DATE: 0901UTC , January 31, 1997.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on August 6, 1996 (61 FR 40719). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advises the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 31, 1997. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date. In addition, an error was discovered in the description of Class E5 airspace and the word Sioux was omitted from the Class E4 airspace. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Sioux City, IA, as published in the Federal Register on August 6, 1996 (61

FR 40719), (FR Doc. 96–20002; page 40720, column 3 and page 40721, column 1) are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ACE IA E5 Sioux City, IA [Corrected]

Sioux City, Sioux Gateway Airport, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
Sioux City VORTAC
(Lat. 42°20′40″N., long. 96°19′25″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sioux Gateway Airport and within 3 miles each side of the 139° radial of the Sioux City VORTAC extending from the 7-mile radius to 17.8 miles southeast of the VORTAC and within 3 miles each side of the 319° radial of the Sioux city VORTAC extending from the 7-mile radius to 25.3 miles northwest of the VORTAC and within 2 miles each side of the 360° bearing from the Sioux Gateway Airport extending from the 7-mile radius to 9.2 miles north of the airport.

* * * * *

ACE IA E4 Sioux City, IA [Corrected]

Sioux City, Sioux Gateway Airport, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
Sioux City VORTAC
(Lat. 42°20′40″N., long. 96°19′25″W.)
Sioux Gateway NDB
(Lat. 42°24′29″N., long. 96°23′09″W.)

That airspace extending upward from the surface within 2.2 miles each side of the 140° radial of the Sioux City VORTAC extending from the 4.3-mile radius of the Sioux Gateway Airport to 5.3 miles southeast of the VORTAC and 2.5 miles each side of the 170° bearing from the Sioux Gateway NDB extending from the 4.3-miles radius of the Sioux Gateway Airport to 7 miles south of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Kansas City, MO, on November 12, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–30520 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28736; Amdt. No. 1766]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on November 15, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Dec, 5 1996*

Cincinnati, OH, Cincinnati-Blue Ash, NDB or GPS RWY 6, Orig-A Cancelled

Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 6, Orig-A

[FR Doc. 96–30515 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28735; Amdt. No. 1765]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected

airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on November 15, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
10/09/96	UT	Logan	Logan-Cache	FDC 6/7718	VOR or GPS–A, Amdt 6A...
10/30/96	LA	Monroe	Monroe Regional	FDC 6/8388	ILS RWY 22 Amdt 3...
10/30/96	LA	Monroe	Monroe Regional	FDC 6/8389	ILS RWY 4 Amdt 20...
10/31/96	LA	Bunkie	Bunkie Muni	FDC 6/8427	NDB RWY 35 Orig...
11/01/96	IL	Moline	Quak City Airport	FDC 6/8444	NDB or GPS RWY 9 Amdt 27A...
11/04/96	NC	Charlotte	Charlotte/Douglas Intl	FDC 6/8491	ILS RWY 18R, Amdt 7...
11/05/96	IA	Storm Lake	Storm Lake Muni	FDC 6/8522	NDB RWY 35, Amdt 1...
11/06/96	KS	Olathe	Johnson County Executive	FDC 6/8528	LOC RWY 35, Orig...
11/06/96	KS	Olathe	Johnson County Executive	FDC 6/8529	NDB or GPS–B, Amdt 2...
11/06/96	KS	Olathe	Johnson County Executive	FDC 6/8530	VOR RWY 35, Amdt 10...
11/06/96	KS	Olathe	Johnson County Executive	FDC 6/8532	GPS RWY 35, Orig...
11/06/96	KS	Olathe	Johnson County Executive	FDC 6/8536	NDB or GPS RWY 17, Amdt 3...
11/06/96	KS	Olathe	Johnson County Executive	FDC 6/8537	LOC RWY 17, Amdt 6...
11/07/96	CA	San Francisco	San Francisco Intl	FDC 6/8571	ILS RWY 28R, Amdt 9A...
11/07/96	IA	Sioux City	Sioux Gateway	FDC 6/8565	ILS RWY 13, Amdt 1B...
11/07/96	OH	Wapakoneta	Wapakoneta-Neil Armstrong	FDC 6/8566	VOR/DME RNAV RWY 26 Amdt 5...
11/07/96	OH	Wapakoneta	Wapakoneta-Neil Armstrong	FDC 6/8567	VOR–A Amdt 7...
11/07/96	WI	Appleton	Outagamie County	FDC 6/8576	NDB or GPS RWY 3 Amdt 14A...
11/07/96	WI	Appleton	Outagamie County	FDC 6/8578	LS RWY 3, Amdt 16A...
11/13/96	FL	Melbourne	Melbourne International	FDC 6/7306	ILS RWY 9R, Amdt 9A...
11/13/96	FL	Melbourne	Melbourne International	FDC 6/7307	NDB or GPS RWY 9R, Amdt 13...
11/13/96	GA	Atlanta	The William B. Hartsfield Atlanta Intl	FDC 6/8676	ILS RWY 26L, Amdt 17A...
11/13/96	IL	Chicago	Chicago Midway	FDC 6/8665	ILS RWY 31C Amdt 5A...
11/13/96	KY	Paducah	Barkley Regional	FDC 6/8646	VOR or GPS RWY 4, Amdt 16...
11/13/96	KY	Paducah	Barkley Regional	FDC 6/8647	VOR/DME RWY 22, Amdt 4...
11/13/96	KY	Paducah	Barkley Regional	FDC 6/8648	ILS RWY 4, Amdt 7...
11/13/96	MS	Yazoo City	Yazoo County	FDC 6/8678	VOR/DME or GPS RWY 35, Orig...
11/13/96	SC	Myrtle Beach	Myrtle Beach Intl	FDC 6/8679	VOR/DME–A, Orig...
11/13/96	SC	Myrtle Beach	Myrtle Beach Intl	FDC 6/8680	ILS RWY 35, Orig...
11/13/96	SC	Myrtle Beach	Myrtle Beach Intl	FDC 6/8681	ILS RWY 17, Orig...

[FR Doc. 96–30516 Filed 11–27–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28734; Amdt. No. 1764]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 15, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACON, and VOR/DME

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

* * * *Effective December 5, 1996*

Bethel, AK, Bethel, MLS RWY 36, Orig
Telluride, CO, Telluride Regional, LOC/DME RWY 9, Orig
Springfield, IL, Capital, NDB RWY 22, Orig
Springfield, IL, Capital, ILS RWY 22, Amdt 7
Fort Wayne, IN, Fort Wayne Intl, NDB or GPS RWY 32, Amdt 25
Fort Wayne, IN, Fort Wayne Intl, LOC BC RWY 14, Amdt 13
Fort Wayne, IN, Fort Wayne Intl, ILS RWY 32, Amdt 28
Pinecreek, MN, Piney Pinecreek Border, NDB RWY 33, Orig
Dayton, OH, Greene County, GPS RWY 7, Orig
Memphis, TN, Memphis Intl, ILS RWY 18L, Orig
Memphis, TN, Memphis Intl, ILS RWY 18R, Amdt 11
Memphis, TN, Memphis Intl, ILS RWY 36R, Orig
Memphis, TN, Memphis Intl, ILS RWY 36L, Amdt 12

* * * *Effective January 2, 1997*

Paragould, AR, Kirk Field, NDB RWY 22, Orig
Chadron, NE, Chadron Muni, VOR OR GPS RWY 20, Amdt 6A, Cancelled

* * * *Effective January 30, 1997*

Aniak, AK, Aniak, GPS RWY 10, Orig
Buckland, AK, Buckland, GPS RWY 10, Orig
Homer, AK, Homer, GPS RWY 21, Orig
Petersburg, AK, James A Johnson Petersburg, GPS–B, Orig
Sand Point, AK, Sand Point, GPS–C, Orig
Sitka, AK, Sitka, GPS RWY 11, Orig
Wainwright, AK, Wainwright, GPS RWY 4, Orig
Wainwright, AK, Wainwright, GPS RWY 22, Orig
Merced, CA, Merced Muni/Macready Field, VOR OR GPS RWY 30, Amdt 17
Merced, CA, Merced Muni/Macready Field, LOC BC RWY 12, Amdt 9
Merced, CA, Merced Muni/Macready Field, ILS RWY 30, Amdt 13
Alamosa, CO, San Luis Valley Regional/ Bergman Field, GPS RWY 2, Amdt 1
Durango, CO, Durango-La Plata County, GPS RWY 2, Orig
Fernandina Beach, FL, Fernandina Beach Muni, GPS RWY 13, Orig
Donalsonville, GA, Donalsonville Muni, GPS RWY 18, Orig
Donalsonville, GA, Donalsonville Muni, GPS RWY 36, Orig
Decatur, IL, Decatur, GPS RWY 30, Orig
Starkville, MS, George M Bryan, GPS RWY 18, Orig
Las Vegas, NV, McCarran Intl, VOR RWY 25L/R, Amdt 1
Las Vegas, NV, McCarran Intl, GPS RWY 1R, Orig
Frederick, OK, Frederick Muni, GPS RWY 35L, Orig
Hot Springs, VA, Ingalls Field, GPS RWY 6, Orig
Luray, VA, Luray Caverns, GPS RWY 22, Orig
Mineral Point, WI, Iowa County, GPS RWY 4, Orig

[FR Doc. 96–30517 Filed 11–27–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 960606162–6293–02]

RIN 0607–AA21

Collection of Canadian Province of Origin Information on Customs Entry Records

AGENCIES: Bureau of the Census, Commerce and U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census) has determined that Canadian Province of Origin information is required for all U.S. imports that originate in Canada. Census has asked the U.S. Customs Service (Customs) to begin collecting this information. This action is taken to fulfill the requirements of the 1987 agreement between the United States and Canada under which the countries agreed to replace their requirements for reporting export data by substituting exchanged import information. The Department of Treasury concurs with the provisions contained in this final rule.

EFFECTIVE DATE: This rule will become effective February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to C. Harvey Monk, Jr., Bureau of the Census, Washington, D.C. 20233, by telephone on (301) 457–2255 or by fax on (301) 457–2645. For information on the specific Customs reporting requirements contact: J. Edgar Nichols, U.S. Customs Service, Room 6216, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, by telephone on (202) 927–1426 or by fax on (202) 927–0165.

SUPPLEMENTARY INFORMATION: Effective in January 1990, the United States and Canada each replaced their requirements for reporting export data by agreeing to substitute exchanged import information. This substitution of exchanged import information allowed the countries to eliminate the requirements that exporters in both countries provide separate export information on the millions of shipments crossing the U.S. and Canadian border each year. A Memorandum of Understanding (MOU) implementing the exchange was signed by the United States and Canada on July 29, 1987.

Under the terms of the MOU, the United States and Canada agreed to collect several new data elements on their respective import records. These elements improve both countries' statistical data and allow elimination of export reporting. One of the data elements that the United States agreed to collect in the MOU is the Canadian Province of Origin where the specific goods exported to the United States were produced. Census has attempted in the past to derive this information from related information now reported on Customs entry records as part of the required Identification of the Foreign Manufacturer. The quality of this derived information, however, has proven unsatisfactory. In many cases the Province currently reported does not identify the location where the goods were manufactured or assembled or mined, grown, or otherwise produced. Instead, it represents a corporate headquarters or the location of the Canadian vendor.

Response to Comments

The Census Bureau issued a Notice of Proposed Rulemaking and Request for Comments in the Federal Register (61 FR 36318) on Wednesday, July 10, 1996. The Bureau of the Census received eight letters commenting on the proposed rule. The Census Bureau replied to each of these respondents.

Two of the respondents pointed out an ambiguity in the definition of province of origin. In order to clarify this definition, the wording in the program requirements and the Foreign Trade Statistics Regulations (FTSR), 15 CFR 30.80 (a) and (b), is modified. The wording is changed to clarify that for goods determined under applicable Customs rules to originate in Canada, the Canadian province of origin should be: (1) For manufactured or assembled goods, that province in which the final manufacture or assembly is performed prior to exporting the goods to the United States; and (2) For nonmanufactured goods, that province where the goods were originally grown, mined, or otherwise produced. One of these respondents also expressed concern that the notice was establishing new criteria for determining the origin of goods for imports from Canada. In order to clarify this issue, the wording in the program requirements and the

FTSR, 15 CFR 30.80, is changed to emphasize that the determination of country of origin continues under applicable Customs rules of origin. In light of these comments, the final rule is revised as referenced above.

Five of the respondents expressed concern with the expected burdens either to U.S. importers or Canadian exporters in determining the actual Canadian Province of Origin. Some respondents stress that this is of particular concern when the exporter is a distributor shipping goods from various Canadian manufacturers. In response to these comments, we note in the rule that when the true Province of Origin is unknown, the location of the vendor can be reported.

The eighth respondent proposed a revision to the definition of the Province of Manufacture for reporting softwood lumber. This definition was established by a final rule published on April 9, 1996 and was not directly addressed in the proposed rule. Thus, no change to the final rule has been made with respect to this specific comment. However, some minor changes were made to make the wording consistent throughout 15 CFR 30.80.

Program Requirements

In order to comply with the MOU, the two-letter designation of the Canadian Province of Origin must be reported on U.S. entry summary records when the Country of Origin is Canada. This information is required only for United States imports that under applicable Customs rules of origin are determined to originate in Canada. For nonmanufactured goods determined to originate in Canada, the Province of Origin is defined as the province where the imported goods were originally grown, mined, or otherwise produced. For goods of Canadian origin that are manufactured or assembled in Canada, with the exception of specific softwood lumber products, the Province of Origin is that in which the final manufacture or assembly is performed prior to exporting that good to the United States. In cases where the Province in which the merchandise was manufactured, assembled, grown, mined, or otherwise produced is unknown, the Province in which the Canadian vendor is located may be reported.

For all shipments of certain softwood lumber products classified under U.S. Harmonized System tariff items 4407.1000, 4409.1010, 4409.1090, or 4409.1020, the Census Bureau began, effective April 5, 1996, to require information on Canadian Province of Manufacture. This requirement was made to allow the United States to carry out the requirements of an agreement concluded with Canada on the amount of certain softwood lumber products exported to the United States annually.

The reporting of the Province of Origin applies to the paper as well as Automated Broker Interface (ABI) entry summaries. For those reporting on paper forms, the Province of Origin code is to replace the Country of Origin data on the Customs Form (CF) 7501, Entry Summary. This requirement would apply only for imports for which the Country of Origin is Canada.

All electronic Automated Broker Interface (ABI) Entry Summaries for imports originating in Canada would also require the new Canadian Province of Origin code to be reported when the Country of Origin is Canada. The Province of Origin should be transmitted for each entry summary line item in the A40 record positions 6–7.

Collection of Information Requirements

For imports of Canada only, the Province of Origin Code replaces the Country of Origin data on the CF 7501, Entry Summary form and in positions 6–7 of the ABI A40 electronic record.

Valid Canadian Province/Territory Codes are:

XA—Alberta
XB—New Brunswick
XC—British Columbia
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XW—Newfoundland
XY—Yukon Territory

The authority to collect this information is provided under Title 13, United States Code, Section 301 (13 U.S.C. 301). This legislation authorizes the Secretary of Commerce to collect from persons importing into or exporting from the United States necessary or appropriate information to foster, promote, develop, and further the commerce, domestic and foreign, of the United States.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The collection of information on Canadian Province of Origin supplements information currently required on the Customs paper form CF 7501 and the ABI automated electronic reporting form A40 for specific softwood lumber imports from Canada. The collection of information requirement contained in this Rulemaking has been approved by the Office of Management and Budget (OMB) under OMB Control No. 1515–0065. For further information on the OMB submission, contact J. Edgar Nichols, U.S. Customs Service, Room 6216, 1301 Constitution Avenue, N.W., Washington, D.C. 20229–0001, by telephone on (202) 927–1426 or by fax (202) 927–0165.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. 553 (a)(1)).

This rule is exempt from the requirements of Executive Order 12866.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Imports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS REGULATIONS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Camp., 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 CFR 42765.

Subpart F—Special Provisions for Particular Types of Import Transactions

2. Section 30.80 is amended to add paragraphs (a), (b), (c), and (d) to read as follows:

§ 30.80 Imports from Canada.

* * * * *

(a) When certain softwood lumber products described under *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020 are imported from Canada, import entry records are required to show a valid Canadian Province of Manufacture Code. The Canadian Province of Manufacture is determined on a first mill basis (the point at which the item

was first manufactured into a covered lumber product). For purposes of determination, Province of Manufacture is the first province where the subject merchandise underwent a change in tariff classification to the tariff classes cited in this paragraph (a). The Province of Manufacture Code should replace the Country of Origin code on the CF 7501, Entry Summary form. For electronic Automated Broker Interface (ABI) entry summaries, the Canadian Province Code should be transmitted in positions 6–7 of the A40 records. These requirements apply only for imports of certain softwood lumber products for which the Country of Origin is Canada.

(b) All other imports from Canada, including certain softwood lumber products not covered in paragraph (a) of this section, will require the two-letter designation of the Canadian Province of Origin to be reported on U.S. entry summary records. This information is required only for United States imports that under applicable Customs rules of origin are determined to originate in Canada. For nonmanufactured goods determined to be of Canadian origin, the Province of Origin is defined as the Province where the exported goods were originally grown, mined, or otherwise produced. For goods of Canadian origin that are manufactured or assembled in Canada, with the exception of the certain softwood lumber products described in paragraph (a) of this section, the Province of Origin is that in which the final manufacture or assembly is performed prior to exporting that good to the United States. In cases where the province in which the merchandise was manufactured or assembled or grown, mined, or otherwise produced is unknown, the province in which the Canadian vendor is located can be reported. For those reporting on paper forms the Province of Origin code replaces the country of origin code on the CF 7501, Entry Summary form.

(c) All electronic Automated Broker Interface (ABI) entry summaries for imports originating in Canada also require the new Canadian Province of Origin code to be transmitted for each entry summary line item in the A40 record positions 6–7.

(d) The Province of Origin code replaces the Country of Origin code only for imports that have been determined, under applicable Customs rules, to originate in Canada.

Valid Canadian Province/Territory Codes are:

XA—Alberta
XB—New Brunswick
XC—British Columbia
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XW—Newfoundland
XY—Yukon Territory

Dated: November 21, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

Concurred:

Dated: November 1, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement), Department of the Treasury.

[FR Doc. 96–30398 Filed 11–27–96; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 96F–0031]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,2-benzisothiazolin-3-one as a biocide in rubber latex for use in the manufacture of rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by Reichhold Chemicals, Inc.

DATES: Effective November 29, 1996; written objections and requests for a hearing by December 30, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 8, 1996 (61 FR 4783), FDA announced that a food additive petition (FAP 3B4389) had been filed by Reichhold Chemicals, Inc., P.O. Box 13582, Research Triangle Park, NC 27709–3582. The petition proposed to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of 1,2-benzisothiazolin-3-one as a biocide in rubber latex for use in the manufacture of rubber articles intended for repeated use in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of carcinogenic polychlorinated dibenzo-*p*-dioxins and dibenzofurans as residual impurities in 1,2-benzisothiazolin-3-one. Residual amounts of reactants and manufacturing aids, such as polychlorinated dibenzo-*p*-dioxins and dibenzofurans, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), ''the so-called general safety clause'' of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer or Delaney clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984).

II. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, 1,2-benzisothiazolin-3-one, will result in exposure to the additive of no greater than 0.16 parts per billion (ppb), which equates to an

estimated daily intake (EDI) of 0.5 micrograms per person per day (µg/p/d) (Ref. 1). The agency has also calculated the estimated daily intake of the migrating impurities associated with the additive under the most severe conditions of its intended use: bis(2-carbamoyl phenyl)disulfide, 5-chloro-1,2-benzisothiazolin-3-one, bis(2-dimethylcarbamoylphenyl)disulfide, and 6-chloro-1,2-benzisothiazolin-3-one, and the probable concentrations of these four migrants and the solvent impurity (dipropylene glycol) from the additive's use in contact with food. The agency estimated the potential daily intakes of the four impurities to be 0.4, 1.8, 1.4, and 1.8 nanograms/p/d, and the daily intake of the solvent impurity to be 9 µg/p/d, respectively (Ref. 1). The additive may also contain small amounts of the carcinogenic impurities, polychlorinated dibenzo-*p*-dioxins and dibenzofurans.

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies and subchronic studies in rat and dog on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals, polychlorinated dibenzo-*p*-dioxins and dibenzofurans, that may be present as impurities in the additive. This risk evaluation of these carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

*A. Polychlorinated Dibenzo-p-*dioxins and Dibenzofurans

FDA has estimated the worst-case exposure to polychlorinated dibenzo-*p*-dioxins and dibenzofurans from the petitioned use of the additive as discussed below. Because little is known about the toxicity of polychlorinated dibenzo-*p*-dioxins and dibenzofurans except 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD), the agency utilized the toxicity equivalency factor (TEF) method (Ref. 3) to relate the toxicity of the polychlorinated dibenzo-*p*-dioxins and dibenzofurans in terms of an equivalent amount of toxicologically well characterized TCDD, and used the TEF's adopted by the North Atlantic Treaty Organization (Ref. 4) (see 59 FR 17384, April 12, 1994). Summing the equivalent EDI's for each polychlorinated dibenzo-*p*-dioxin and dibenzofurans present as an impurity gives the total exposure to these polychlorinated compounds in terms of a total equivalent EDI for TCDD of 0.0039 picogram (pg)/p/d (Ref. 1).

Using data from a 2-year chronic toxicity and carcinogenicity study by Kociba et. al., (Ref. 5) on TCDD fed to rats, the agency estimated the upper-bound level of lifetime human risk from exposure to TCDD toxic equivalents resulting from the use of 1,2-benzisothiazolin-3-one as a food contact biocide in repeat-use rubber articles intended for contact with food. The results of the bioassay on TCDD showed that the material was carcinogenic for rats under the conditions of the study in that the test material caused significantly increased incidences of hepatocellular carcinomas and adenomas as well as squamous cell carcinomas of the lung, hard palate, nasal turbinates, and tongue. FDA further concluded that given the paucity of TCDD bioassay data, the Kociba et. al., bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime carcinogenesis risk from exposure to TCDD toxic equivalents stemming from the use of the subject additive (1,2-benzisothiazolin-3-one) as a biocide in repeat-use rubber articles.

The agency used a linear-at-low-dose extrapolation method from the doses used in the Kociba et al., bioassay and the tumor incidence data based upon the original classification of tumors found in that study to estimate the upper-bound risk presented by the very low levels of TCDD toxic equivalents encountered under the actual conditions of use of the additive as a biocide in repeat-use rubber articles. This procedure is not likely to underestimate the actual risk from very low doses and may in fact exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. In so doing, FDA estimated a carcinogenic unit risk of 16 x 10^{-6} for an intake of 1 pg/kilogram (kg) body weight/d of TCDD toxic equivalents (Ref. 6).

As noted, the carcinogenic unit risk assessed above by FDA was based on the original tumor incidence data from the Kociba bioassay (Ref. 5). Following FDA's risk assessment discussed above, however, a group of pathologists, the Pathology Working Group (PWG), reanalyzed the slides of the liver tumors observed in the Kociba bioassay using the National Toxicology Program's 1986 classification system for liver tumors (Ref. 7). FDA has reviewed the results of this reanalysis and agrees with the classification of the tumors made by PWG. Using the results of this revised reading of the Kociba study slides, FDA estimates a carcinogenic unit risk of 9 x 10^{-6} for an intake of 1 pg TCDD equivalents/kg body weight/d (Ref. 8). Using this carcinogenic unit risk and an upper-bound total exposure to polychlorinated dibenzo-*p*-dioxins and dibenzofurans present in the additive in terms of a total equivalent EDI for TCDD of 0.0039 pg/person/d, FDA estimates that the upper-bound limit of risk of cancer would be 5.9 x 10^{-10} from the proposed use of the subject additive (Ref. 9). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime averaged individual exposure to polychlorinated dibenzo-*p*-dioxins and dibenzofurans is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to polychlorinated dibenzo-*p*-dioxins and dibenzofurans would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of polychlorinated dibenzo-*p*-dioxins and dibenzofurans as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because low levels of polychlorinated dibenzo-*p*-dioxins and dibenzofurans may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime risk from exposure to these impurities, even under worst-case assumptions, are very low, less than 5.9 in 10 billion for polychlorinated dibenzo-*p*-dioxins and dibenzofurans.

III. Conclusion

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the additive as a biocide in repeat-use rubber articles is safe, that the additive will have the intended technical effect, and therefore, that § 177.2600 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated June 10, 1994, from the Chemistry Review Branch (HFS–247), to the Indirect Additives Branch (HFS–216), concerning FAP 3B4389—Reichhold Chemicals, Inc.—exposure to the food additive and its components (polychlorinated dibenzo-*p*-dioxins and dibenzofurans).

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, S. Karger, New York, pp. 24–33, 1985.

3. EPA 560/5–90–014, Background Document to the Integrate Risk Assessment for Dioxins and Furans from Chlorine Bleaching in Pulp and Papermills, pp. 3-13, July, 1990.

4. Pilot Study on International Information Exchange on Dioxins and Related Compounds, Report No. 178, December, 1988.

5. Kociba, R. J., et al., ''Results of a Two Year Chronic Toxicity and Oncogenicity Study of 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin in Rats,'' *Toxicology and Applied Pharmacology*, 46:279–303, 1978.

6. Report of the Quantitative Risk Assessment Committee, ''Carcinogenic Risk Assessment for Dioxins and Furans in Foods Contacting Bleached Paper Products,'' April 20, 1990.

7. ''2,3,7,8-Tetrachlorodibenzo-*p*-dioxin in Sprague-Dawley Rats,'' Pathco, Inc., March 13, 1990.

8. Report of the Quantitative Risk Assessment Committee, ''Upper-Bound Lifetime Carcinogenic Risk From Exposure to Dioxin Congeners From Foods Contacting Paper Products With Dioxin Levels Not Exceeding 2 ppt,'' January 27, 1993.

9. Memorandum, Report of the Quantitative Risk Assessment Committee, ''Estimation of Upper-Bound Lifetime Risk From Polychlorinated Dibenzo-*p*-dioxins and Dibenzofurans in 1,2-benzisothiazolin-3-one,'' April 2, 1994.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 30, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2600 is amended in paragraph (c)(4)(ix) by alphabetically adding a new entry for 1,2-benzisothiazolin-3-one to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(ix) * * *

1,2-Benzisothiazolin-3-one (CAS Reg. No. 2634–33–5) for use as a biocide in uncured liquid rubber latex not to exceed 0.02 percent by weight of the latex solids, where the total of all items listed in paragraph (c)(4)(ix) of this section does not exceed 5 percent of the rubber product.

* * * * *

Dated: November 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–30510 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4154–I–01]

RIN 2501–AC36

Revised Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: Section 214 of the Housing and Community Development Act of 1980 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens. This interim rule revises HUD's regulations governing assistance to noncitizens to incorporate the recent statutory amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 (''Immigration Reform Act''). This rule, however, does not amend the noncitizen requirements for Indian Housing Authorities (IHAs). Further, this rule does not implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (''Welfare Reform Act'') which concern immigration. The changes to HUD regulations required by that Act will be the subject of future rulemaking.

DATES: *Effective date:* November 29 1996.

Comments due date: November 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding the interim rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and

Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation (except Single Room Occupancy—''SRO'') programs—Linda Campbell, Office of Public Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0744;

(2) For the Section 8 Moderate Rehabilitation SRO program—Dave Pollack, Office of Special Needs Assistance Programs, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1234;

(3) For the other Section 8 programs, the Section 236 programs, Housing Development Grants and Rent Supplement—Barbara Hunter, Office of Asset Management and Disposition, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3944; and

(4) For the Section 235 homeownership program—Morris Carter, Office of Lender Activities and Program Compliance, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1515.

For persons with hearing or speech impairment, the TTY number is 1–800–877–8339 (Federal Information Relay Service TTY). With the exception of the ''800'' number, none of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Implementation of Section 214 of the Housing and Community Development Act of 1980

On March 20, 1995 (60 FR 14816), HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) and that rule became effective on June 19, 1995. Section 214 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or specified categories of eligible noncitizens.

HUD's March 20, 1995 final rule promulgated virtually identical ''noncitizen'' regulations for the various HUD programs covered by Section 214. On March 27, 1996 (61 FR 13614), HUD, as part of its continuing regulatory reform efforts, published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. The March 27, 1996 final rule, however, did not consolidate the noncitizen requirements for HUD's Indian Housing programs.

B. This Interim Rule

This interim rule revises HUD's regulations at 24 CFR part 5, subpart E by incorporating the recent amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 (Title V, Subtitle E of the Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009, approved September 30, 1996) (the Immigration Reform Act). The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330; 110 Stat. 4016; approved October 26, 1996) completely revises HUD's Indian Housing programs, this interim rule does not amend the noncitizen requirements for Indian Housing Authorities (IHAs) in § 950.310. The transition notice and regulations promulgated under the Native American Housing Assistance and Self-Determination Act of 1996 will address the applicability of the Section 214 requirements as amended by the Immigration Reform Act.

The most significant changes made to Section 214 by the Immigration Reform Act, and consequently to HUD's existing Section 214 regulations by this interim rule are as follows:

1. The interim rule provides that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established. Related to this issue, the Immigration Reform Act also provides that pending such verification the Secretary may not delay, deny, reduce or terminate the eligibility of an individual for financial assistance on the basis of the immigration status of that individual. Although at first glance these two provisions appear to conflict, HUD believes they are complementary.

HUD believes that the first provision places responsibility on the family to produce documentation of eligible immigration status. Accordingly, this interim rule provides that no family shall be provided assistance until the required documentation has been submitted. The second provision places responsibility on the INS and any other entity which must take certain action once the family has submitted the necessary documentation. Once the family has produced the necessary documents, it should not be penalized for delays on the part of those entities which must verify eligible immigration status.

2. The interim rule requires that continued financial assistance provided to an eligible mixed family after November 29, 1996 be prorated based on the percentage of family members that are eligible for assistance. An eligible mixed family is a family containing members with eligible immigration status, as well as members without such status, and that meets the criteria for eligibility for continued assistance as set forth in Section 214.

3. The interim rule requires that HUD suspend financial assistance to a family upon determining that the family has knowingly permitted an ineligible individual to reside on a permanent basis in the family's unit. The suspension shall be for a period of at least 24 months. This provision does not apply if the ineligible individual has already been considered in calculating any proration of assistance for the family.

4. This interim rule allows responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens or nationals to verify the declaration through appropriate documentation (e.g., United States passport, resident alien card, registration card, social security card, or other appropriate documentation). Before this amendment, only individuals who are not U.S. citizens or nationals are required to present documentation of their eligible immigration status.

5. The interim rule revises the maximum period for deferral of termination of assistance provided after November 29, 1996 from an aggregate of 3 years to an aggregate of 18 months. The 18-month maximum deferral period does not apply to refugees under section 207 of the Immigration and Nationality Act or to individuals seeking asylum

under section 208 of that Act. The maximum deferral period for deferrals granted prior to November 29, 1996 continues to be 3 years.

6. The interim rule provides that an individual has a maximum period of 30-days, starting from the date of receipt of the notice of denial or termination of assistance, to request a fair hearing. HUD believes that due process requires that assistance already being provided to a tenant may not be delayed, denied, reduced or terminated until completion of the fair hearing.

7. This interim rule, in accordance with Section 214 as amended, provides that a PHA may elect not to comply with the requirements of 24 CFR part 5, subpart E. In complying with 24 CFR part 5, subpart E, a PHA may initiate procedures to affirmatively establish or verify the eligibility of an individual or family at any time in which the PHA determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the PHA. The PHA may also affirmatively establish or verify the eligibility of a family member in accordance with the procedures set forth in section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324A(b)(1)), and shall have access to any relevant information contained in the INS SAVE system (or any successor thereto) that relates to any family member applying for financial assistance.

The change described in paragraph #7 is based on the language of new subsection 214(h)(2), which was added by Section 575 of the Immigration Reform Act. Subsection 214(h)(2) provides that ''[a] Public Housing Agency * * * may elect not to comply with this section.'' The use of the word ''section'' (as opposed to ''subsection'') in this provision, in a strict statutory construction, refers to Section 214 in its entirety.

The Immigration Reform Act restricts the provision of assistance to a family until at least the eligibility of one family member has been verified. This interim rule, however, provides that HUD shall not be responsible for verifying compliance with the requirements of Section 214 if a PHA elects to ''opt-out'' of 24 CFR part 5, subpart E. HUD would only be able to verify the eligible immigration status of family members applying for assistance with the aid of the PHAs. Since PHA assistance would be required, the imposition of such verification responsibility upon HUD would in effect negate the right of a PHA to ''opt-out'' of Section 214.

C. Changes Made to Section 214 by the Welfare Reform Act

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193; 110 Stat. 2105; approved August 22, 1996) (Welfare Reform Act) expanded the scope of Section 214. Specifically, Section 441 of the Welfare Act makes assistance provided under the National Homeownership Trust (42 U.S.C. 12851–12859) subject to the noncitizen requirements of Section 214. Pursuant to 42 U.S.C. 12859, the National Homeownership Trust was terminated on September 30, 1994. Accordingly, this interim rule does not revise 24 CFR part 5, subpart E to incorporate the amendment made by the Welfare Reform Act.

Section 441 of the Welfare Reform Act also made the restrictions of Section 214 applicable to the following programs administered by the Secretary of Agriculture: direct loan program under section 502 of the Housing Act of 1949 or section 502(c)(5)(D), 504, 521(a)(2)(A), or 542 of the Housing Act of 1949, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act. Since these programs are administered by the Secretary of Agriculture, HUD is not amending its regulations to reflect the expanded scope of the Section 214 restrictions.

In addition to the changes discussed above, the Welfare Reform Act made other amendments concerning immigration. This interim rule does not implement these provisions of the Welfare Reform Act. This interim rule only amends 24 CFR part 5, subpart E to incorporate the changes made by the Immigration Reform Act. HUD and other responsible agencies are developing regulations to implement the changes made by the Welfare Reform Act. Responsible entities should not implement the Welfare Reform Act provisions until the issuance of these implementing regulations.

D. Nondiscrimination in the Implementation of Section 214

HUD reiterates the statement made in the March 20, 1995 final rule that all regulatory procedures in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen).

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. Part 10 provides that prior public procedure may be omitted if ''a statute expressly so authorizes'' (24 CFR 10.1). Section 577 of the Immigration Reform Act requires that the Secretary of HUD, within 60 days of the Act's enactment, issue an interim rule implementing the amendments made to Section 214. Further, section 577 provides that the interim rule ''shall take effect upon issuance.'' This interim rule implements the rulemaking requirement contained in Section 577 of the Immigration Reform Act. Although HUD is statutorily mandated to issue this interim rule for immediate effect, it welcomes public comment. All comments will be considered in the development of the final rule.

On October 30, 1996, the Department held a meeting at HUD Headquarters on the subject of the Immigration Reform Act. HUD invited to this meeting representatives of civil rights groups, public housing agencies, private housing providers, and legal services groups to present their views on the effect of the amendments to Section 214 made by the Immigration Reform Act. The comments and concerns about the Immigration Reform Act were taken into account during the development of this interim rule. Organizations that participated in this meeting included, among others, the Public Housing Authorities Directors Association; the National Housing Law Project; the National Puerto Rican Coalition; the National Association of Housing and Redevelopment Authorities; the National Council of La Raza; and the Council of Large Public Housing Authorities.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this interim rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance

with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this interim rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. As explained in the preamble to the March 20, 1995 final rule, the implementation of HUD's noncitizen requirements have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The amendments made by this interim rule do not alter that determination. This interim rule does not require the creation of new procedures or impose significant additional costs on responsible entities. Rather, the requirements of the interim rule can be satisfied through the use of existing procedures. For example, the interim rule prohibits responsible entities from making assistance available to a noncitizen until the necessary documentation establishing eligible immigration status is verified. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, current methods may be used to prorate the assistance provided to an eligible mixed family receiving continued assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement 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 business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this interim rule have no federalism implications, and that the policies are not subject to review under the Order. This interim rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the status that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of discretion in promulgating a rule to implement the statute.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this interim rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The only families upon whom Section 214 and HUD's implementing regulations have an impact are those containing individuals with ineligible immigration status. Even for these families, however, Section 214 and HUD's regulations strive to maintain the unity of the family under the provisions concerning preservation assistance to mixed families which provide for continued assistance for certain categories of mixed families, and deferral of termination of assistance and prorated assistance for other mixed families.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart E—Restrictions on Assistance to Noncitizens

2. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535(d).

3. A new § 5.501 is added to read as follows:

§ 5.501 PHA election whether to comply with this subpart.

(a) *PHA opt-out.* A PHA that is a responsible entity under this subpart may elect not to comply with (''opt-out'' of) the requirements of this subpart.

(b) *PHA compliance.* If the PHA elects to comply with this subpart, the PHA:

(1) May initiate procedures to affirmatively establish or verify the eligibility of a family under this section at any time at which the PHA determines that such eligibility is in question, without regard to position of the family member's family on the waiting list of the PHA;

(2) May affirmatively establish or verify the eligibility of a family member in accordance with the procedures set forth in section 274A(b)(1) of the Immigration and Nationality Act; and

(3) Shall have access to any relevant information contained in the INS SAVE system (or any successor thereto) that relates to any family member applying for financial assistance.

(c) *HUD not responsible due to PHA opt-out.* HUD shall not bear any responsibility in connection with compliance with the requirements of Section 214 if a PHA elects not to comply with this subpart under paragraph (a) of this section.

4. Section 5.508 is amended by revising paragraphs (b)(1), (b)(2), (h)(2) and (h)(3) introductory text to read as follows:

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

* * * * *

(b) * * *

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship. The responsible entity may request verification of the declaration by requiring presentation of a United States passport, resident alien card, registration card, social security card, or other appropriate documentation.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

* * * * *

(h) * * *

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to

allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

* * * * *

5. Section 5.510 is amended by revising paragraph (b) to read as follows:

§ 5.510 Documents of eligible immigration status.

* * * * *

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

6. Section 5.512 is amended by revising paragraph (a) to read as follows:

§ 5.512 Verification of eligible immigration status.

(a) *General.* Except as described in §§ 5.501 and 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

* * * * *

7. Section 5.514 is amended by:

a. Revising paragraph (b);

b. Revising paragraph (c)(1);

c. Revising paragraph (e)(1);

d. Removing paragraph (f)(2);

e. Redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(2) and (f)(3) respectively; and

f. Revising paragraph (f)(1), to read as follows:

§ 5.514 Delay, denial, reduction or termination of assistance.

* * * * *

(b) *Restrictions on delay, denial, reduction or termination of assistance.* (1) *Restrictions on reduction, denial or termination of assistance for applicants and tenants.* Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with § 5.520; or

(vi) Assistance for a mixed family is continued in accordance with §§ 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

(2) *Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants.* In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) *Events causing denial or termination of assistance.* (1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 5.508(g) or by the expiration of any extension granted in accordance with § 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

* * * * *

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

* * * * *

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

* * * * *

8. Section 5.516 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c) (1) and (2) of this section.

* * * * *

9. Section 5.518 is amended by revising paragraphs (a), (b)(3) and (b)(5) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* (1) *General.* A mixed family may receive continued

housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in § 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) *Proration of continued assistance.* A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in § 5.520.

(b) * * *

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

* * * * *

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i) (A) or (B) of this section. Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; *or*

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

* * * * *

10. Section 5.526 is revised to read as follows:

§ 5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

Date: November 22, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–30498 Filed 11–27–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8687]

RIN 1545–AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations governing the source of income from sales of natural resources or other inventory produced in the United States and sold outside the United States or produced outside the United States and sold in the United States. This document affects persons who produce natural resources or other inventory in the United States and sell outside the United States, or produce natural resources or other inventory outside the United States and sell in the United States.

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

Applicability: Taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and on or before December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne, (202) 622–3880 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1476. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent is approximately 2.6 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 863 of the Internal Revenue Code (Code). The final regulations provide rules for allocating and apportioning income between U.S. and foreign sources from natural resources and other inventory produced in the United States and sold outside the United States, or produced outside the United States and sold in the United States.

On December 11, 1995, proposed regulations [INTL–0003–95] were published in the Federal Register (60 FR 63478). The IRS received written comments on the proposed regulations and held a public hearing on April 10, 1996. Having considered the comments and the statements made at the hearing, the IRS and the Treasury Department adopt the proposed regulations as modified by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions

I. Allocation of Gross Income From Sales of Natural Resources Under Section 863(a)

Section 1.863–1(b) of the proposed regulations relate to the rules governing natural resources. The proposed regulations provide three methods for determining the amount of United States or foreign source income from sales of natural resources. One method (derived from the existing regulations) sources income in its entirety to the location of the natural resources, and applies where the taxpayer does not engage in substantial additional production beyond production of the natural resources. The second method, the export terminal rule, splits sales income at the export terminal, sourcing gross receipts equal to the fair market value at the export terminal to the location of the natural resources, and gross receipts in excess of that amount either to the place of sale or according to the rules in § 1.863–3, depending on the circumstances. The third method requires taxpayers performing additional production in the country where the natural resources are located, to split gross receipts at the point of the additional production, sourcing gross receipts equal to the fair market value prior to that point to the location of the natural resources and gross receipts in excess of that amount according to the rules in § 1.863–3.

1. Implications of the Tenth Circuit's Order in *Phillips*

Section 1.863–1(b)(1)(i) of the proposed regulations sources certain income from natural resources in its entirety to the location of the resources. The preamble to the proposed regulations states that Treasury and the IRS would consider the Tenth Circuit's unpublished opinion in its Order and Judgment in *Phillips Petroleum* v. *Comm'r*, 97 T.C. 30 (1991), 101 T.C. 78 (1993), *aff'd. without published opinion*, 70 F.3d 1282 (10th Cir., 1995), in finalizing the regulations. In *Phillips*, the Tax Court ruled § 1.863–1(b)'s natural resource regulation, generally sourcing income from U.S. natural resources in its entirety to the United States, invalid to the extent it conflicted with the Court's interpretation of section 863(b)(2). That section provides that gains, profits and income from the sale of inventory property produced within and sold without the United States (or vice versa) shall be treated as derived partly from sources within and partly from sources without the United States. The Tenth Circuit affirmed the Tax Court.

In view of *Phillips*, the final regulations modify the proposed regulations to eliminate the 100 percent allocation rule, making the determination of the source of income subject instead to the export terminal rule. Thus, gross receipts equal to the fair market value of the product at the export terminal are allocated to the location of the farm, mine, well, deposit or uncut timber, with the source of gross receipts from such sales in excess of the product's fair market value at the export terminal allocated to the country of sale.

Several commentators requested that any change to the natural resource rules made in light of *Phillips* be done in proposed form, providing opportunity to comment on the regulations. However, because the final regulations merely eliminate the rule which required a single source of income for sales of natural resources, and because Treasury and the IRS believe that there has been adequate opportunity to comment on the proposed regulations' export terminal rule, the natural resources rules are issued in final form.

2. Availability of the 50/50 Method for Natural Resources

Several commentators wrote that there is no basis for treating natural resources differently than other inventory. Therefore, producers of natural resources should be permitted to determine the source of their income under the 50/50 method described in § 1.863–3(b)(1). They point to legislation enacted in the Tax Reform Act of 1986, arguing that Congress, in enacting section 865 to govern personal property sales, drew no distinction between sales of natural resources and sales of other inventory. Commentators have also pointed to section 865(b), enacted in 1993, providing that income from sales of U.S. softwood must be U.S. source in its entirety. They conclude that Congress was aware of the Tax Court's decision in *Phillips*, overruling *Phillips* only for softwood, but intending that all other natural resources be sourced under the 50/50 method.

Treasury and the IRS do not believe that Congress in the 1986 Act evidenced an intent to source all income from sales of natural resources under the 50/50 method. Rather, Congress merely referred to the 50/50 method to generally describe the methods for sourcing income from certain types of inventory sales. In addition, the legislative history to the 1993 Act, requiring income from softwood sales to be allocated in its entirety to the United States, does not suggest that Congress intended to overturn the longstanding regime governing sales of other natural resources. Moreover, the Small Business Job Protection Act of 1996, Public Law 104–188 (August 20, 1996) (the 1996 Act), further clarifies that the Service is not required to apply the 50/50 method. Prior to the 1996 Act, section 865(b) provided that income from inventory sales was to be sourced under sections 861(a)(6), 862(a)(6), and 863(b). The 1996 Act, in section 1704(f)(4)(A), amended Code section 865(b)(2) by striking 863(b) and inserting 863. The Act makes this amendment effective as if included in amendments made by section 1211 of the Tax Reform Act of 1986 (Public Law 99–514). This technical correction to the 1986 Act clarifies that Treasury has broad authority to provide rules sourcing income from sales of inventory under

section 863, and is not restricted to any particular method.

Treasury and the IRS also believe longstanding distinctions have been made in the tax treatment of natural resources and other property, both in our tax laws and in our tax treaties. Most treaties, for example, grant primary or exclusive taxing jurisdiction to the country where natural resources are located. Thus, income from sales of natural resources is treated differently than income derived from sales of other inventory, which is normally subject to the business profits article of a treaty. See, e.g., Article 6 of the United States Model Income Tax Convention (September 20, 1996), which provides that income from real property, ''including income from agriculture and forestry'' may be taxed by the country where the resources are located.

The legislative history to section 863's predecessor, section 217(e) of the Revenue Act of 1921, also reflects an intention that natural resources be treated differently from other property. The House version of section 217 (H.R. 8245, 67th Cong., 1st Sess. (Aug.20, 1921)) included a provision sourcing income from natural resources in its entirety to the location of the resources. However, based on testimony raising the possibility of a case where such a single source rule should not apply, the Senate struck the provision that allocated all of the income from natural resources to a single country. (H.R. 8245 (67th Cong., 1st Sess. (November 4, 1921)); Hearings Before The Committee on Finance, United States Senate, H.R. 8245, 67th Cong., 1st Sess. (September 1 to October 1, 1921), at 309–310. A provision similar to that considered by the House, but with flexibility available for unusual cases, was then added to the regulations promulgated in 1922.

Thus, Treasury and the IRS believe that income from natural resources should be sourced differently than income from other sales of inventory.

3. Clarification of Language in § 1.863–2

In response to a comment, the final regulations are modified to clarify that the source of income from sales of natural resources must be determined solely under the rules set forth in § 1.863–1(b) of the final regulations. Treasury and the IRS clarified this point in corrections to the proposed regulations, published on August 27, 1996, in the Federal Register (61 FR 44023).

4. Additional Production Activities

The proposed regulations define additional production activities in § 1.863–1(b)(3)(ii) as substantial production activities performed by the taxpayer in addition to activities relating to the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber. The proposed regulations provide that generally the principles of § 1.954–3(a)(4) apply in determining whether an activity qualifies as such additional production. However, in no case will activities that prepare the natural resource itself for export, including those that are designed to facilitate transportation of the natural resource to or from the export terminal, be considered additional production. Thus, the proposed regulations in an example indicate liquefaction of natural gas would not constitute additional production activities.

Liquefaction is the process of liquefying natural gas so that it can be transported by tanker for sales abroad. Several commentators urged us to reconsider our position, arguing that liquefaction is an expensive, complex activity. Treasury and the IRS, however, continue to believe that liquefaction is an activity preparing the natural resource itself for export within the meaning of § 1.863–1(b)(3)(ii) of the final regulations, and that it is appropriate to exclude such activities from the definition of additional production. Even though liquefaction may be an expensive, complex process, liquefied natural gas retains its character as a natural resource, so that liquefaction should be treated no differently than other processes that prepare natural resources for export.

Several commentators requested that the regulations more precisely define the processes that constitute production of natural resources, to better differentiate those activities described in § 1.863–1(b)(1) of the proposed regulations, as being from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, from those that qualify as additional production activities within the meaning of § 1.863–1(b)(3)(ii) of the proposed regulations. In particular, a commentator requested that the final regulations specifically address this issue in the case of mining. In response to this comment, the final regulations include an example describing certain mining processes that would not qualify as additional production activities in the case of copper.

5. Treatment of Partnerships

The proposed regulations provide that, in applying the rules in § 1.863–3 of the proposed regulations, a partner would be treated as engaged in the production activity of its partnership. However, that provision was not extended to § 1.863–1 of the proposed regulations, which generally provides rules for determining the source of income from sales of natural resources. The final regulations provide rules for transactions involving partners and partnerships, which apply in the same manner to sales of natural resources and to sales of other inventory. See II. 3. of this preamble for a discussion of those rules.

6. Genetically-Engineered Agricultural Products

One commentator requested that final regulations state that natural resources do not include products, such as certain seeds, where the premium value of the product is derived from genetic traits produced by biotechnology or traditional methods, and the seeds themselves are not grown for consumption. The inherent nature of products as agricultural products, however, does not change because they may be subject to research and development. Because they remain natural resources, Treasury and the IRS rejected this comment.

II. Allocation and Apportionment of Income From Sales of Inventory Other Than Natural Resources

Section 1.863–3 of the proposed regulations provides rules for allocating and apportioning income from inventory sales other than natural resources where the taxpayer produces property in the United States and sells outside the United States, or produces property outside the United States and sells in the United States (Section 863 Sales). The proposed regulations provide three methods: the 50/50 method, the independent factory price method, and the books and records method.

1. Sales in International Waters or in Space

Consistent with the existing regulations, the proposed regulations limit the methods in § 1.863–3 to sales within a foreign country. The preamble, however, requests comments on whether the regulation should be expanded to cover sales made in international waters or in space. Although the statute refers to sales outside the United States, Treasury and the IRS expressed concern in that preamble that expanding the scope of the regulations to include all such sales could lead to abuses where, for example, a taxpayer produced goods in the United States, passed title to those

goods outside the United States, and then sold the goods to U.S. customers. In considering whether to expand the scope of the final regulations to include such sales, Treasury and the IRS requested comments on whether to include an exception to the title passage rule for sales of goods produced in the United States and destined for the U.S. market.

In response to comments and consistent with the preamble to the proposed regulations, the final regulations expand the scope of the existing and proposed regulations to include sales outside the United States. Moreover, to prevent abuse from this expanded rule, the final regulations provide that sales of goods wholly produced in the United States and sold for use, consumption, or disposition in the United States, will be considered to take place in the United States. Income from such sales will be treated as from U.S. sources. The final regulations rely on rules in § 1.864–6(b)(3)(ii) (relating to the determination of whether foreign source income is effectively connected with a U.S. trade or business under section 864(c)(4)(iii)), for determining the country of use, consumption, or disposition. Also, property will be treated as wholly produced in the United States for this purpose if it is subject to no more than packaging, repackaging, labeling, or other minor assembly operations outside the United States. See also § 1.861–7(c) to determine the source of income in any case in which the sales transaction is arranged in a particular manner for the primary purpose of tax avoidance.

Treasury and the IRS are considering whether the rules of the final regulations are appropriate where a product is produced in one country but is destined for use either on the high seas or in space. Until additional guidance is provided, taxpayers may rely upon the general rules of the final regulations for these cases.

2. Segregation and Aggregation of Sales

Once a taxpayer selects a method under § 1.863–3(b) for dividing gross income derived from Section 863 Sales between production activity and sales activity, § 1.863–3(a) of the proposed regulations provide that a taxpayer must separately apply that method to Section 863 Sales in the United States and to Section 863 Sales outside the United States. The proposed regulations also provide in § 1.863–3(a) that taxpayers must determine the source of gross income under paragraph (c) and taxable income under paragraph (d) by aggregating all Section 863 Sales to which a method described in paragraph (b) applies.

The final regulations clarify that the rules of paragraphs (c) and (d) apply separately to Section 863 Sales in the United States and to Section 863 Sales outside the United States, so that taxpayers are required to aggregate all Section 863 Sales under paragraphs (c) and (d) after the taxpayer has first separately applied the method under paragraph (b) to Section 863 Sales in the United States and to Section 863 Sales outside the United States.

3. Transactions With Partnerships

The proposed regulations provide in § 1.863–3(a) that a taxpayer's production activity includes production activities conducted through a partnership of which the taxpayer is a partner either directly or through one or more partnerships. One commentator recommended that final regulations extend the partnership rules to natural resources. However, the commentator suggested that an aggregate approach to partnerships should apply only in cases where the partnership, instead of selling the property and distributing the proceeds to the partner, distributes the property to a partner. In response to the comments, the final regulations modify the proposed regulations. Under the final regulations, the aggregate approach applies to a partnership's production or sales activity only for two purposes. First, the aggregate approach applies for purposes of determining the source of a partner's distributive share of partnership income. Thus, if a partnership engages in the production of inventory property in the United States and sells such property outside the United States, a partner will be considered to have produced and sold that inventory property in the same manner as the partnership when determining the source of its distributive share of such sales income. Second, the aggregate approach applies for purposes of sourcing income from the sale of inventory property that is transferred in kind from or to a partnership. Thus, for example, where the partnership makes an in kind distribution of inventory property to its partners, the source of the partner's income from the sale of such property is determined based on both its own activity and on the partnership's activity. Similarly, the aggregate approach applies in cases where a partner contributes inventory produced by it to its partnership, if the partnership then sells the inventory (e.g., as a distributor or after further processing).

The entity approach applies for all other purposes. For example, where a partnership manufactures inventory property and sells the property to one of its partners, the source of that partner's income from the resale of the property is determined without regard to the partnership's manufacturing activity. Consistent with this modification, the final regulations also specify that assets owned by a partnership (or a partner) are not deemed owned by the partner (or the partnership) unless the aggregate approach applies to the transaction at issue.

4. Taxable Income Method

In response to comments, § 1.863–2(b) of the proposed regulations is clarified to provide that taxpayers may elect the principles of § 1.863–3 (b)(1) and (c) to determine the source of taxable income (rather than gross income) from sales of inventory property.

5. Independent Factory Price (IFP) Method

One commentator requested clarification that the sale establishing an IFP must be sourced under the IFP method only if a taxpayer elects the IFP method. The proposed and final regulations intend this result. The IFP method applies to either the sale establishing the IFP or to a sale applying the IFP only if the taxpayer elects the IFP method.

The proposed regulations eliminated the provision in existing regulations permitting taxpayers to establish an IFP by methods other than by sales to independent distributors. The preamble, however, requested comments on the continued utility of such a provision. Two commentators recommended that the provision be retained and expanded to permit taxpayers to establish an IFP by any method that is appropriate under section 482. The commentators stated that any evidence acceptable for proving an arm's length price under section 482 should be acceptable as an IFP. The commentators also stated that taxpayers who cannot use the IFP method must use the 50/50 method, and that the 50/50 method may not produce an equitable result for nonresidents importing goods into the United States.

After further consideration, Treasury and the IRS have decided to finalize the regulations on this point as proposed. No convincing evidence has been presented for the need of a broad-based rule permitting taxpayers to establish an IFP by any method that would otherwise be appropriate under section 482 when they can use books and records to demonstrate a more appropriate sourcing result. In view of

the absence of a clearly identified benefit for taxpayers and the availability of the books and records method, Treasury and the IRS believe that expansion of the IFP rule is not justified.

6. Books and Records

Under both the existing and proposed regulations, taxpayers can request permission from the District Director to use a taxpayer's books and records to allocate or apportion income between U.S. and foreign sources if this method more clearly reflects the taxpayer's income. The preamble to the proposed regulations requests comments on retaining the books and records method. Two commentators asked for retention of this method because instances may arise where a taxpayer does not have third party sales, thereby making the IFP method unavailable. In such cases, a taxpayer may find it advantageous to determine the source of its income on the basis of its books and records. These comments were accepted. The final regulations retain the books and records method, subject to an election and prior approval of the method by the District Director.

7. Determination of Source of Gross Income From Production Activities

a. Definition of Production Assets

i. Contract manufacturing. Under the proposed regulations, production assets are limited to those owned directly by the taxpayer that are directly used by the taxpayer to produce the relevant inventory. These rules are intended to insure that taxpayers do not attribute the assets or activities of related or unrelated parties manufacturing under contract with the taxpayer. One commentator asked that the definition of production assets be expanded to include production assets owned by related or unrelated contract manufacturers. The commentator contends that by limiting production assets to those owned by the taxpayer, the regulations source income differently depending upon the form in which the taxpayer conducts business. Treasury and the IRS, however, believe it is appropriate to limit production assets in the apportionment formula to assets owned by the taxpayer and used by the taxpayer to produce the inventory. In addition, taxpayers generally do not know the contract manufacturer's basis in its production assets. Further, it would be very difficult to draw a clear line between contract manufacturers and other suppliers. Thus, Treasury and the IRS do not believe the source of a taxpayer's income should take into account activities of others or assets owned by others with whom the taxpayer has manufacturing arrangements. The final regulations clarify, however, that this rule does not override the single entity rules set forth under § 1.1502–13 (dealing with members of an affiliated group filing on a consolidated basis), or the rules under § 1.863–3(g) dealing with partnerships.

ii. Accounts receivable. One commentator also asserted that accounts receivable should be included as a production asset. This comment was rejected. The production formula is intended to approximate the location of the taxpayer's production activity. Thus, assets not directly involved in production should not be included.

b. Anti-Abuse Rule

The preamble to the proposed regulations indicated that the purpose of the property fraction is to attribute the source of production income to the location of production activity. Treasury and the IRS, however, were concerned that taxpayers would attempt to artificially affect the location of assets to manipulate the rules, and so solicited comments on whether an anti-abuse rule was needed. No comments were received that objected to such anti-abuse rule. After further considering the issue, Treasury and the IRS have included an anti-abuse rule in the final regulations to prevent taxpayers from manipulating the property formula to achieve inappropriate results. Therefore, the anti-abuse rule provides that if a taxpayer has entered into or structured one or more transactions with a principal purpose of reducing its U.S. tax liability by affecting the formula in a manner inconsistent with the purpose of the regulation, the District Director may make appropriate adjustments so that the source of the taxpayer's income from production activity more clearly reflects the source of that income. An example in the regulations demonstrates circumstances where the anti-abuse rule may apply. In that example, with a principal purpose of reducing its U.S. tax liability, the taxpayer leases all of its U.S. property so that it owns only property located in a foreign country. The example concludes that the District Director may ignore a sale-leaseback transaction to more clearly reflect the source of the taxpayer's production income.

8. Determination of Taxable Income

One commentator requested that the calculation of taxable income, when applying the 50/50 method along with the research and experimental (R&E) expense allocation rules in § 1.861–17, be clarified. The commentator suggests that the last sentence of § 1.863–3(d) of the proposed regulations can be read to conflict with the R&E set aside in § 1.861–17. The final regulations clarify that the R&E set aside remains available to taxpayers using the 50/50 method.

9. Reporting Requirements

The proposed regulations, in § 1.863–3(e), require a taxpayer to fully explain the methodology used to determine the source of income, the circumstances justifying use of that method, the extent that sales are aggregated, and the amount of income so allocated. One commentator wrote that the reporting requirements in § 1.863–3(e) of the proposed regulations are unnecessary and excessively burdensome. The regulations clarify that the requirement is limited to a statement attached to the tax return, explaining the methodology used, the circumstances justifying that use, the aggregation of sales, and the amount of income allocated. Treasury and the IRS believe the reporting requirements in § 1.863–3(e) of the proposed regulations are reasonable, and serve legitimate administrative purposes.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules of this section principally impact large multinationals who pay foreign taxes on substantial foreign operations and therefore the rules will impact very few small entities. Moreover, in those few instances where the rules of this section impact small entities, the economic impact on such entities is not likely to be significant. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Anne Shelburne, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.863–2 also issued under 26 U.S.C. 863.

Section 1.863–3 also issued under 26 U.S.C. 863.

Section 1.863–4 also issued under 26 U.S.C. 863.

Section 1.863–6 also issued under 26 U.S.C. 863. * * *

Par. 2. Sections 1.863–3 and 1.863–3T are redesignated as §§ 1.863–3A and 1.863–3AT, respectively, and an undesignated center heading is added preceding the redesignated sections to read as follows:

Regulations Applicable to Taxable Years Prior to December 30, 1996

Par. 3. Section 1.863–0 is added to read as follows:

§ 1.863–0 Table of contents.

This section lists captions contained in §§ 1.863–1, 1.863–2, and 1.863–3.

§ 1.863–1 Allocation of gross income.

(a) In general.
(b) Natural resources.
(1) In general.
(2) Additional production prior to export terminal.
(3) Definitions.
(i) Production activity.
(ii) Additional production activities.
(iii) Export terminal.
(4) Determination of fair market value.
(5) Determination of gross income.
(6) Tax return disclosure.
(7) Examples.
(c) Determination of taxable income.
(e) Effective dates.

§ 1.863–2 Allocation and apportionment of taxable income.

(a) Determination of taxable income.
(b) Determination of source of taxable income.
(c) Effective dates.

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) In general.
(1) Scope.
(2) Special rules.
(b) Methods to determine income attributable to production activity and sales activity.
(1) 50/50 method.
(i) Determination of gross income.
(ii) Example.
(2) IFP method.
(i) Establishing an IFP.
(ii) Applying the IFP method.
(iii) Determination of gross income.
(iv) Examples.
(3) Books and records method.
(c) Determination of the source of gross income from production activity and sales activity.
(1) Income attributable to production activity.
(i) Production only within the United States or only within foreign countries.
(A) Source of income.
(B) Definition of production assets.
(C) Location of production assets.
(ii) Production both within the United States and within foreign countries.
(A) Source of income.
(B) Adjusted basis of production assets.
(iii) Anti-abuse rule.
(iv) Examples.
(2) Income attributable to sales activity.
(d) Determination of source of taxable income.
(e) Election and reporting rules.
(1) Elections under paragraph (b) of this section.
(2) Disclosure on tax return.
(f) Income partly from sources within a possession of the United States.
(g) Special rules for partnerships.
(h) Effective dates.

Par. 4. In § 1.863–1, paragraphs (a), (b) and (c) are revised and paragraph (e) is added to read as follows:

§ 1.863–1 Allocation of gross income.

(a) *In general.* Items of gross income other than those specified in section 861(a) and section 862(a) will generally be separately allocated to sources within or without the United States. See § 1.863–2 for alternate methods to determine the income from sources within or without the United States in the case of items specified in § 1.863–2(a). See also sections 865(b) and (e)(2). In the case of sales of property involving partners and partnerships, the rules of § 1.863–3(g) apply.

(b) *Natural resources*—(1) *In general.* Notwithstanding any other provision, except to the extent provided in paragraph (b)(2) of this section, gross receipts from the sale outside the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber within the United States, must be allocated between sources within and without the United States based on the fair market value of the product at the export terminal (as defined in paragraph (b)(3)(iii) of this section). Notwithstanding any other provision, except to the extent provided in paragraph (b)(2) of this section, gross receipts from the sale within the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber outside the United States must be allocated between sources within and without the United States based on the fair market value of the product at the export terminal. For place of sale, see §§ 1.861–7(c) and 1.863–3(c)(2). The source of gross receipts equal to the fair market value of the product at the export terminal will be from sources where the farm, mine, well, deposit, or uncut timber is located. The source of gross receipts from the sale of the product in excess of its fair market value at the export terminal (excess gross receipts) will be determined as follows—

(i) If the taxpayer engages in additional production activities subsequent to shipment from the export terminal and outside the country of sale, the source of excess gross receipts must be determined under § 1.863–3. For purposes of applying § 1.863–3, only production assets used in additional production activity subsequent to the export terminal are taken into account.

(ii) In all other cases, excess gross receipts will be from sources within the country of sale. This paragraph (b)(1)(ii) applies to a taxpayer that engages in additional production activities in the country of sale, as well as to a taxpayer that does not engage in additional production activities at all.

(2) *Additional production prior to export terminal.* Notwithstanding any other provision of this section, gross receipts from the sale of products derived by a taxpayer who performs additional production activities as defined in paragraph (b)(3)(ii) of this section before the relevant product is shipped from the export terminal are allocated between sources within and without the United States based on the fair market value of the product immediately prior to the additional production activities. The source of gross receipts equal to the fair market value of the product immediately prior to the additional production activities will be from sources where the farm, mine, well, deposit, or uncut timber is located. The source of gross receipts from the sale of the product in excess of the fair market value immediately prior to the additional production activities must be determined under § 1.863–3. For purposes of applying § 1.863–3, only production assets used in the additional production activities are taken into account.

(3) *Definitions*—(i) *Production activity.* For purposes of this section, production activity means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory. See § 1.864–1. Except as otherwise provided in §§ 1.1502–13 or 1.863–3(g)(2), only production activities conducted directly by the taxpayer are taken into account.

(ii) *Additional production activities.* For purposes of this section, additional production activities are substantial production activities performed directly by the taxpayer in addition to activities from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber. Whether a taxpayer's activities constitute additional production activities will be determined under the principles of § 1.954–3(a)(4). However, in no case will activities that prepare the natural resource itself for export, including those that are designed to facilitate the transportation of the natural resource to or from the export terminal, be considered additional production activities for purposes of this section.

(iii) *Export terminal.* Where the farm, mine, well, deposit, or uncut timber is located without the United States, the export terminal will be the final point in a foreign country from which goods are shipped to the United States. If there is no such final point in a foreign country (e.g., the property is extracted and produced on the high seas), the export terminal will be the place of production. Where the farm, mine, well, deposit, or uncut timber is located within the United States, the export terminal will be the final point in the United States from which goods are shipped from the United States to a foreign country. The location of the export terminal is determined without regard to any contractual terms agreed to by the taxpayer and without regard to whether there is an actual sale of the products at the export terminal.

(4) *Determination of fair market value.* For purposes of this section, fair market value depends on all of the facts and circumstances as they exist relative to a party in any particular case. Where the products are sold to a related party in a transaction subject to section 482, the determination of fair market value under this section must be consistent with the arm's length price determined under section 482.

(5) *Determination of gross income.* To determine the amount of a taxpayer's gross income from sources within or without the United States, the taxpayer's gross receipts from sources within or without the United States determined under this paragraph (b) must be reduced by the cost of goods sold properly attributable to gross receipts from sources within or without the United States.

(6) *Tax return disclosure.* A taxpayer that determines the source of its income under this paragraph (b) shall attach a statement to its return explaining the methodology used to determine fair market value under paragraph (b)(4) of this section, and explaining any additional production activities (as defined in paragraph (b)(3)(ii) of this section) performed by the taxpayer. In addition, the taxpayer must provide such other information as is required by § 1.863–3.

(7) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. No additional production. U.S. Mines, a U.S. corporation, operates a copper mine and mill in country X. U.S. Mines extracts copper-bearing rocks from the ground and transports the rocks to the mill where the rocks are ground and processed to produce copper-bearing concentrate. The concentrate is transported to a port where it is dried in preparation for export, stored and then shipped to purchasers in the United States. Because title to the property is passed in the United States and, under the facts and circumstances, none of U.S. Mine's activities constitutes additional production prior to the export terminal within the meaning of paragraph (b)(3)(ii) of this section, under paragraph (b)(1) and (b)(1)(ii) of this section, gross receipts equal to the fair market value of the concentrate at the export terminal will be from sources without the United States, and excess gross receipts will be from sources within the United States.

Example 2. No additional production. US Gas, a U.S. corporation, extracts natural gas within the United States, and transports the natural gas to a U.S. port where it is liquified in preparation for shipment. The liquified natural gas is then transported via freighter and sold without additional production activities in a foreign country. Liquefaction of natural gas is not an additional production activity because liquefaction prepares the natural gas for transportation from the export terminal. Therefore, under paragraph (b)(1) and (b)(1)(ii) of this section, gross receipts equal to the fair market value of the liquefied natural gas at the export terminal will be from sources within the United States, and excess gross receipts will be from sources without the United States.

Example 3. Sale in third country. US Gold, a U.S. corporation, mines gold in country X, produces gold jewelry in the United States, and sells the jewelry in country Y. Assume that the fair market value of the gold at the export terminal in country X is $40, and that US Gold ultimately sells the gold jewelry in country Y for $100. Under § 1.863–1(b), $40 of US Gold's gross receipts will be allocated to sources without the United States. Under paragraph (b)(1)(i) of this section, the source of the remaining $60 of gross receipts will be determined under § 1.863–3. If US Gold applies the 50/50 method described in § 1.863–3, $20 of cost of goods sold is properly attributable to activities subsequent to the export terminal, and all of US Gold's production assets subsequent to the export terminal are located in the United States, then $20 of gross income will be allocated to sources within the United States and $20 of gross income will be allocated to sources without the United States.

Example 4. Production in country of sale. US Oil, a U.S. corporation, extracts oil in country X, transports the oil via pipeline to the export terminal in country Y, refines the oil in the United States, and sells the refined product in the United States to unrelated persons. Assume that the fair market value of the oil at the export terminal in country Y is $80, and that US Oil ultimately sells the refined product for $100. Under paragraph (b)(1) of this section, $80 of US Oil's gross receipts will be allocated to sources without the United States, and under paragraph (b)(1)(ii) of this section the remaining $20 of gross receipts will be allocated to sources within the United States.

Example 5. Additional production prior to export. The facts are the same as in *Example 1,* except that U.S. Mines also operates a smelter in country X. The concentrate output from the mill is transported to the smelter where it is transformed into smelted copper. The smelted copper is exported to purchasers in the United States. Under the facts and circumstances, all of the processes applied to make copper concentrate are considered mining. Therefore, under paragraph (b)(2) of this section, gross receipts equal to the fair market value of the concentrate at the smelter will be from sources without the United States. Under the facts and circumstances, the conversion of the concentrate into smelted copper is an additional production activity in a foreign country within the meaning of paragraph (b)(3)(ii) of this section. Therefore, the source of U.S. Mine's excess gross receipts will be determined pursuant to paragraph (b)(2) of this section.

(c) *Determination of taxable income.* The taxpayer's taxable income from sources within or without the United States will be determined under the rules of §§ 1.861–8 through 1.861–14T for determining taxable income from sources within the United States.

* * * * *

(e) *Effective dates.* The rules of paragraphs (a), (b) and (c) of this section will apply to taxable years beginning December 30, 1996. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and before December 30, 1996. For years beginning before December 30, 1996, see § 1.863–1 (as contained in 26 CFR part 1 revised as of April 1, 1996).

Par. 5. Section 1.863–2 is revised to read as follows:

§ 1.863–2 Allocation and apportionment of taxable income.

(a) *Determination of taxable income.* Section 863(b) provides an alternate method for determining taxable income from sources within the United States in

the case of gross income derived from sources partly within and partly without the United States. Under this method, taxable income is determined by deducting from such gross income the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions that cannot definitely be allocated to some item or class of gross income. The income to which this section applies (and that is treated as derived partly from sources within and partly from sources without the United States) will consist of gains, profits, and income

(1) From certain transportation or other services rendered partly within and partly without the United States to the extent not within the scope of section 863(c) or other specific provisions of this title;

(2) From the sale of inventory property (within the meaning of section 865(i)) produced (in whole or in part) by the taxpayer in the United States and sold outside the United States or produced (in whole or in part) by the taxpayer outside the United States and sold in the United States; or

(3) Derived from the purchase of personal property within a possession of the United States and its sale within the United States, to the extent not excluded from the scope of these regulations under § 1.936–6(a)(5), Q&A 7.

(b) *Determination of source of taxable income.* Income treated as derived from sources partly within and partly without the United States under paragraph (a) of this section may be allocated to sources within and without the United States pursuant to § 1.863–1 or apportioned to such sources in accordance with the methods described in other regulations under section 863. To determine the source of certain types of income described in paragraph (a)(1) of this section, see § 1.863–4. To determine the source of gross income described in paragraph (a)(2) of this section, see § 1.863–1 for natural resources and see § 1.863–3 for other inventory. Taxpayers, at their election, may apply the principles of § 1.863–3 (b)(1) and (c) to determine the source of taxable income (rather than gross income) from sales of inventory property (other than natural resources). To determine the source of income partly from sources within a possession of the United States, including income described in paragraph (a)(3) of this section, see § 1.863–3(f).

(c) *Effective dates.* This section will apply to taxable years beginning December 30, 1996. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and before December 30, 1996. For years beginning before December 30, 1996, see § 1.863–2 (as contained in 26 CFR part 1 revised as of April 1, 1996).

Par. 6. Section 1.863–3 is added to read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) *In general*—(1) *Scope.* Paragraphs (a) through (e) of this section apply to determine the source of income derived from the sale of inventory property (inventory), which a taxpayer produces (in whole or in part) within the United States and sells outside the United States, or which a taxpayer produces (in whole or in part) outside the United States and sells within the United States (Section 863 Sales). A taxpayer must divide gross income from Section 863 Sales between production activity and sales activity using one of the methods described in paragraph (b) of this section. The source of gross income from production activity and from sales activity must then be determined under paragraph (c) of this section. Taxable income from Section 863 Sales is determined under paragraph (d) of this section. Paragraph (e) of this section describes the rules for electing the methods described in paragraph (b) of this section and the information that a taxpayer must disclose on a tax return. Paragraph (f) of this section applies to determine the source of certain income derived from a possession of the United States. Paragraph (g) of this section provides special rules for partnerships for all sales subject to §§ 1.863–1 through 1.863–3. Paragraph (h) of this section provides effective dates for the rules in this section.

(2) *Rules of application for Section 863 Sales.* Once a taxpayer has elected a method described in paragraph (b) of this section, the taxpayer must separately apply that method to Section 863 Sales in the United States and to Section 863 Sales outside the United States. In addition, the taxpayer must apply the rules of paragraphs (c) and (d) of this section by aggregating all Section 863 Sales to which a method described in paragraph (b) of this section applies, after separately applying that method to Section 863 Sales in the United States and to Section 863 Sales outside the United States. See section 865(i)(1) for the definition of inventory property. See also section 865(e)(2). See § 1.861–7(c) and paragraph (c)(2) of this section for the time and place of sale.

(b) *Methods to determine income attributable to production activity and sales activity*—(1) *50/50 method*—(i) *Determination of gross income.* Generally, gross income from Section 863 Sales will be apportioned between production activity and sales activity under the 50/50 method as described in this paragraph (b)(1). Under the 50/50 method, one-half of the taxpayer's gross income will be considered income attributable to production activity and the source of that income will be determined under the rules of paragraph (c)(1) of this section. The remaining one-half of such gross income will be considered income attributable to sales activity and the source of that income will be determined under the rules of paragraph (c)(2) of this section. In lieu of the 50/50 method, the taxpayer may elect to determine the source of income from Section 863 Sales under the IFP method described in paragraph (b)(2) of this section or, with the consent of the District Director, the books and records method described in paragraph (b)(3) of this section.

(ii) *Example.* The following example illustrates the rules of this paragraph (b)(1):

Example. 50/50 method. (i) P, a U.S. corporation, produces widgets in the United States. P sells the widgets for $100 to D, an unrelated foreign distributor, in another country. P's cost of goods sold is $40. Thus, P's gross income is $60.

(ii) Pursuant to the 50/50 method, one-half of P's gross income, or $30, is considered income attributable to production activity, and one-half of P's gross income, or $30, is considered income attributable to sales activity.

(2) *IFP method*—(i) *Establishing an IFP.* A taxpayer may elect to allocate gross income earned from production activity and sales activity using the independent factory price (IFP) method described in this paragraph (b)(2) if an IFP is fairly established. An IFP is fairly established based on a sale by the taxpayer only if the taxpayer regularly sells part of its output to wholly independent distributors or other selling concerns in such a way as to reasonably reflect the income earned from production activity. A sale will not be considered to fairly establish an IFP if sales activity by the taxpayer with respect to that sale is significant in relation to all of the activities with respect to that product.

(ii) *Applying the IFP method.* If the taxpayer elects to use the IFP method, the amount of the gross sales price equal to the IFP will be treated as attributable to production activity, and the excess of the gross sales price over the IFP will be treated as attributable to sales activity. If a taxpayer elects to use the IFP method, the IFP must be applied to all Section 863 Sales of inventory that are

substantially similar in physical characteristics and function, and are sold at a similar level of distribution as the inventory sold in the sale fairly establishing an IFP. The IFP will only be applied to sales that are reasonably contemporaneous with the sale fairly establishing the IFP. An IFP cannot be applied to sales in other geographic markets if the markets are substantially different. If the taxpayer elects the IFP method, the rules of this paragraph will also apply to determine the division of gross receipts between production activity and sales activity in a Section 863 Sale that itself fairly establishes an IFP. If the taxpayer elects to apply the IFP method, the IFP method must be applied to all sales for which an IFP may be fairly established and applied for that taxable year and each subsequent taxable year. The taxpayer will apply either the 50/50 method described in paragraph (b)(1) of this section or the books and records method described in paragraph (b)(3) of this section to any other Section 863 Sale for which an IFP cannot be established or applied for each taxable year.

(iii) *Determination of gross income.* The amount of a taxpayer's gross income from production activity is determined by reducing the amount of gross receipts from production activity by the cost of goods sold properly attributable to production activity. The amount of a taxpayer's gross income from sales activity is determined by reducing the amount of gross receipts from sales activity by the cost of goods sold (if any) properly attributable to sales activity. The source of gross income from production activity is determined under the rules of paragraph (c)(1) of this section, and the source of gross income from sales activity will be determined under the rules of paragraph (c)(2) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (b)(2):

Example 1. IFP method. (i) P, a U.S. producer, purchases cotton and produces cloth in the United States. P sells cloth in country X to D, an unrelated foreign clothing manufacturer, for $100. Cost of goods sold for cloth is $80, entirely attributable to production activity. P does not engage in significant sales activity in relation to its other activities in the sales to D. Under these facts, the sale to D fairly establishes an IFP of $100. Assume that P elects to use the IFP method. Accordingly, $100 of the gross sales price is treated as attributable to production activity, and no amount of income from this sale is attributable to sales activity. After reducing the gross sales price by cost of goods sold, $20 of the gross income is treated as attributable to production activity ($100–$80).

(ii) P also sells cloth in country X to A, an unrelated foreign retail outlet, for $110. Because P elected the IFP method and the cloth is substantially similar to the cloth sold to D, the IFP fairly established in the sales to D must be used to determine the amount attributable to production activity in the sale to A. Accordingly, $100 of the gross sales price is treated as attributable to production activity and $10 ($110–$100) is attributable to sales activity. After reducing the gross sales price by cost of goods sold, $20 of the gross income is treated as attributable to production activity ($100–$80) and $10 is attributable to sales activity.

Example 2. Scope of IFP Method. (i) USCo manufactures three dissimilar products. USCo elects to apply the IFP method. In year 1, an IFP can be established for sales of product X, but not for products Y and Z. In year 2, an IFP cannot be established for any of USCo's products. In year 3, an IFP can be established for products X and Y, but not for product Z.

(ii) In year 1, USCo must apply the IFP method to sales of product X. In year 2, although USCo's IFP election remains in effect, USCo is not required to apply the IFP election to any products. In year 3, USCo is required to apply the IFP method to sales of products X and Y.

(3) *Books and records method.* A taxpayer may elect to determine the amount of its gross income from Section 863 Sales that is attributable to production and sales activities for the taxable year based upon its books of account if it has received in advance the permission of the District Director having audit responsibility over its tax return. The taxpayer must establish to the satisfaction of the District Director that the taxpayer, in good faith and unaffected by considerations of tax liability, will regularly employ in its books of account a detailed allocation of receipts and expenditures which clearly reflects the amount of the taxpayer's income from production and sales activities. If a taxpayer receives permission to apply the books and records method, but does not comply with a material condition set forth by the District Director, the District Director may, in its discretion, revoke permission to use the books and records method. The source of gross income treated as attributable to production activity under this method may be determined under the rules of paragraph (c)(1) of this section, and the source of gross income attributable to sales activity will be determined under the rules of paragraph (c)(2) of this section.

(c) *Determination of the source of gross income from production activity and sales activity*—(1) *Income attributable to production activity*—(i) *Production only within the United States or only within foreign countries*—(A) *Source of income.* For purposes of this section, production activity means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory. See § 1.864–1. Subject to the provisions in § 1.1502–13 or paragraph (g)(2)(ii) of this section, the only production activities that are taken into account for purposes of §§ 1.863–1, 1.863–2, and this section are those conducted directly by the taxpayer. Where the taxpayer's production assets are located only within the United States or only outside the United States, the income attributable to production activity is sourced where the taxpayer's production assets are located. For rules regarding the source of income when production assets are located both within the United States and without the United States, see paragraph (c)(1)(ii) of this section.

(B) *Definition of production assets.* Subject to the provisions of § 1.1502–13 and paragraph (g)(2)(ii) of this section, production assets include only tangible and intangible assets owned directly by the taxpayer that are directly used by the taxpayer to produce inventory described in paragraph (a) of this section. Production assets do not include assets that are not directly used to produce inventory described in paragraph (a) of this section. Thus, production assets do not include such assets as accounts receivables, intangibles not related to production of inventory (e.g., marketing intangibles, including trademarks and customer lists), transportation assets, warehouses, the inventory itself, raw materials, or work-in-process. In addition, production assets do not include cash or other liquid assets (including working capital), investment assets, prepaid expenses, or stock of a subsidiary.

(C) *Location of production assets.* For purposes of this section, a tangible production asset will be considered located where the asset is physically located. An intangible production asset will be considered located where the tangible production assets owned by the taxpayer to which it relates are located.

(ii) *Production both within the United States and within foreign countries*—(A) *Source of income.* Where the taxpayer's production assets are located both within and without the United States, income from sources without the United States will be determined by multiplying the income attributable to the taxpayer's production activity by a fraction, the numerator of which is the average adjusted basis of production assets that are located outside the United States and the denominator of which is the average adjusted basis of all production assets within and without the United States. The

remaining income is treated as from sources within the United States.

(B) *Adjusted basis of production assets.* For purposes of paragraph (c)(1)(ii)(A) of this section, the adjusted basis of an asset is determined under section 1011. The average adjusted basis is computed by averaging the adjusted basis of the asset at the beginning and end of the taxable year, unless by reason of material changes during the taxable year such average does not fairly represent the average for such year. In this event, the average adjusted basis will be determined upon a more appropriate basis. If production assets are used to produce inventory sold in Section 863 Sales and are also used to produce other property during the taxable year, the portion of its adjusted basis that is included in the fraction described in paragraph (c)(1)(ii)(A) of this section will be determined under any method that reasonably reflects the portion of the assets that produces inventory sold in Section 863 Sales. For example, the portion of such an asset that is included in the formula may be determined by multiplying the asset's average adjusted basis by a fraction, the numerator of which is the gross receipts from sales of inventory from Section 863 Sales produced by the asset, and the denominator of which is the gross receipts from all property produced by that asset.

(iii) *Anti-abuse rule.* The purpose of this paragraph (c)(1) is to attribute the source of the taxpayer's production income to the location of the taxpayer's production activity. Therefore, if the taxpayer has entered into or structured one or more transactions with a principal purpose of reducing its U.S. tax liability by manipulating the formula described in paragraph (c)(1)(ii)(A) of this section in a manner inconsistent with the purpose of this paragraph (c)(1), the District Director may make appropriate adjustments so that the source of the taxpayer's income from production activity more clearly reflects the source of that income.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (c)(1):

Example 1. Source of production income. (i) A, a U.S. corporation, produces widgets that are sold both within the United States and within a foreign country. The initial manufacture of all widgets occurs in the United States. The second stage of production of widgets that are sold within a foreign country is completed within the country of sale. A's U.S. plant and machinery which is involved in the initial manufacture of the widgets has an average adjusted basis of $200. A also owns warehouses used to store work-in-process. A owns foreign equipment with an average adjusted basis of $25. A's gross receipts from all sales of widgets is $100, and its gross receipts from export sales of widgets is $25. Assume that apportioning average adjusted basis using gross receipts is reasonable. Assume A's cost of goods sold from the sale of widgets in the foreign countries is $13 and thus, its gross income from widgets sold in foreign countries is $12. A uses the 50/50 method to divide its gross income between production activity and sales activity.

(ii) A determines its production gross income from sources without the United States by multiplying one-half of A's $12 of gross income from sales of widgets in foreign countries, or $6, by a fraction, the numerator of which is all relevant foreign production assets, or $25, and the denominator of which is all relevant production assets, or $75 ($25 foreign assets + ($200 U.S. assets × $25 gross receipts from export sales/$100 gross receipts from all sales)). Therefore, A's gross production income from sources without the United States is $2 ($6 × ($25/$75)).

Example 2. Location of intangible property. Assume the same facts as *Example 1,* except that A employs a patented process that applies only to the initial production of widgets. In computing the formula used to determine the source of income from production activity, A's patent, if it has an average adjusted basis, would be located in the United States.

Example 3. Anti-abuse rule. (i) Assume the same facts as *Example 1.* A sells its U.S. assets to B, an unrelated U.S. corporation, with a principal purpose of reducing its U.S. tax liability by manipulating the property fraction. A then leases these assets from B. After this transaction, under the general rule of paragraph (c)(1)(ii) of this section, all of A's production income would be considered from sources without the United States, because all of A's relevant production assets are located within a foreign country. Since the leased property is not owned by the taxpayer, it is not included in the fraction.

(ii) Because A has entered into a transaction with a principal purpose of reducing its U.S. tax liability by manipulating the formula described in paragraph (c)(1)(ii)(A) of this section, A's income must be adjusted to more clearly reflect the source of that income. In this case, the District Director may redetermine the source of A's production income by ignoring the sale-leaseback transactions.

(2) *Income attributable to sales activity.* The source of the taxpayer's income that is attributable to sales activity will be determined under the provisions of § 1.861–7(c). However, notwithstanding any other provision, for purposes of section 863, the place of sale will be presumed to be the United States if personal property is wholly produced in the United States and the property is sold for use, consumption, or disposition in the United States. See § 1.864–6(b)(3)(ii) to determine the country of use, consumption, or disposition. Also, in applying this paragraph, property will be treated as wholly produced in the United States if it is subject to no more than packaging, repackaging, labeling, or other minor assembly operations outside the United States, within the meaning of § 1.954–3(a)(4)(iii) (property manufactured or produced by a controlled foreign corporation).

(d) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (c) of this section, the taxpayer must properly allocate and apportion separately under §§ 1.861–8 through 1.861–14T the amounts of its expenses, losses, and other deductions to its respective amounts of gross income from Section 863 Sales determined separately under each method described in paragraph (b) of this section. In addition, if the taxpayer deducts expenses for research and development under section 174 that may be attributed to its Section 863 Sales under § 1.861–8(e)(3), the taxpayer must separately allocate or apportion expenses, losses, and other deductions to its respective amounts of gross income from each relevant product category that the taxpayer uses in applying the rules of § 1.861–8(e)(3)(i)(A). In the case of gross income from Section 863 Sales determined under the IFP method or the books and records method, the rules of §§ 1.861–8 through 1.861–14T must apply to properly allocate or apportion amounts of expenses, losses and other deductions allocated and apportioned to such gross income between gross income from sources within and without the United States. In the case of gross income from Section 863 Sales determined under the 50/50 method, the amounts of expenses, losses, and other deductions allocated and apportioned to such gross income must be apportioned between sources within and without the United States pro rata based on the relative amounts of gross income from sources within and without the United States determined under the 50/50 method. Research and experimental expenditures qualifying under § 1.861–17 are allocated under that section, and are not allocated and apportioned pro rata under the 50/50 method.

(e) *Election and reporting rules*—(1) *Elections under paragraph (b) of this section.* If a taxpayer does not elect a method specified in paragraph (b) (2) or (3) of this section, the taxpayer must apply the method specified in paragraph (b)(1) of this section. The taxpayer may elect to apply the method specified in paragraph (b)(2) of this section by using the method on a timely filed original return (including extensions). A taxpayer may elect to apply the method specified in paragraph (b)(3) of this

section by using the method on a timely filed original return (including extensions), but only if the taxpayer has received permission from the District Director to apply that method. Once a method under paragraph (b) of this section has been used, that method must be used in later taxable years unless the Commissioner consents to a change. However, if a taxpayer elects to change to or from the method specified in paragraph (b)(3) of this section, the taxpayer must obtain permission from the District Director instead of the Commissioner. Permission to change methods from one year to another year will not be withheld unless the change would result in a substantial distortion of the source of the taxpayer's income.

(2) *Disclosure on tax return.* A taxpayer who uses one of the methods described in paragraph (b) of this section must fully explain in a statement attached to the return the methodology used, the circumstances justifying use of that methodology, the extent that sales are aggregated, and the amount of income so allocated.

(f) *Income partly from sources within a possession of the United States.* Taxpayers with income partly from sources within a possession of the United States must apply the rules of § 1.863–3A(c).

(g) *Special rules for partnerships*—(1) *General rule.* For purposes of § 1.863–1 and this section, a taxpayer's production or sales activity does not include production and sales activities conducted by a partnership of which the taxpayer is a partner either directly or through one or more partnerships, except as otherwise provided in paragraph (g)(2) of this section.

(2) *Exceptions*—(i) *In general.* For purposes of determining the source of the partner's distributive share of partnership income or determining the source of the partner's income from the sale of inventory property which the partnership distributes to the partner in kind, the partner's production or sales activity includes an activity conducted by the partnership. In addition, the production activity of a partnership includes the production activity of a taxpayer that is a partner either directly or through one or more partnerships, to the extent that the partner's production activity is related to inventory that the partner contributes to the partnership in a transaction described under section 721.

(ii) *Attribution of production assets to or from a partnership.* A partner will be treated as owning its proportionate share of the partnership's production assets only to the extent that, under paragraph (g)(2)(i) of this section, the partner's activity includes production activity conducted through a partnership. A partner's share of partnership assets will be determined by reference to the partner's distributive share of partnership income for the year attributable to such production assets. Similarly, to the extent a partnership's activities include the production activities of a partner, the partnership will be treated as owning the partner's production assets related to the inventory that is contributed in kind to the partnership. See paragraph (c)(1)(ii)(B) of this section for rules apportioning the basis of assets to Section 863 Sales.

(iii) *Basis.* For purposes of this section, in those cases where the partner is treated as owning its proportionate share of the partnership's production assets, the partner's basis in production assets held through a partnership shall be determined by reference to the partnership's adjusted basis in its assets (including a partner's special basis adjustment, if any, under section 743). Similarly, a partnership's basis in a partner's production assets is determined with reference to the partner's adjusted basis in its assets.

(iv) *Separate application of methods.* If, under paragraph (g)(2) of this section, a partner is treated as conducting the activity of a partnership, and is treated as owning its proportionate share of a partnership's production assets, a partner must apply the method it has elected under paragraph (b) of this section separately to Section 863 Sales described in this paragraph (g) and all other Section 863 Sales.

(3) *Examples.* The following examples illustrate the rules of this paragraph (g):

Example 1. Distributive share of partnership income. A, a U.S. corporation, forms a partnership in the United States with B, a country X corporation. A and B each have a 50 percent interest in the income, gains, losses, deductions and credits of the partnership. The partnership is engaged in the manufacture and sale of widgets. The widgets are manufactured in the partnership's plant located in the United States and are sold by the partnership outside the United States. The partnership owns the manufacturing facility and all other production assets used to produce the widgets. A's distributive share of partnership income includes 50 percent of the sales income from these sales. In applying the rules of section 863 to determine the source of its distributive share of partnership income from the export sales of widgets, A is treated as carrying on the activity of the partnership related to production of these widgets and as owning a proportionate share of the partnership's assets related to production of the widgets, based upon its distributive share of partnership income.

Example 2. Distribution in kind. Assume the same facts as in *Example 1* except that the partnership, instead of selling the widgets, distributes the widgets to A and B. A then further processes the widgets and then sells them outside the United States. In determining the source of the income earned by A on the sales outside the United States, A is treated as conducting the activities of the partnership related to production of the distributed widgets. Thus, the source of gross income on the sale of the widgets is determined under section 863 and these regulations. A applies the 50/50 method described in paragraph (b)(1) of this section to determine the source of income from the sales. In applying paragraph (c)(1) of this section, A is treated as owning its proportionate share of the partnership's production assets based upon its distributive share of partnership income.

(h) *Effective dates.* The rules of this section apply to taxable years beginning December 30, 1996. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before December 30, 1996. For years beginning before December 30, 1996, see §§ 1.863–3A and 1.863–3AT.

Par. 7. Section 1.863–4 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.863–4 Certain transportation services.

(a) *General.* A taxpayer carrying on the business of transportation service (other than an activity giving rise to transportation income described in section 863(c) or to income subject to other specific provisions of this title) between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

* * * * *

§ 1.863–5 [Removed]

Par. 8. Section 1.863–5 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. In § 602.101, paragraph (c) is amended by adding entries for 1.863–1 and 1.863–3A, and revising the entry for 1.863–3 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.863–1	1545–1476
1.863–3	1545–1476
* * * * *	
1.863–3A	1545–0126
* * * * *	

Approved: November 25, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of Tax Policy.

[FR Doc. 96–30617 Filed 11–27–96; 8:45 am]

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26 CFR Parts 20 and 602

[TD 8686]

RIN 1545–AT64

Requirements to Ensure Collection of Section 2056A Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOTs) described in section 2056A(a).

DATES: These regulations are effective November 29, 1996.

For dates of applicability, see § 20.2056A–2(d).

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1443. Responses to this collection of information are required in order for an estate to be eligible for the estate tax marital deduction in cases where the surviving spouse is not a United States citizen.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1.39 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A notice of proposed rulemaking was published in the Federal Register on January 5, 1993 (58 FR 305), reflecting amendments to the Internal Revenue Code by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647), the Revenue Reconciliation Act of 1989 (Public Law 101–239), and the Revenue Reconciliation Act of 1990 (Public Law 101–508). The amendments generally relate to sections 2056 and 2523, and affect the availability of the estate and gift tax marital deduction when the surviving spouse or the donee spouse is not a United States citizen. Part of the NPRM was published in the Federal Register as final regulations, in TD 8612, on August 22, 1995 (60 FR 43531). That part of the NPRM that addressed the regulatory requirements to ensure the collection of the estate tax imposed by section 2056A(b)(1) (A) and (B) was published in the Federal Register on August 22, 1995, in the form of temporary and proposed regulations, (60 FR 43554 and 60 FR 43575, respectively) in order to afford the public a further opportunity to comment on these security arrangements.

On January 16, 1996, the IRS held a hearing on the temporary and proposed regulations. These final regulations reflect the comments received in response to the temporary and proposed regulations.

Explanation of Provisions

The following is a summary of the significant comments received and the reasons for accepting or rejecting those comments in the final regulations.

Under the temporary regulations, a qualified domestic trust (QDOT) that has assets in excess of $2 million, may alternate among the three security arrangements provided in the regulations (U.S. bank trustee, bond or letter of credit), provided that at all times, at least one of the three arrangements is in effect. A QDOT with assets of $2 million or less need not satisfy these requirements, if, in general, the trust holdings of foreign situs real property are limited to 35 percent of the fair market value of the trust corpus.

Comments were received that trusts in actual compliance with these regulatory requirements, but which do not explicitly include the required language, will not qualify as a QDOT. In addition, comments suggested that the imposition of numerous governing instrument requirements will increase the difficulty of drafting a QDOT and result in a trust document that will have to include detailed provisions, many of which are not likely to be applicable. A suggestion was made that if the governing instrument requirement is retained in the regulations, then the required security provisions should be permitted to be incorporated by reference in a trust document. This suggestion was adopted. However, in order to assist taxpayers who may wish to specify the required provisions in the governing instrument, the IRS has published guidance in the Internal Revenue Bulletin (see § 602.101(d)(2) of this chapter) providing sample language that may be used in a QDOT instrument to satisfy the additional security requirements contained in the final regulations.

In response to comments, the language of the regulations has been modified to clarify that the QDOT may alternate among the three arrangements provided in the regulations as long as, at any given time, one of the three arrangements is required to be operative.

Comments suggested that the temporary regulations may be viewed as requiring that a QDOT that initially employs the bank trustee security alternative must, irrespective of whether the QDOT has switched to another security option, continue to have at least one U.S. Bank acting as a trustee. In response to this comment, the final regulations clarify that, if the QDOT changes to a different security arrangement, a U.S. bank need not continue to act as trustee.

Under the temporary regulations, in determining whether the value of the assets passing to a QDOT are in excess of, or less than, $2 million, indebtedness with respect to the assets is not taken into account to reduce value. Similarly,

under the temporary regulations, the amount of the bond or letter of credit that is furnished to the IRS must be equal to 65 percent of the fair market value of the trust assets determined ''without regard to any indebtedness thereon.'' Comments suggested that indebtedness should be taken into account in determining whether the $2 million dollar threshold has been exceeded and the amount of the bond or letter of credit required. This change has not been made. The IRS and Treasury believe that the retention of the rule that indebtedness on the property is not taken into account to reduce value most effectively ensures collection of the estate tax imposed under section 2056A(b). For the limited purpose under this section (i.e., to determine whether the $2 million threshold is exceeded and the amount of the bond or letter of credit to be furnished to the IRS) the complexity that would be involved in drafting rules to determine which debts qualify to be taken into account and which do not is not warranted.

Under the temporary regulations, with regard to the bond and letter of credit security options, if the fair market value of the trust assets, is ''finally determined'' to be in excess of the value of the trust assets as originally reported, the trustee has a reasonable period of time (not exceeding sixty days from the date of the final determination) to adjust the amount of the bond or letter of credit. The temporary regulations also use the term ''finally determined'' in addressing substantial undervaluations of property passing to a QDOT and the grace period provided to meet the security requirements when a QDOT is determined to contain assets in excess of $2 million. Comments were received suggesting that the regulations provide a definition of ''finally determined''.

Accordingly, the final regulations provide that the value of the assets will be finally determined on the earliest to occur of—

1. The entry of a decision, judgment, decree, or other order by any court of competent jurisdiction that has become final;

2. The execution of a closing agreement made under section 7121;

3. Any final disposition by the IRS of a claim for refund;

4. The issuance of an estate tax closing letter (if no claim for refund is filed); or

5. The expiration of the statute of limitations for assessment with respect to the decedent's estate tax liability.

In response to comments, the regulation addressing the required duration of the bond or letter of credit has been clarified to provide that the security arrangement must remain in effect until the trust ceases to function as a QDOT.

Comments have been received regarding the amount of the bond or letter of credit that must be furnished to the IRS. One commentator stated that, since the purpose of the bond or letter of credit requirement is to provide a source of funds for the payment of the section 2056A(b) estate tax, the amount of the required bond or letter of credit should be based on either the maximum federal estate tax rate, or the amount of estate tax deferred, rather than 65% of the value of the QDOT, as provided in the regulations. This suggestion has not been adopted. Generally, the regulation requires a bond of 65 percent of the initial fair market value of the trust assets to ensure that the potential estate tax liability is adequately secured if the trust property appreciates in value.

The temporary regulations providing that notice of failure to renew a bond or letter of credit must be ''received by the IRS at least 60 days prior to the end of the term of the bond or letter of credit'' has been changed to reference the date the notice is ''mailed to'' the IRS. Further, under the final regulations, the notice must also be mailed to the U.S. Trustee of the QDOT.

Under the regulations, in the case of a QDOT of less than $2 million, if on the last day of a taxable year of the QDOT, the value of foreign real property owned by the QDOT exceeds 35 percent of the QDOT assets because of distributions of principal during that year, or because of fluctuations in the value of the foreign currency in the jurisdiction where the real property is located, a grace period of one year is provided to allow the trustee to comply with the 35 percent limit. Comments suggested that changes in the relative value of the trust assets would also cause the trust to fail to satisfy the 35 percent limit, and failure to comply due to such changes that are beyond the control of the trustee should also be eligible for the grace period. Accordingly, under the final regulations, the trustee will also be accorded the grace period to satisfy the 35 percent limit if, as a result of changes in the relative values of the trust assets, more than 35 percent of the value of the trust consists of foreign real estate.

Under the temporary regulations, for purposes of determining whether the $2 million threshold has been exceeded, and for purposes of determining the amount of the bond or letter of credit, the executor of the decedent's estate may exclude up to $600,000 in value attributable to real property wherever situated (and related furnishings) owned directly by the QDOT that is used by the surviving spouse as the spouse's principal residence. Comments were received that the regulations should be expanded to allow the exclusion of all residential real property that is actually used by the surviving spouse. Thus, a vacation home or second home would qualify for the exclusion. It was also suggested that all personally used residential real property, regardless of value, should be eligible for the exclusion. The final regulations do not change the monetary limit of $600,000 for the exclusion. The $600,000 limit for the exclusion facilitates the reduction of the costs associated with providing security while adequately ensuring the collection of the section 2056A(b) tax. This is especially the case in situations where the residential real property is situated outside the United States so that a significant collection risk is presented. However, under the final regulations the exclusion has been redesignated as a ''personal residence'' exclusion. The exclusion is now available for the principal residence of the surviving spouse and one additional residence, to the extent the combined value excluded does not exceed $600,000. The second residence will be eligible for the exclusion only if the residence is used by the surviving spouse as a personal residence and not subject to any rental arrangement with any person.

Under the temporary regulations, the residence exclusion election is made by attaching a written statement to the estate tax return on which the QDOT election is made. Commentators suggested that the final regulations allow the election to be made at any time during the term of the QDOT, and not necessarily at the time of filing of the decedent's estate tax return. For example, if the bank trustee alternative is selected by the trustee of the QDOT, but at some future date the trustee desires to change to the bond or letter of credit security arrangement, the trustee should be given the opportunity to make a delayed election of the exclusion. In response to these comments, the final regulations provide that the election may be made at any time during the term of the QDOT. In addition, the final regulation provides for the cancellation of a prior election.

Under the temporary regulations, the U.S. Trustee of a QDOT is required to file an annual statement with the IRS containing specified items of information (including a list of all assets held by the QDOT together with the fair market value of each asset determined as of the last day of the taxable year) if the residence exclusion applies during the taxable year. Comments were

received suggesting that the cost of compliance with this annual reporting requirement will limit the utility of the residence exclusion. In response to these comments, annual reporting is no longer required solely because the personal residence exclusion was elected. However, the regulations retain the annual reporting requirement where the residence previously subject to the exclusion is sold, or where the residence ceases to be used as a personal residence during the taxable or calendar year.

Under the temporary regulations, if a residence that is subject to the exclusion is sold during the term of the QDOT, the exclusion will continue to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(d)(1)) is used to purchase a new residence for the spouse. In response to comments, this provision has been amended to provide that if a residence ceases to be used as the personal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusion may be applied to another residence that is held in either the same QDOT or in another QDOT, if the other residence is used as a personal residence of the spouse. The amount of exclusion that may be applied to the new personal residence under these circumstances can be up to $600,000 (less that amount previously allocated to a residence that continues to qualify for the exclusion) even if the entire $600,000 exclusion was not previously used for the initial personal residence(s).

Also, under the temporary regulations, on the sale of a residence, if less than the entire adjusted sales price is reinvested in a new residence, then the amount of the exclusion initially claimed by the QDOT is reduced proportionately. For example, if a residence is sold for an adjusted sales price of $1,000,000 and a new residence is acquired for $800,000, then, the original exclusion would be reduced by $120,000 to $480,000: $200,000 (adjusted sales price not reinvested)/ $1,000,000 (adjusted sales price) × $600,000. Comments were received suggesting that this rule be changed to provide that the amount of the exclusion as adjusted not be reduced below the amount actually reinvested (up to $600,000). This suggestion was adopted in the final regulations, reflecting that two residences can now qualify for the $600,000 exclusion.

Special Analyses

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these regulations is Susan Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 602 are amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 20.2056A–0, the table of contents is amended by revising the entry for § 20.2056A–2(d) to read as follows:

§ 20.2056A–0 Table of contents.

* * * * *

§ 20.2056A–2 Requirements for qualified domestic trust.

* * * * *

(d) Additional requirements to ensure collection of the section 2056A estate tax.

(1) Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1).

(2) Individual trustees.

(3) Annual reporting requirements.

(4) Request for alternate arrangement or waiver.

(5) Adjustment of dollar threshold and exclusion.

(6) Effective date and special rules.

* * * * *

Par. 3. In § 20.2056A–2, paragraph (d) is added to read as follows:

§ 20.2056A–2 Requirements for qualified domestic trust.

* * * * *

(d) *Additional requirements to ensure collection of the section 2056A estate tax—(1) Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1)*—(i) *QDOTs with assets in excess of $2 million*. If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, exceeds $2 million as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must meet the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section at all times during the term of the QDOT. The QDOT may alternate between any of the arrangements provided in paragraphs (d)(1)(i) (A), (B), and (C) of this section provided that, at any given time, one of the arrangements must be operative. See paragraph (d)(1)(iii) of this section for the definition of finally determined. The QDOT may provide that the trustee has the discretion to use any one of the security arrangements or may provide that the trustee is limited to using only one or two of the arrangements specified in the trust instrument. A trust instrument that specifically states that the trust must be administered in compliance with paragraph (d)(1)(i) (A), (B), or (C) of this section is treated as meeting the requirements of paragraphs (d)(1)(i) (A), (B), or (C) of this section for purposes of paragraphs (d)(1)(i) and, if applicable, (d)(1)(ii) of this section.

(A) *Bank Trustee*. Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the Bank Trustee security alternative is used for the QDOT, at least one U.S. Trustee must be a bank as defined in section 581. Alternatively, except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, at least one trustee must be a United States branch of a foreign bank, provided that, in such cases, during the entire term of the QDOT a U.S. Trustee must act as a trustee with the foreign bank trustee.

(B) *Bond*. Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the bond security arrangement alternative is used for the QDOT, the U.S. Trustee must furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death (or alternate valuation date, if

applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iv) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee has a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the bond accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the bond must remain in effect until the trust ceases to function as a QDOT and any tax liability finally determined to be due under section 2056A(b) is paid, or is finally determined to be zero.

(*1*) *Requirements for the bond.* The bond must be with a satisfactory surety, as prescribed under section 7101 and § 301.7101–1 of this chapter (Regulations on Procedure and Administration), and is subject to Internal Revenue Service review as may be prescribed by the Commissioner. The bond may not be cancelled. The bond must be for a term of at least one year and must be automatically renewable at the end of that term, on an annual basis thereafter, unless notice of failure to renew is mailed to the U.S. Trustee and the Internal Revenue Service at least 60 days prior to the end of the term, including periods of automatic extensions. Any notice of failure to renew required to be sent to the Internal Revenue Service must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [specify Street Address, City, State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate Tax Group, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the bond if, within 30 days of receipt of the notice of failure to renew, the U.S. Trustee notifies the Internal Revenue Service (at the same address to which notice of failure to renew is to be sent) that an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) or (d)(4) of this section, has been secured and that the arrangement will take effect immediately prior to or upon expiration of the bond.

(*2*) *Form of bond.* The bond must be in the following form (or in a form that is the same as the following form in all material respects), or in such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

Bond in Favor of the Internal Revenue Service To Secure Payment of Section 2056A Estate Tax Imposed Under Section 2056A(b) of the Internal Revenue Code.

KNOW ALL PERSONS BY THESE PRESENTS, That the undersigned, _____, the SURETY, and _____, the PRINCIPAL, are irrevocably held and firmly bound to pay the Internal Revenue Service upon written demand that amount of any tax up to *$[amount determined under paragraph (d)(1)(i)(B) of this section]*, imposed under section 2056A(b)(1) of the Internal Revenue Code (including penalties and interest on said tax) determined by the Internal Revenue Service to be payable with respect to the principal as trustee for: *[Identify trust and governing instrument, name and address of trustee]*, a qualified domestic trust as defined in section 2056A(a) of the Internal Revenue Code, for the payment of which the said Principal and said Surety, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Internal Revenue Service may demand payment under this bond at any time if the Internal Revenue Service in its sole discretion determines that a taxable event with respect to the trust has occurred; the trust no longer qualifies as a qualified domestic trust as described in section 2056A(a) of the Internal Revenue Code and the regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) has been made. Demand by the Internal Revenue Service for payment may be made whether or not the tax and tax return (Form 706–QDT) with respect to the taxable event is due at the time of such demand, or an assessment has been made by the Internal Revenue Service with respect to the tax.

NOW THEREFORE, The condition of this obligation is such that it must not be cancelled and, if payment of all tax liability finally determined to be imposed under section 2056A(b) is made, then this obligation is null and void; otherwise, this obligation is to remain in full force and effect for one year from its effective date and is to be automatically renewable on an annual basis unless, at least 60 days prior to the expiration date, including periods of automatic renewals, the surety mails to the U.S. Trustee and the Internal Revenue Service by Registered or Certified Mail, return receipt requested, notice of the failure to renew. Receipt of this notice of failure to renew by the Internal Revenue Service may be considered a taxable event. The Internal Revenue Service will not draw upon the bond if, within 30 days of receipt of the notice of failure to renew, the trustee notifies the Internal Revenue Service that an alternate security arrangement has been secured and that the arrangement will take effect immediately prior to or upon expiration of the bond. The surety remains liable for all taxable events occurring prior to the date of expiration. All notices required to be sent to the Internal Revenue Service under this instrument should be sent to District Director, *[specify location]* District Office, Estate and Gift Tax Examination Group, Street Address, City, State, Zip Code. (In the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States, all notices should be sent to Estate Tax Group, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024).

This bond shall be effective as of _____. Principal _____ Date _____ Surety _____ Date _____

(*3*) *Additional governing instrument requirements.* The trust instrument must provide that in the event the Internal Revenue Service draws on the bond, in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until after April 15th of the calendar year following the year in which the bond is drawn upon. After that date, any such remittance will be treated as a deposit and returned (without interest) upon request of the U.S. Trustee, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*4*) *Procedure.* The bond is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the bond is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the bond that provides a list of the assets that will be used to fund the QDOT and the respective values of the assets. The written statement must also indicate whether

any exclusions under paragraph (d)(1)(iv) of this section are claimed.

(C) *Letter of credit.* Except as otherwise provided in paragraph (d)(6)(ii) or (iii) of this section, the trust instrument must provide that whenever the letter of credit security arrangement is used for the QDOT, the U.S. Trustee must furnish an irrevocable letter of credit issued by a bank as defined in section 581, a United States branch of a foreign bank, or a foreign bank with a confirmation by a bank as defined in section 581. The letter of credit must be for an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iv) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee has a reasonable period of time (not exceeding 60 days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the letter of credit accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the letter of credit must remain in effect until the trust ceases to function as a QDOT and any tax liability finally determined to be due under section 2056A(b) is paid or is finally determined to be zero.

(*1*) *Requirements for the letter of credit.* The letter of credit must be irrevocable and provide for sight payment. The letter of credit must have a term of at least one year and must be automatically renewable at the end of the term, at least on an annual basis, unless notice of failure to renew is mailed to the U.S. Trustee and the Internal Revenue Service at least sixty days prior to the end of the term, including periods of automatic renewals. If the letter of credit is issued by the U.S. branch of a foreign bank and the U.S. branch is closing, the branch (or foreign bank) must notify the U.S. Trustee and the Internal Revenue Service of the closure and the notice of closure must be mailed at least 60 days prior to the date of closure. Any notice of failure to renew or closure of a U.S. branch of a foreign bank required to be sent to the Internal Revenue Service must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [Street Address, City State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate Tax, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the letter of credit if, within 30 days of receipt of the notice of failure to renew or closure of the U.S. branch of a foreign bank, the U.S. Trustee notifies the Internal Revenue Service (at the same address to which notice is to be sent) that an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C), or (d)(4) of this section, has been secured and that the arrangement will take effect immediately prior to or upon expiration of the letter of credit or closure of the U.S. branch of the foreign bank.

(*2*) *Form of letter of credit.* The letter of credit must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form that the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service
Attention: District Director, *[specify location]* District Office
Estate and Gift Tax Examination Group
[Street Address, City, State, ZIP Code]

[Or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate Tax Group, Assistant Commissioner (International) 950 L'Enfant Plaza CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby establish our irrevocable Letter of Credit No. ____ in your favor for drawings up to U.S. $ *[Applicant should provide bank with amount which Applicant determined under paragraph (d)(1)(i)(C)]* effective immediately. This Letter of Credit is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on ____ at said office.

For information and reference only, we are informed that this Letter of Credit relates to [*Applicant should provide bank with the identity of qualified domestic trust and governing instrument*], and the name, address, and identifying number of the trustee is [*Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any*].

Drawings on this Letter of Credit are available upon presentation of the following documents:

1. Your draft drawn at sight on us bearing our Letter of Credit No. ____; and

2. Your signed statement as follows:

The amount of the accompanying draft is payable under *[identify bank]* irrevocable Letter of Credit No. _____ pursuant to section 2056A of the Internal Revenue Code and the regulations promulgated thereunder, because the Internal Revenue Service in its sole discretion has determined that a ''taxable event'' with respect to the trust has occurred; e.g., the trust no longer qualifies as a qualified domestic trust as described in section 2056A of the Internal Revenue Code and regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) of the Internal Revenue Code has been made.

Except as expressly stated herein, this undertaking is not subject to any agreement, requirement or qualification. The obligation of *[Name of Issuing Bank]* under this Letter of Credit is the individual obligation of [*Name of Issuing Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for a period of one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we mail to you and to the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the trustee's address indicated above, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt of this notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

[In the case of a letter of credit issued by a U.S. branch of a foreign bank the following language must be added]. It is a further condition of this Letter of Credit that if the U.S. branch of *[name of foreign bank]* is to be closed, that at least sixty days prior to closing, we mail to you and the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the U.S. Trustee's address indicated above, that this branch will be closing. This notice will specify the actual date of closing. Upon receipt of the notice, you may draw hereunder on or before the date of closure, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No.

500. If we notify you of our election not to consider this Letter of Credit renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

Except as stated herein, this Letter of Credit cannot be modified or revoked without your consent.

Authorized Signature _____Date _____

(3) Form of confirmation. If the requirements of this paragraph (d)(1)(i)(C) are satisfied by the issuance of a letter of credit by a foreign bank with confirmation by a bank as defined in section 581, the confirmation must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form as the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see § 602.101(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service
Attention: District Director, [*specify location*]
District Office Estate and Gift Tax Examination Group [State Address, City, State, ZIP Code]

[or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate Tax Group, Assistant Commissioner (International) 950 L'Enfant Plaza CP:IN:D:C:EX:HQ:1114, Washington, DC 20024].

Dear Sirs: We hereby confirm the enclosed irrevocable Letter of Credit No. _____, and amendments thereto, if any, in your favor by _____ [Issuing Bank] for drawings up to U.S. _____ [same amount as in initial Letter of Credit] effective immediately. This confirmation is issued, presentable and payable at our office at _____and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____at said office.

For information and reference only, we are informed that this Confirmation relates to [Applicant should provide bank with the identity of qualified domestic trust and governing instrument], and the name, address, and identifying number of the trustee is [Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any].

We hereby undertake to honor your sight draft(s) drawn as specified in the Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [*Name of Confirming Bank*] under this Confirmation is the individual obligation of [*Name of Confirming Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Confirmation that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least sixty days prior to the expiration date, we send to you and to the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the trustee's addresses, respectively, indicated above, that we elect not to consider this Confirmation renewed for any additional period. Upon receipt of this notice by you, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Confirmation renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Confirmation is drawn against within 30 days after the resumption of business.

Except as stated herein, this Confirmation cannot be modified or revoked without your consent.

Authorized Signature _____ Date _____

(4) Additional governing instrument requirements. The trust instrument must provide that if the Internal Revenue Service draws on the letter of credit (or confirmation) in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the letter of credit (or confirmation) is drawn upon. After that date, any such remittance will be treated as a deposit and returned (without interest) upon request of the U.S. Trustee after the date specified above, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*5*) *Procedure.* The letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the letter of credit is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective values of the assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iv) of this section are claimed.

(D) *Disallowance of marital deduction for substantial undervaluation of QDOT property in certain situations.* (*1*) If either—

(*i*) The bond or letter of credit security arrangement under paragraph (d)(1)(i)(B) or (C) of this section is chosen by the U.S. Trustee; or

(*ii*) The QDOT property as originally reported on the decedent's estate tax return is valued at $2 million or less but, as finally determined for federal estate tax purposes, the QDOT property is determined to be in excess of $2 million, then the marital deduction will be disallowed in its entirety for failure to comply with the requirements of section 2056A if the value of the QDOT property reported on the estate tax return is 50 percent or less of the amount finally determined to be the correct value of the property for federal estate tax purposes.

(*2*) The preceding sentence does not apply if—

(*i*) There was reasonable cause for the undervaluation; and

(*ii*) The fiduciary of the estate acted in good faith with respect to the undervaluation. For this purpose, § 1.6664–4(b) of this chapter applies, to the extent applicable, with respect to the facts and circumstances to be taken into account in making this determination.

(ii) *QDOTs with assets of $2 million or less.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, is $2 million or less as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iv) of this section), the trust instrument must provide that either no more than 35 percent of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust (or on the last day of the calendar year if the QDOT does not have a taxable year), will consist of real property located outside of the United States, or the trust will meet the requirements prescribed by paragraph (d)(1)(i)(A), (B), or (C) of this section. See paragraph (d)(1)(ii)(D) of this section for special rules in the case of principal distributions from a QDOT, fluctuations in the value of foreign real property held by a QDOT due to changes in value of foreign currency, and fluctuations in the fair market value

of assets held by the QDOT. See paragraph (d)(1)(iv) of this section for a special rule for personal residences. If the fair market value, as originally reported on the decedent's estate tax return, of the assets passing or deemed to have passed to the QDOT (determined without reduction for any indebtedness with respect to the assets) is $2 million or less, but the fair market value of the assets as finally determined for federal estate tax purposes is more than $2 million, the U.S. Trustee has a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. However, see paragraph (d)(1)(i)(D) of this section in the case of a substantial undervaluation of QDOT assets. See § 20.2056A–2(d)(1)(iii) for the definition of finally determined.

(A) *Multiple QDOTs.* For purposes of this paragraph (d)(1)(ii), if more than one QDOT is established for the benefit of the surviving spouse, the fair market value of all the QDOTs are aggregated in determining whether the $2 million threshold under this paragraph (d)(1)(ii) is exceeded.

(B) *Look-through rule.* For purposes of determining whether no more than 35 percent of the fair market value of the QDOT assets consists of foreign real property, if the QDOT owns more than 20% of the voting stock or value in a corporation with 15 or fewer shareholders, or more than 20% of the capital interest of a partnership with 15 or fewer partners, then all assets owned by the corporation or partnership are deemed to be owned directly by the QDOT to the extent of the QDOT's pro rata share of the assets of that corporation or partnership. For a partnership, the QDOT partner's pro rata share is based on the greater of its interest in the capital or profits of the partnership. For purposes of this paragraph, all stock in the corporation, or interests in the partnership, as the case may be, owned by or held for the benefit of the surviving spouse, or any members of the surviving spouse's family (within the meaning of section 267(c)(4)), are treated as owned by the QDOT solely for purposes of determining the number of partners or shareholders in the entity and the QDOT's percentage voting interest or value in the corporation or capital interest in the partnership, but not for the purpose of determining the QDOT's pro rata share of the assets of the entity.

(C) *Interests in other entities.* Interests owned by the QDOT in other entities (such as an interest in a trust) are accorded treatment consistent with that described in paragraph (d)(1)(ii)(B) of this section.

(D) *Special rule for foreign real property.* For purposes of this paragraph (d)(1)(ii), if, on the last day of any taxable year during the term of the QDOT (or the last day of the calendar year if the QDOT does not have a taxable year), the value of foreign real property owned by the QDOT exceeds 35 percent of the fair market value of the trust assets due to: distributions of QDOT principal during that year; fluctuations in the value of the foreign currency in the jurisdiction where the real estate is located; or fluctuations in the fair market value of any assets held in the QDOT, then the QDOT will not be treated as failing to meet the requirements of this paragraph (d)(1). Accordingly, the QDOT will not cease to be a QDOT within the meaning of § 20.2056A–5(b)(3) if, by the end of the taxable year (or the last day of the calendar year if the QDOT does not have a taxable year) of the QDOT immediately following the year in which the 35 percent limit was exceeded, the value of the foreign real property held by the QDOT does not exceed 35 percent of the fair market value of the trust assets or, alternatively, the QDOT meets the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section on or before the close of that succeeding year.

(iii) *Definition of finally determined.* For purposes of § 20.2056A–2(d)(1) (i) and (ii), the fair market value of assets will be treated as finally determined on the earliest to occur of—

(A) The entry of a decision, judgment, decree, or other order by any court of competent jurisdiction that has become final;

(B) The execution of a closing agreement made under section 7121;

(C) Any final disposition by the Internal Revenue Service of a claim for refund;

(D) The issuance of an estate tax closing letter (Form L–154 or equivalent) if no claim for refund is filed; or

(E) The expiration of the period of assessment.

(iv) *Special rules for personal residence and related personal effects*—(A) *Two million dollar threshold.* For purposes of determining whether the $2 million threshold under paragraphs (d)(1)(i) and (ii) of this section has been exceeded, the executor of the estate may elect to exclude up to $600,000 in value attributable to real property (and related furnishings) owned directly by the QDOT that is used by, or held for the use of the surviving spouse as a personal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion. The statement must clearly identify the property or properties (i.e. address and location) for which the election is being made.

(B) *Security requirement.* For purposes of determining the amount of the bond or letter of credit required when paragraph (d)(1)(i)(B) or (C) of this section applies, the executor of the estate may elect to exclude, during the term of the QDOT, up to $600,000 in value attributable to real property (and related furnishings) owned directly by the QDOT that is used by, or held for the use of the surviving spouse as a personal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion. If an election is not made on the decedent's estate tax return, the election may be made, prospectively, at any time, during the term of the QDOT, by attaching to the Form 706–QDT a written statement claiming the exclusion. A statement may also be attached to the Form 706–QDT that cancels a prior election of the personal residence exclusion that was made under this paragraph, either on the decedent's estate tax return or on a Form 706–QDT.

(C) *Foreign real property limitation.* The special rules of this paragraph (d)(1)(iv) do not apply for purposes of determining whether more than 35 percent of the QDOT assets consist of foreign real property under paragraph (d)(1)(ii) of this section.

(D) *Personal residence.* For purposes of this paragraph (d)(1)(iv), a *personal residence* is either the principal residence of the surviving spouse within the meaning of section 1034 or one other residence of the surviving spouse. In order to be used by or held for the use of the spouse as a personal residence, the residence must be available at all times for use by the surviving spouse. The residence may not be rented to another party, even when not occupied by the spouse. A personal residence may include appurtenant structures used by the

surviving spouse for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

(E) Related furnishings. The term *related furnishings* means furniture and commonly included items such as appliances, fixtures, decorative items and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class are not within the meaning of this term.

(F) *Required statement.* If one or both of the exclusions provided in paragraph (d)(1)(iv)(A) or (B) of this section are elected by the executor of the estate and the personal residence is later sold or ceases to be used, or held for use as a personal residence, the U.S. Trustee must file the statement that is required under paragraph (d)(3) of this section at the time and in the manner provided in paragraphs (d)(3)(ii) and (iii) of this section.

(G) *Cessation of use.* Except as provided in this paragraph (d)(1)(iv)(G), if the residence ceases to be used by, or held for the use of, the spouse as a personal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusions provided in paragraphs (d)(1)(iv)(A) and (B) of this section cease to apply. However, if the residence is sold, the exclusion continues to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(b)(1)) is reinvested to purchase a new personal residence for the spouse. If less than the amount of the adjusted sales price is reinvested, the amount of the exclusion equals the amount reinvested in the new residence plus any amount previously allocated to a residence that continues to qualify for the exclusion, up to a total of $600,000. If the QDOT ceases to qualify for all or any portion of the initially claimed exclusions, paragraph (d)(1)(i) of this section, if applicable (determined as if the portion of the exclusions disallowed had not been initially claimed by the QDOT), must be complied with no later than 120 days after the effective date of the cessation. In addition, if a residence ceases to be used by, or held for the use of the spouse as a personal residence of the spouse or if the personal residence is sold during the term of the QDOT, the personal residence exclusion may be allocated to another residence that is held in either the same QDOT or in another QDOT that is established for the surviving spouse, if the other residence qualifies as being used by, or held for the use of the spouse as a personal residence. The trustee may allocate up to $600,000 to the new personal residence (less the amount previously allocated to a residence that continues to qualify for the exclusion) even if the entire $600,000 exclusion was not previously utilized with respect to the original personal residence(s).

(v) *Anti-abuse rule.* Regardless of whether the QDOT designates a bank as the U.S. Trustee under paragraph (d)(1)(i)(A) of this section (or otherwise complies with paragraph (d)(1)(i)(A) of this section by naming a foreign bank with a United States branch as a trustee to serve with the U.S. Trustee), complies with paragraph (d)(1)(i)(B) or (C) of this section, or is subject to and complies with the foreign real property requirements of paragraph (d)(1)(ii) of this section, the trust immediately ceases to qualify as a QDOT if the trust utilizes any device or arrangement that has, as a principal purpose, the avoidance of liability for the estate tax imposed under section 2056A(b)(1), or the prevention of the collection of the tax. For example, the trust may become subject to this paragraph (d)(1)(v) if the U.S. Trustee that is selected is a domestic corporation established with insubstantial capitalization by the surviving spouse or members of the spouse's family.

(2) *Individual trustees.* If the U.S. Trustee is an individual United States citizen, the individual must have a tax home (as defined in section 911(d)(3)) in the United States.

(3) *Annual reporting requirements*—(i) *In general.* The U.S. Trustee must file a written statement described in paragraph (d)(3)(iii) of this section, if the QDOT satisfies any one of the following criteria for the applicable reporting years—

(A) The QDOT directly owns any foreign real property on the last day of its taxable year (or the last day of the calendar year if it has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1)(i) (A), (B), or (C) or (d)(4) of this section by employing a bank as trustee or providing security; or

(B) The personal residence previously subject to the exclusion under paragraph (d)(1)(iv) of this section is sold, or that personal residence ceases to be used, or held for use, as a personal residence, during the taxable year (or during the calendar year if the QDOT does not have a taxable year); or

(C) After the application of the look-through rule contained in paragraph (d)(1)(ii)(B) of this section, the QDOT is treated as owning any foreign real property on the last day of the taxable year (or the last day of the calendar year if the QDOT has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1) (A), (B), (C) or (d)(4) of this section by employing a bank as trustee or providing security.

(ii) *Time and manner of filing.* The written statement, containing the information described in paragraph (d)(3)(iii) of this section, is to be filed for the taxable year of the QDOT (calendar year if the QDOT does not have a taxable year) for which any of the events or conditions requiring the filing of a statement under paragraph (d)(3)(i) of this section have occurred or have been satisfied. The written statement is to be submitted to the Internal Revenue Service by filing a Form 706–QDT, with the statement attached, no later than April 15th of the calendar year following the calendar year in which or with which the taxable year of the QDOT ends (or by April 15th of the following year if the QDOT has no taxable year), unless an extension of time is obtained under § 20.2056A–11(a). The Form 706–QDT, with attached statement, must be filed regardless of whether the Form 706–QDT is otherwise required to be filed under the provisions of this chapter. Failure to file timely the statement may subject the QDOT to the rules of paragraph (d)(1)(v) of this section.

(iii) *Contents of statement.* The written statement must contain the following information—

(A) The name, address, and taxpayer identification number, if any, of the U.S. Trustee and the QDOT; and

(B) A list summarizing the assets held by the QDOT, together with the fair market value of each listed QDOT asset, determined as of the last day of the taxable year (December 31 if the QDOT does not have a taxable year) for which the written statement is filed. If the look-through rule contained in paragraph (d)(1)(ii)(B) of this section applies, then the partnership, corporation, trust or other entity must be identified and the QDOT's pro rata share of the foreign real property and other assets owned by that entity must be listed on the statement as if directly owned by the QDOT; and

(C) If a personal residence previously subject to the exclusion under paragraph (d)(1)(iv) of this section is sold during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the statement must provide the date of sale, the adjusted sales price (as defined in section 1034(b)(1)), the extent to which the amount of the adjusted sales price has been or will be used to purchase a new

personal residence and, if not timely reinvested, the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable; and

(D) If the personal residence ceases to be used, or held for use, as a personal residence by the surviving spouse during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the written statement must describe the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable.

(4) *Request for alternate arrangement or waiver.* If the Commissioner provides guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) pursuant to which a testator, executor, or the U.S. Trustee may adopt an alternate plan or arrangement to assure collection of the section 2056A estate tax, and if the alternate plan or arrangement is adopted in accordance with the published guidance, then the QDOT will be treated, subject to paragraph (d)(1)(v) of this section, as meeting the requirements of paragraph (d)(1) of this section. Until this guidance is published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), taxpayers may submit a request for a private letter ruling for the approval of an alternate plan or arrangement proposed to be adopted to assure collection of the section 2056A estate tax in lieu of the requirements prescribed in this paragraph (d)(4).

(5) *Adjustment of dollar threshold and exclusion.* The Commissioner may increase or decrease the dollar amounts referred to in paragraph (d)(1)(i), (ii) or (iv) of this section in accordance with guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(6) *Effective date and special rules.* (i) This paragraph (d) is effective for estates of decedents dying after February 19, 1996.

(ii) *Special rule in the case of incompetency.* A revocable trust or a trust created under the terms of a will is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust instrument (or will) was executed on or before November 20, 1995, and—

(A) The testator or settlor dies after February 19, 1996;

(B) The testator or settlor is, on November 20, 1995, and at all times thereafter, under a legal disability to amend the will or trust instrument;

(C) The will or trust instrument does not provide the executor or the U.S. Trustee with a power to amend the instrument in order to meet the requirements of section 2056A; and

(D) The U.S. Trustee provides a written statement with the federal estate tax return (Form 706 or 706NA) that the trust is being administered (or will be administered) so as to be in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

(iii) *Special rule in the case of certain irrevocable trusts.* An irrevocable trust is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust was executed on or before November 20, 1995, and:

(A) The settlor dies after February 19, 1996;

(B) The trust instrument does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A; and

(C) The U.S. Trustee provides a written statement with the decedent's federal estate tax return (Form 706 or 706NA) that the trust is being administered in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

§ 20.2056A–2T [Removed]

Par. 3a. Section 20.2056A–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056A–2T(d)	1545–1443
* * * * *	

2. Adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056A–2	1545–1443
* * * * *	

Approved: September 19, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–29827 Filed 11–27–96; 8:45 am]

BILLING CODE 4830–01–U

Customs Service

31 CFR Part 1

Privacy Act of 1974, as Amended; Exemption of System of Records From Certain Provisions

AGENCY: Customs Service, Treasury.

ACTION: Final Rule; determination.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Customs has determined to exempt a system of records, the Pacific Basin Reporting Network (Treasury/ Customs .171) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Acting Chief, Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–6970.

SUPPLEMENTARY INFORMATION: As a law enforcement agency, the U.S. Customs Service has a wide variety of

investigatory responsibilities including, for example, investigations of smuggling, narcotics trafficking, the importation of prohibited or restricted merchandise, violations of the Neutrality Act, investigations of organized crime activities, commercial fraud investigations and many others. Among the activities in which Customs is involved is the clearance of aircraft and vessels and their crews into the customs territory of the United States. The purpose of the Pacific Basin Reporting Network system of records is to collect and store information with respect to potential violations of Customs and other domestic and international laws and where appropriate to disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 19 U.S.C. 1433, 1459; 19 U.S.C. 1644(a); Treasury Department Order No. 165, Revised, as amended.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C.552a, the Department of the Treasury published in the Federal Register of November 9, 1995 (60 FR 56648), all of its systems of records including the Pacific Basin Reporting Network—Treasury/Customs .171. This system of records assists Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent,control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Commissioner of Customs has determined to exempt the Pacific Basin Reporting Network from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and 31 CFR 1.23(c). The proposed rule announcing the determination was published in the Federal Register on November 19, 1992, at 57 FR 54539. No comments were received in response to the proposed rule. The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a(j)(2) and (k)(2).

General Exemption Under 5 U.S.C. 552a(j)(2)

Pursuant to 5 U.S.C. 552a(j)(2), the Commissioner of Customs exempts the Pacific Basin Reporting Network from the following provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1),(2),(3), (4)(G),(H) and (I);(e)(5) and (8); (f) and (g).

Specific Exemptions Under 5 U.S.C. 552a(k)(2)

To the extent the exemption under 5 U.S.C. 552a(j) does not apply to the Pacific Basin Reporting Network, the Commissioner of Customs exempts the Pacific Basin Reporting Network from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552(k)(2): 5 U.S.C. 552a(c)(3); (d)(1),(2), (3) and (4); (e)(1), (e)(4)(G), (H) and (I); and (f).

Reasons for Exemption Under 5 U.S.C. 552a(j)(2) and (k)(2)

Although more specific explanations are contained in 31 CFR 1.36 under the heading United States Customs Service, the following explanations for exemptions will be helpful.

(1) Pursuant to 5 U.S.C. 552a(e)(4)(G) and (f)(1), individuals may inquire whether a system of records contains records pertaining to them. Application of these provisions to the Pacific Basin Reporting Network would give individuals an opportunity to learn whether they have been identified as either suspects or subjects of investigation. As further described in the following subsection, access to such knowledge would impair the ability of the Office of Investigations to carry out its mission, since individuals could take steps to avoid detection, inform associates that an investigation is in progress: learn whether they are only suspects or identified as law violators; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation.

(2) Pursuant to 5 U.S.C.552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5), individuals may gain access to records pertaining to them. The application of these provisions to the Pacific Basin Reporting Network would compromise the ability of the Office of Investigations to provide useful tactical and strategic information to law enforcement agencies. Permitting access to records contained in the Pacific Basin Reporting Network would provide individuals with information concerning the nature of any current investigations concerning them and would enable them to avoid detection or apprehension. By discovering the collection of facts which would form the basis of their arrest, by enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and by learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance.

Permitting access to either on-going or closed investigations files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize law enforcement officers' established investigative tools and procedures.

Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the ability of the Office

of Investigations to carry out its mandate.

Furthermore, providing access to records contained in the Pacific Basin Reporting Network could reveal the identities of undercover law enforcement officials who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

By compromising the law enforcement value of the Pacific Basin Reporting Network for the reasons outlined above, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Office of Investigations and thus would restrict the Office's access to information necessary to accomplish its mission most effectively.

(3) Pursuant to 5 U.S.C. 552a(d)(2),(3), and (4),(e)(4)(H), and (f)(4) an individual may request amendment of a record pertaining to him or her and the agency must either amend the record, or note the disputed portion of the record and provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the Pacific Basin Reporting Network from provisions of 5 U.S.C. 552a, as amended, relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the Pacific Basin Reporting Network.

(4) Under 5 U.S.C. 552a(c)(4) an agency must inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the Pacific Basin Reporting Network from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the Pacific Basin Reporting Network.

(5) Under 5 U.S.C. 552a(c)(3) an agency is required to make an accounting of disclosure of records available to the individual named in the record upon his or her request. The accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

The application of this provision would impair the ability of enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Pacific Basin Reporting Network. Making an accounting of disclosure available to the subjects of an investigation would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Pacific Basin Reporting Network has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Office of Investigation's information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) Under 5 U.S.C. 552a(e)(4)(1) an agency is required to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Pacific Basin Reporting Network could compromise its ability to provide useful information to law enforcement agencies, since revealing sources for the information could disclose investigative techniques and procedures, result in threats or reprisals against informers by the subjects of investigations, and cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain'' as defined in 5 U.S.C. 552a(a)(3) includes ''collect'' and ''disseminate.'' At the time that information is collected by the Customs Service, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Customs Service; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Customs Service. Further, not all violations of law discovered during a Customs Service criminal investigation fall within the investigative jurisdiction of the Customs Service; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Customs Service should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Customs Service through the conduct of a lawful Customs Service investigation. The Customs Service therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

(8) Under 5 U.S.C. 552a(e)(2) an agency is requested to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the Pacific Basin Reporting Network would impair the ability to collate, analyze, and disseminate investigative intelligence and enforcement information.

Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension. In certain instances, the subject of a criminal investigation is not required to supply

information to criminal investigators as a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether the disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information and the effects on the individual of not providing all or part of the information. The Pacific Basin Reporting Network should be exempted from this provision to avoid impairing the ability of the Office of Investigation to collect and collate investigative intelligence and enforcement data.

Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(10) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate'', application of this provision to the Pacific Basin Reporting Network would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the ability of Customs to disseminate information from the Pacific Basin Reporting Network pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information.

Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Pacific Basin Reporting Network should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual.

The Pacific Basin Reporting Network is exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules exempt the Pacific Basin Reporting Network, since there are civil remedies for failure to comply with provisions from which the Pacific Basin Reporting Network is exempted. Exemption from this provision will also protect the Pacific Basin Reporting Network from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence and law enforcement data.

A conforming amendment to 31 CFR 1.36 will be published at a later date in the Federal Register by the Department of the Treasury.

George J. Weise,

Commissioner of Customs.

Approved:

Dated: November 14, 1996.

John P. Simpson,

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

Dated: November 18, 1996.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 96–30280 Filed 11–27–96; 8:45 am]

BILLING CODE 4820–02–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 69

School Boards for Department of Defense Domestic Dependent Elementary and Secondary Schools

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule provides guidance to the Department of Defense (DoD) Domestic Dependent Elementary and Secondary Schools (DDESS) implementing the National Defense Authorization Act which provides for elected School Boards in Dod DDESS. Pursuant to this legislation, school boards in DoD DDESS may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for these schools. This final rule provides guidance outlining the responsibilities, operating procedures, composition, electorate and election procedures for the DoD DDESS school boards.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Hector O. Nevarez, (703) 696–4373.

SUPPLEMENTARY INFORMATION: Because of the importance of providing guidance for elected school boards, this final rule is being issued. The Office of Management and Budget has determined that this is a significant regulatory action. However, since this

rule is not ''economically significant'' as defined in Executive Order 12866, the extensive analysis report is not required, and the rule complies with the requirements of the Executive Order. It has been determined that this rule is not subject to Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601) because it does not have a significant economic impact on a substantial number of small entities. The primary effect of this rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of policies. It has been determined that Public Law 109–13, ''Paperwork Reduction Act 1995'' (44 U.S.C. Chapter 44), does not apply because the rule does not impose any reporting or recordkeeping requirements on persons or entities outside the Federal Government.

All significant comments received following publication of the interim final rule were considered and changes made as appropriate. Many comments concerned allowing school boards more autonomy in determining terms of office for school board members and the number of consecutive terms members may serve. The language of section 69.6(c)(2) has been changed to allow school boards to make these determinations within established parameters.

Several comments addressed problems with holding school board elections to coincide with local elections and recommended that school boards determine the timing of elections to meet local situations, particularly with respect to military transfers. Section 69.6(c)(4) was modified to allow school boards to determine the schedule for regular elections. As 10 U.S.C. 2164 requires elected school boards and makes no provision for filling midterm vacancies through appointment, no change was made to section 69.6(c)(3). Special elections must be held to fill such vacancies.

List of Subjects in 32 CFR Part 69

Elementary and secondary education, Government employees, Military personnel.

Accordingly, Title 32, Chapter I, Subchapter C is revising Part 69 to read as follows:

PART 69—SCHOOL BOARDS FOR DEPARTMENT OF DEFENSE DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS

Sec.

Authority: 10 U.S.C. 2164.

§ 69.1 Purpose.

This part prescribes policies and procedures for the establishment and operation of elected School Boards for schools operated by the Department of Defense (DoD) under 10 U.S.C. 2164, 32 CFR part 345, and Public Law 92–463.

§ 69.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Coast Guard when operating as a service of the Department of the Navy or by agreement between DoD and the Department of Transportation, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, and the DoD Field Activities.

(b) The schools (prekindergarten through grade 12) operated by the DoD under 10 U.S.C. 2164 and 32 CFR part 345 within the continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, known as DoD DDESS Arrangements.

(c) This part does not apply to elected school boards established under state or local law for DoD DDESS special arrangements.

§ 69.3 Definitions.

(a) *Arrangements.* Actions taken by the Secretary of Defense to provide a free public education to dependent children under 10 U.S.C. 2164 through DoD DDESS arrangements or DoD DDESS special arrangements:

(1) *DDESS arrangement.* A school operated by the Department of Defense under 10 U.S.C. 2164 and 32 CFR 345 to provide a free public education for eligible children.

(2) *DDESS special arrangement.* An agreement, under 10 U.S.C. 2164, between the Secretary of Defense, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

(b) *Parent.* The biological father or mother of a child when parental rights have not been legally terminated; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in *loco parentis* to that child and contributes at least one-half of the child's support.

§ 69.4 Policy.

(a) Each DoD DDESS arrangement shall have an elected school board, established and operated in accordance with this part and other pertinent guidance.

(b) Because members of DoD DDESS elected school boards are not officers or employees of the United States appointed under the Appointments Clause of the United States Constitution (Art. II, Sec. 2, Cl. 2), they may not exercise discretionary governmental authority, such as the taking of personnel actions or the establishment of governmental policies. This part clarifies the role of school boards in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for DoD DDESS arrangements, subject to these constitutional limitations.

(c) The DoD DDESS chain of command for matters relating to school arrangements operated under 10 U.S.C. 2164 and 32 CFR part 345 shall be from the Director, DoD DDESS, to the Superintendent of each school arrangement. The Superintendent will inform the school board of all matters affecting the operation of the local school arrangement. Direct liaison among the school board, the Director, and the Superintendent is authorized for all matters pertaining to the local school arrangement.

§ 69.5 Responsibilities.

The Assistant Secretary of Defense for Force Management Policy (ASD (FMP)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(a) Make the final decision on all formal appeals to directives and other guidance submitted by the school board or Superintendent.

(b) Ensure the Director, DoD DDESS shall:

(1) Ensure the establishment of elected school boards in DoD DDESS arrangements.

(2) Monitor compliance by the Superintendent and school boards with applicable statutory and regulatory requirements, and this part. In the event of suspected noncompliance, the

Director, DoD DDESS, shall take appropriate action, which will include notification of the Superintendent and the school board president of the affected DoD DDESS arrangement.

(3) Determine when the actions of a school board conflict with an applicable statute, regulation, or other guidance or when there is a conflict in the views of the school board and the Superintendent. When such conflicts occur, the Director, DoD DDESS, shall assist the Superintendent and the school board in resolving them or direct that such actions be discontinued. Such disapprovals must be in writing to the school board and the Superintendent concerned and shall state the specific supporting reason or reasons.

(c) Ensure the school board for DoD DDESS arrangements shall:

(1) Participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the DoD DDESS arrangement concerned, consistent with this part.

(2) Approve agendas and prepare minutes for school board meetings. A copy of the approved minutes of school board meetings shall be forwarded to the Director, DoD DDESS, within 10 working days after the date the minutes are approved.

(3) Provide to the Director, DoD DDESS, names of applicants for a vacancy in the Superintendent's position after a recruitment has been accomplished. The school board shall submit to the Director, DoD DDESS, a list of all applicants based on its review of the applications and interviews (either in person or telephonically) of the applicants. The list of applicants will be accompanied by the recommended choice of the school board. The Director will select the Superintendent and will submit written notice with justification to the school board if the recommendation of the school board is not followed.

(4) Prepare an annual written on-site review of the Superintendent's performance for consideration by the Director, DoD DDESS. The written review shall be based on critical elements recommended by the school board and Superintendent and approved by the Director, DoD DDESS. The school board's review will be an official attachment to the Superintendent's appraisal.

(5) Participate in the development of the school system's budget for submission to the Director, DoD DDESS, for his or her approval as endorsed by the school board; and participate in the oversight of the approved budget, in conjunction with the Superintendent, as appropriate for operation of the school arrangement.

(6) Invite the Superintendent or designee to attend all school board meetings.

(7) Provide counsel to the Superintendent on the operation of the school and the implementation of the approved budget.

(8) Channel communications with school employees to the DoD DDESS Superintendent. Refer all applications, complaints, and other communications, oral or written, to the DoD DDESS Arrangement Superintendents.

(9) Participate in the development of school policies, rules, and regulations, in conjunction with the Superintendent, and recommend which policies shall be reflected in the School Policy Manual. At a minimum, the Policy Manual, which shall be issued by the Superintendent, shall include following:

(i) A statement of the school philosophy.

(ii) The role and responsibilities of school administrative and educational personnel.

(iii) Provisions for promulgation of an annual school calendar.

(iv) Provisions on instructional services, including policies for development and adoption of curriculum and textbooks.

(v) Regulations affecting students, including attendance, grading, promotion, retention, and graduation criteria, and the student code of rights, responsibilities, and conduct.

(vi) School policy on community relations and noninstructional services, including maintenance and custodial services, food services, and student transportation.

(vii) School policy and legal limits on financial operations, including accounting, disbursing, contracting, and procurement; personnel operations, including conditions of employment, and labor management regulations; and the processing of, and response to, complaints.

(viii) Procedures providing for new school board member orientation.

(ix) Any other matters determined by the school board and the superintendent to be necessary.

(10) Under 10 U.S.C. 2164(b)(4)(B), prepare and submit formal appeals to directives and other guidance that in the view of the school board adversely impact the operation of the school system either through the operation and management of DoD DDESS or a specific DoD DDESS arrangement. Written formal appeals with justification and supporting documentation shall be submitted by the school board or Superintendent to ASD(FMP). The ASD(FMP) shall make the final decision on all formal appeals. The Director, Dod DDESS, will provide the appealing body written review of the findings relating to the merits of the appeal. Formal appeals will be handled expeditiously by all parties to minimize any adverse impact on the operation of the DoD DDESS system.

(d) Ensure school board operating procedures are as follows:

(1) The school board shall operate from a written agenda at all meetings. Matters not placed on the agenda before the start of the meeting, but approved by a majority of the school board present, may be considered at the ongoing meeting and added to the agenda at that time.

(2) A majority of the total number of school board members authorized shall constitute a quorum.

(3) School board meetings shall be conducted a minimum of 9 times a year. The school board President or designee will provide school board members timely notice of all meetings. All regularly scheduled school board meetings will be open to the public. Executive session meetings may be closed under 10 U.S.C. 2164(d)(6).

(4) The school board shall not be bound in any way by any action or statement of an individual member or group of members of the board except when such action or statement is approved by a majority of the school board members during a school board meeting.

(5) School board members are eligible for reimbursement for official travel in accordance with the DoD Joint Travel Regulations and guidance issued by the Director, DoD DDESS.

(6) School board members may be removed by the ASD (FMP) for dereliction of duty, malfeasance, or other grounds for cause shown. The school board concerned may recommend such removal with a two-thirds majority vote. Before a member may be removed, the member shall be afforded due process, to include written notification of the basis for the action, review of the evidence or documentation considered by the school board, and an opportunity to respond to the allegations.

§ 69.6 Procedures.

(a) *Composition of school board.* (1) The school board shall recommend to the Director, DoD DDESS, the number of elected school board voting members, which shall be not fewer than 3 and no more than 9, depending upon local needs. The members of the school board shall select by majority vote of the total number of school board members

authorized at the beginning of each official school board term, one member to act as President and another to act as Vice President. The President and Vice President shall each serve for 1 year. The President shall preside over school board meetings and provide leadership for related activities and functions. The Vice President shall serve in the absence of the President. If the position of President is vacated for any reason, the Vice President shall be the President until the next regularly scheduled school board election. The resulting vacancy in the position of the Vice President shall be filled by the majority vote of all members of the incumbent board.

(2) The DoD DDESS Arrangement Superintendent, or designee, shall serve as a non-voting observer to all school board meetings. The Installation Commander, or designee, shall convey command concerns to the school board and the Superintendent and keep the school board and the Superintendent informed of changes and other matters within the host installation that affect school expenditures or operations.

(3) School board members may not receive compensation for their service on the school board.

(4) Members of the school board may not have any financial interest in any company or organization doing business with the school system. Waivers to this restriction may be granted on a case-by-case basis by the Director, DoD DDESS, in coordination with the Office of General Counsel of the Department of Defense.

(b) *Electorate of the school board.* The electorate for each school board seat shall be composed of parents of the students attending the school. Each member of the electorate shall have one vote.

(c) *Election of school board members.* (1) To be elected as a member of the school board, an individual must be a resident of the military installation in which the DoD DDESS arrangement is located, or in the case of candidates for the Antilles Consolidated School System School Board, be the parent of an eligible child currently enrolled in the school system. Personnel employed by a DoD DDESS arrangement may not serve as school board members.

(2) The board shall determine the term of office for elected members, not to exceed 3 years, and the limit on the number of terms, if any. If the board fails to set these terms by the first day of the first full month of the school year, the terms will be set at 3 years, with a maximum of 2 consecutive terms.

(3) When there is a sufficient number of school board vacancies that result in not having a quorum, which is defined as a majority of seats authorized, a special election shall be called by the DoD DDESS Arrangement Superintendent or designee. A special election is an election that is held between the regularly scheduled annual school board election. The nomination and election procedures for a special election shall be the same as those of regularly scheduled school board elections. Individuals elected by special election shall serve until the next regularly scheduled school board election. Vacancies may occur due to the resignation, death, removal for cause, transfer, or disenrollment of a school board member's child(ren) from the DoD DDESS arrangement.

(4) The board shall determine a schedule for regular elections. Parents shall have adequate notice of the time and place of the election. The election shall be by secret ballot. All votes must be cast in person at the time and place of the election. The candidate(s) receiving the greatest number of votes shall be elected as school board member(s).

(5) Each candidate for school board membership must be nominated in writing by at least one member of the electorate to be represented by the candidate. Votes may be cast at the time of election for write-in candidates who have not filed a nomination petition if the write-in candidates otherwise are qualified to serve in the positions sought.

(6) The election process shall provide staggered terms for board members; e.g., on the last day of the last month of each year, the term for some board members will expire.

(7) The DoD DDESS Superintendent, in consultation with the school board, shall be responsible for developing the plans for nominating school board members and conducting the school board election and the special election process. The DoD DDESS Superintendent shall announce election results within 7 working days of the election.

Dated: November 22, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–30383 Filed 11–27–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840–AC36

Institutional Eligibility and Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations by revising requirements for compliance audits and audited financial statements, revising the two-year performance exemption to the refund reserve requirement, and adding financial responsibility standards for foreign schools. These final regulations improve the Secretary's oversight of institutions participating in programs authorized by title IV of the Higher Education Act of 1965, as amended.

The final regulations do not contain changes to the general standards of financial responsibility, which will be considered further by the Secretary.

DATES: *Effective date:* These regulations take effect July 1, 1997. However, affected parties do not have to comply with the information collection requirements in § 668.23 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David Lorenzo or Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045 ROB–3, Washington, D.C. 20202, telephone (202) 708–7888. 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 standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations (34 CFR part 668) apply to all institutions that participate in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs).

Compliance audits and audited financial statements provide information necessary for the Secretary to determine whether an institution that participates or seeks to participate in the

title IV, HEA programs has the resources to deliver its education and training programs to students and the extent to which the institution complies with applicable statutory and regulatory requirements in its administration of the title IV, HEA programs.

On September 20, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the Federal Register (61 FR 49552–49574). The NPRM included a discussion of the major issues surrounding the proposed changes (as well as a summary of the report by the firm of KPMG Peat Marwick, LLP) which 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 issues may be found:

Revisions to the compliance audit requirements that would amalgamate the previous requirements for the provision of an audited financial statement; the proposed inclusion of a requirement for a proprietary institution to disclose the percentage of revenues it derives from title IV, HEA programs; audit submission requirements for foreign institutions; a clarification of the entity that must submit an audited financial statement; and a statement regarding the treatment of questionable accounting treatments contained in the required audited financial statement (pages 49555–49556).

The scope and purpose statement of the new Subpart L (page 49556).

The new ratio standards that comprise the main test of financial responsibility; a transition rule; and a proposed modification to an exception to the refund letter of credit requirement (pages 49556–49557).

A proposal to modify the precipitous closure alternative to demonstrating financial responsibility; and a clarification of the types of alternatives to demonstrating financial responsibility available to new institutions (pages 49557–49558).

Financial responsibility standards and other requirements for institutions undergoing a change of ownership (page 49558).

Financial responsibility standards for foreign institutions (pages 49558–49559).

Past performance standards (page 49559).

An outline of additional requirements and administrative actions, including requirements for institutions that are provisionally certified; and an outline of administrative actions taken when an institution fails to demonstrate financial responsibility (page 49559).

The contents of the proposed Appendix F (page 49559).

The following discussion describes significant changes since the publication of the NPRM.

General

In the September 20, 1996 NPRM, the Secretary indicated that the Department intended to publish final regulations by December 1, 1996, implementing new financial responsibility standards based on the proposed ratio methodology. However, in response to public comment on the proposed rules, the Secretary has decided to seek further comment and delay publishing final rules implementing these standards.

In particular, the public expressed concern that there was insufficient time for the Department to identify and address any possible problems with the proposed methodology and make needed technical adjustments. Commenters also asserted that institutions had insufficient time to review and provide meaningful comment on the methodology. Commenters from private non-profit institutions also expressed concern about the sufficiency of data on the effects of changed reporting standards that takes place when institutions begin reporting under Statement of Financial Accounting Standards 116 and 117 promulgated by the Financial Accounting Standards Board, and maintained that the Secretary should attempt to gather data on the effects of the changes and further evaluate the methodological adjustments made to the strength factors that are based on the estimated impact of that change. Finally, commenters urged the Secretary to consult with more members of the community regarding the potential impact of and possible improvements to the methodology.

The Secretary sought to implement the proposed rule effective July 1, 1997 to benefit institutions that do not satisfy the current financial responsibility standards, but could establish their financial responsibility under the proposed standards because those standards better evaluate the total financial condition of those institutions.

However, the Secretary is now convinced by commenters to await further analysis and consultation. The Secretary is, therefore, delaying publication of final regulations establishing a new subpart containing new financial responsibility standards and related regulations. The Secretary is publishing separately in the Federal Register a notice reopening the comment period for those parts of the September 20, 1996 NPRM not addressed in these Final Rules, and providing further information regarding the Secretary's plans.

Because the Secretary is delaying publication of final rules implementing the proposed changes to the financial responsibility standards, the Secretary is not creating a new Subpart L in these Final Rules, as was proposed in the September 20, 1996 NPRM. Nor is the Secretary removing the current § 668.15, as was also proposed in the September 20, 1996 NPRM. Instead, as discussed below, the Secretary is amending § 668.15 to add the revised refund reserve performance standard, to add the foreign schools financial responsibility standards, and to remove the additional submission of an audited financial statement. The Secretary is also amending § 668.23 to require the simultaneous submission of the audited financial statement and compliance audit, both performed on a fiscal year basis, and to require notification of 85/15 information as a note to the audited financial statement.

Section 600.5—Proprietary Institution of Higher Education

The Secretary is removing § 600.5(e), since the requirements for verifying 85/15 information will now be contained in § 668.23.

Section 668.15—Factors of Financial Responsibility

Because the Secretary is delaying publication of final regulations addressing factors of financial responsibility, § 668.15 is retained and amended to include the change in the two-year performance alternative to the refund reserve requirement, and to include financial responsibility standards for foreign schools. Both changes were originally proposed to be included in the new subpart L in the September 20, 1996 NPRM.

The Secretary is also removing § 668.15(e), since the audited financial statement will now be required to be submitted with the compliance audit under the requirements contained in § 668.23.

Section 668.23—Compliance Audits and Audited Financial Statements

The Secretary has made several technical changes to the language proposed in the September 20, 1996 NPRM. The Secretary is also removing the proposed section addressing the treatment of questionable accounting treatments.

As part of the consideration of the comments concerning the consolidated audit submissions, the Secretary has also restructured some of the regulation

language to simplify and clarify the requirements. Specifically, a new definition of Independent Auditor has been added to 668.23(a) to explain that the audits submitted under these regulations may be performed by certified public accountants or by government auditors that meet certain governmental standards. Similarly, a new section 668.23(e) has been created that consolidates language from several parts of the proposed regulation concerning access to auditor records for a school's or servicer's compliance or financial statement audit. This section also clarifies that such access includes the ability of the Secretary or Inspector General to make copies of such records.

The Secretary also received substantive comments on the provisions in § 668.23 that were formerly contained in § 668.24. While the Secretary, as described above, has made technical changes in these provisions, the Secretary does not address the commenters' substantive concerns here. The Secretary will consider those comments when final regulations addressing financial responsibility standards are published.

Analysis of Comments and Changes

In response to the Secretary's invitation in the September 20, 1996 NPRM, approximately 500 parties submitted comments on the proposed regulations. An analysis of the comments on § 668.15 and § 668.23 and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. In that appendix, the Secretary responds only to those comments pertaining to the final regulations published here. The Secretary will publish responses to all other comments when the Secretary publishes final regulations on the remainder of the regulatory areas addressed in the September 20, 1996 NPRM.

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—are not addressed.

Executive Order 12866

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 proposed 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.

The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Department has assessed the costs and benefits of the proposed regulations. This discussion is contained in the Regulatory Flexibility Analysis.

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 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 or is available from any other agency or authority of the United States.

Regulatory Flexibility Analysis

The Secretary has determined that small entities are likely to experience economic impacts from this regulation. Thus, the Regulatory Flexibility Act (RFA) requires that an Initial Regulatory Flexibility Analysis (IRFA) of the economic impacts be performed and that analysis, or a summary thereof, be published in the notice of proposed rulemaking. The IRFA was performed and a summary was published. This Final Regulatory Flexibility Analysis (FRFA) discusses the comments received on the IRFA and fulfills the other RFA requirements.

Summary of Significant Issues Raised by the Public Comments on the Initial Regulatory Flexibility Analysis (IRFA), a Summary of the Assessment of the Department of Such Issues, and a Statement of any Changes Made in the Proposed Rule as a Result of Such Comments

Changes were made in the final rule as a result of public comments. These changes are discussed elsewhere. Two commenters replied specifically to the IRFA. Their comments are summarized and discussed here.

Comments: Both commenters stated that the IRFA did not explore any alternatives.

Response: As stated in the IRFA, alternatives such as those that would establish differing compliance or reporting requirements or timetables based upon the size of the institution rather than the type of institution, or the use of performance standards rather than establishing baseline measures, or an exemption from coverage of the rule or any part thereof for small entities, would not adequately discharge the Secretary's obligation under section 498(c) of the HEA to determine the financial responsibility of institutions and guard the Federal fiscal interest. At the time the IRFA was completed, the Secretary determined that there were no significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact on small entities. Public comment was received that the Secretary has determined requires additional consideration, so the comment period for several components of this regulation is being reopened. The Secretary welcomes comments that suggest additional alternatives consistent with the objectives of the Regulatory Flexibility Act.

Changes: The comment period for several components will be reopened to allow for additional public comment.

Comments: Both commenters stated that the IRFA did not consider economic impacts from regulatory provisions that are not addressed in these Final Rules. This includes opinions from one or both commenters that there may be impacts from: the change of ownership/additional location components; underestimation of the cost of obtaining a letter of credit; and, the notion that the cost of a letter of credit was not considered in the context of applications for new approvals or for changes in ownership.

Response: These comments will be discussed when the reopened comment period has closed for the ratio portions

of the final regulations and the final regulation is published.

Changes: The comment period for these components has been extended to allow for additional public comment.

Comments: One commenter raised numerous questions about the necessity for the rule itself.

Response: The preamble to the rule discusses the reasons why action by the Secretary is needed.

Changes: None.

Comments: One commenter stated that the IRFA did not consider the cost of changing the audit requirements. This commenter also asked questions about possible secondary effects of changing the audit requirements.

Response: The Secretary re-analyzed the component of this rule that requires changes in audit requirements. While there may be some slight costs associated with the transition to the new audit requirements, these costs are not thought to represent a significant economic impact.

Changes: The final regulatory flexibility analysis acknowledges the slight costs that may be associated with a transition to the new audit requirements.

Description of the Reasons Why Action by the Department Is Being Considered and a Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The Secretary is directed by section 498(c) of the HEA to establish that institutions participating in title IV, HEA student financial assistance programs are financially responsible. The Secretary is directed by section 498(d) of the HEA to establish that institutions participating in the programs have the administrative capability to administer federal funds. As part of the regulatory reinvention process, the Secretary has analyzed the current standards whereby institutions can demonstrate financial responsibility and administrative capability and found that improvements can be made. The proposed improvements are discussed at length in the preamble to the September 20, 1996 NPRM.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The Secretary has adopted the U.S. Small Business Administration (SBA) Size Standards for this analysis. The Regulatory Flexibility Act directs that small entities are the sole focus of the Regulatory Flexibility Analysis. There are three types of small entities that are analyzed here. They are: for-profit entities with total annual revenue below $5,000,000; non-profit entities with total annual revenue below $5,000,000; and entities controlled by governmental entities with populations below 50,000. An estimate of the proportion of entities in each of these categories was calculated using the best available data from the National Center for Education Statistics IPEDS survey for academic year 1993–94. These estimates were applied to Department administrative files, where no data element for total revenue is available. The estimates are that 1,690 small for-profit entities, 660 small non-profit entities and 140 small governmental entities will be covered by the proposed rule. Where exact data were not available to estimate the proportion of small entities, data elements were chosen that would have overestimated, rather than underestimated, the proportion.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The components of this final rule that may impose economic impacts are those associated with the new compliance audit requirements. The new audit requirements change the audit period from the award year to the institution's fiscal year. In some circumstances, this may entail a somewhat more involved audit if award rules change significantly from award year to award year so that the auditor would have to verify compliance with both the old and new sets of rules during the fiscal year. These changes are expected to cost $2,000 or less for a small entity with $5,000,000 in total revenue.

Changing the 85–15 compliance verification from the current attestation standard to a note to the financial statement is not expected to represent higher auditor fees. On balance, the amount of auditing work is comparable for both standards. Combining the audits is expected to reduce the economic cost of audits. While there may be some slight costs associated with the transition to the new audit requirements, these costs are not expected to represent a significant economic impact.

As discussed above, all small (and large) entities that are identified as being covered by the rule will be subject to the new audit requirements. The Regulatory Flexibility Act requires a discussion of the professional skills required for compliance with this rule. All small (and large) entities that participate in the title IV, HEA programs are required by statute to provide audits. These audits must be prepared by auditors that are qualified to prepare government audits. This rule changes the audit requirements, but does not impose a significantly new activity upon the entities. Under the current regulations, an institution must submit an audited financial statement and a compliance audit, but the financial statement was submitted twice. Under these new regulations, the institution will still be required to submit both the audited financial statement and the compliance audit, but the financial statement will only be submitted once, at the same time as the compliance audit is submitted. Thus the savings to institutions is the marginal savings that is produced by the elimination of the extra submission of the audited financial statement.

Description of the Steps the Department Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

This rule reduces the number of audits which must be submitted to the Secretary, removing a reporting requirement that overlaps with this proposed rule. This should help to reduce the overall reporting costs to participating institutions.

A Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Department That Affect the Impact on Small Entities Was Rejected

For the purpose of this regulatory flexibility analysis, the significant alternative that was considered by the Secretary and rejected was that of ''no action.'' Other alternatives, would not adequately discharge the Secretary's obligation under sections 498 (c) and (d) of the HEA to determine the financial responsibility and administrative capability of participating institutions and guard the Federal fiscal interest.

The Secretary has determined that there are no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact on small entities. This determination is based, in part, on the extensive consultation that the Department performed with small (and large) entities in developing these proposed revisions. The alternative ''no action'' was rejected because this alternative would not adequately protect the

Federal fiscal interest, as discussed above and in the appendix to the final rule.

Conclusion

The Secretary concludes that a substantial number of small entities are likely to experience significant adverse economic impacts from the proposed rule. However, the Secretary has concluded that the costs are outweighed by the benefits. In this case, the benefits are better protection of the Federal fiscal interest as well as improved service to students receiving assistance under the title IV, HEA programs.

The Secretary emphasizes that this conclusion addresses the regulations published in this Final Rule. Additional analysis of, and conclusions regarding, the other regulatory proposals that were part of the September 20, 1996 NPRM will be published when final regulations addressing those proposals are published, and will be based on comments received during the initial comment period, and those received during the reopened comment period.

Paperwork Reduction Act of 1995

The information collection requirements contained in § 668.23 have been submitted to the Office of Management and Budget for approval.

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan Programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedures, Colleges and universities, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number: 84.007, Federal Supplemental Educational Opportunity Grant Program; 84.032, Federal Family Educational Loan Program; 84.032, Federal PLUS Program; 84.032, Federal Supplemental Loans for Students Program; 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, and 84.268, Direct Loan Program)

Dated: November 22, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

§ 600.5 [Amended]

2. Under § 600.5, paragraph (e) is removed and reserved.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3. 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.

4. Under § 668.15, paragraph (e) is removed and reserved, paragraph (g) is revised, and paragraph (h) is added to read as follows:

§ 668.15 Factors of financial responsibility

* * * * *

(g) *Two-year performance requirement.* (1) The Secretary considers an institution to have satisfied the requirements in paragraph (d)(1)(C) of this section if the independent certified public accountant, or government auditor who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(i)(A) For either of those fiscal years, did not find in the sample of student records audited or reviewed that the institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund under § 668.22; or

(B) The Secretary considers the institution to have satisfied the conditions in paragraph (g)(1)(i)(A) of this section if the auditor or reviewer finds in the sample of student records audited or reviewed that the institution made only one late refund to a student in that sample; and

(ii) For either of those fiscal years, did not note a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(2) If the Secretary or a State or guaranty agency finds during a review conducted of the institution that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must—

(i) Submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the Secretary or State or guaranty agency notifies the institution of that finding; and

(ii) Notify the Secretary of the guaranty agency or State that conducted the review.

(3) If the auditor who conducted the institution's compliance audit finds that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the date the institution's compliance audit must be submitted to the Secretary.

(h) *Foreign institutions.* The Secretary makes a determination of financial responsibility for a foreign institution on the basis of financial statements submitted under the following requirements—

(1) If the institution received less than $500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement for that year. For purposes of this paragraph, the audited financial statements may be prepared under the auditing standards and accounting principles used in the institution's home country; or

(2) If the institution received $500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement in accordance with the requirements of § 668.23, and satisfy the general standards of financial responsibility contained in this section, or qualify under an alternate standard of financial responsibility contained in this section.

* * * * *

5. Section 668.23 is revised to read as follows:

§ 668.23 Compliance audits and audited financial statements.

(a) *General.* (1) *Independent auditor.* For purposes of this section, the term ''independent auditor'' refers to an independent certified public accountant or a government auditor. To conduct an audit under this section, a government auditor must meet the Government Auditing Standards qualification and independence standards, including

standards related to organizational independence.

(2) *Institutions.* An institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution's general purpose financial statements.

(3) *Third-party servicers.* Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education's Office of Inspector General. A third-party servicer is defined under § 668.2 and 34 CFR 682.200.

(4) *Submission deadline.* Except as provided by the Single Audit Act, Chapter 75 of title 31, United States Code, an institution must submit annually to the Secretary its compliance audit and its audited financial statements no later than six months after the last day of the institution's fiscal year.

(5) *Audit submission requirements.* In general, the Secretary considers the compliance audit and audited financial statement submission requirements of this section to be satisfied by an audit conducted in accordance with the Office of Management and Budget Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations''; Office of Management and Budget Circular A–128, ''Audits of State and Local Governments'', or the audit guides developed by and available from the Department of Education's Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. (Both OMB circulars are available by calling OMB's Publication Office at (202) 395–7332, or they can be obtained in electronic form on the OMB Home Page (http://www.whitehouse.gov).

(b) *Compliance audits for institutions.* (1) An institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit.

(2) The compliance audit required under this section must be conducted in accordance with—

(i) The general standards and the standards for compliance audits contained in the U.S. General Accounting Office's (GAO's) Government Auditing Standards. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) Procedures for audits contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General.

(3) The Secretary may require an institution to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(c) *Compliance audits for third-party servicers.* (1) A third-party servicer that administers title IV, HEA programs for institutions does not have to have a compliance audit performed if—

(i) The servicer contracts with only one institution; and

(ii) The audit of that institution's administration of the title IV, HEA programs involves every aspect of the servicer's administration of that program for that institution.

(2) A third-party servicer that contracts with more than one participating institution may submit a compliance audit report that covers the servicer's administration of the title IV, HEA programs for all institutions with which the servicer contracts.

(3) A third-party servicer must submit annually to the Secretary its compliance audit no later than six months after the last day of the servicer's fiscal year.

(4) The Secretary may require a third-party servicer to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(d) *Audited financial statements.* (1) *General.* To enable the Secretary to make a determination of financial responsibility, an institution must, to the extent requested by the Secretary, submit to the Secretary a set of financial statements for its latest complete fiscal year, as well as any other documentation the Secretary deems necessary to make that determination. Financial statements submitted to the Secretary must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, and other guidance contained in the Office of Management and Budget Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations''; Office of Management and Budget Circular A–128, ''Audits of State and Local Governments''; or in audit guides developed by, and available from, the Department of Education's Office of Inspector General , whichever is applicable. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in the Statement of Financial Accounting Standards (SFAS) 57. The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable to Secretary to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) *Submission of additional financial statements.* To the extent requested by the Secretary in determining whether an institution is financially responsible, the Secretary may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary.

(3) *Audited financial statements for foreign institutions.* A foreign institution must submit—

(i) Audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, if the institution received less than $500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year; or

(ii) Audited financial statements translated to meet the requirements of paragraph (d) of this section, if the institution received $500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year.

(4) *Disclosure of title IV HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with § 600.5(d).

(5) *Audited financial statements for third-party servicers.* A third-party servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs, as provided under 34 CFR part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education's Office of Inspector General.

(e) *Access to records.* (1) An institution or a third-party servicer that has a compliance or financial statement audit conducted under this section must—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review that audit, including the right to obtain copies of those records or documents; and

(ii) Require an individual or firm conducting the audit to give the Secretary and the Inspector General access to records, audit work papers, or other documents necessary to review that audit, including the right to obtain copies of those records, work papers, or documents.

(2) An institution must give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's compliance or financial statement audit, including the right to obtain copies of those records or documents.

(f) *Notification of questioned expenditures or compliance.* (1) As a result of a Federal audit or an audit performed at the direction of an institution or third-party servicer, if the auditor questions an expenditure made by the institution or servicer, or questions the institution's or servicer's compliance with an applicable requirement (including the lack of proper documentation), the Secretary notifies the institution or servicer of the questioned expenditure or compliance.

(2) If the institution or servicer believes that the questioned expenditure or compliance was proper, the institution or servicer shall notify the Secretary in writing of the institution's or servicer's position and the reasons for that position.

(3) The institution's or servicer's response must be based on an attestation engagement performed by the institution's or servicer's auditor in accordance with the Standards for Attestation Engagements of the American Institute of Certified Public Accountants and must be received by the Secretary within 45 days of the date of the Secretary's notification to the institution or servicer.

(g) *Determination of liabilities.* (1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's title IV, HEA programs, the servicer must notify each institution under whose contract the servicer owes a liability of that determination. The servicer must also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(h) *Repayments.* (1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (f) and (g)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may use administrative offset pursuant to 34 CFR part 30 to collect the funds owed under the procedures of this section.

(3) If, under the proceedings in subpart H, liabilities asserted in the Secretary's notification, under paragraph (e)(1) of this section, to the institution or third-party servicer are upheld, the institution or third-party servicer must repay those funds at the direction of the Secretary within 30 days of the final decision under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (g)(2) of this section.

(4) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141, and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations)

General

Comments: Many commenters maintained that the 45 day comment period was too short for institutions to understand thoroughly the new proposals and submit comments on them. Many commenters also maintained that the turnaround time between November 4 (the end of the comment period) and December 1 (the deadline for publication of final regulations in time for implementation for the 1997–1998 award year in accordance with the Master Calendar) was too short for Department staff to understand the comments that were submitted and to make necessary changes in the regulations based on those comments. These commenters therefore recommended that the publication of final rules be delayed, and the comment period extended.

Discussion: The Secretary has reviewed these comments and is sympathetic to some of the concerns raised that additional time would have been desirable for the public to consider some of the proposals in more detail. The September 20, 1996 Notice of Proposed Rulemaking provided a detailed discussion of the competing concerns at issue given the statutory deadline that requires final rules to be published by December 1 in order to go into effect by July 1 of the following year. The Secretary also notes that many members of the public were able to use the allotted time to study the proposed regulation and provide detailed comments with constructive suggestions for improving the final regulation. These

comments also identified areas where the proposed regulation may need further study and review, particularly with respect to some of the components of the financial responsibility ratios calculated under the proposed methodology.

Based in large part on concerns identified in the comments, the Secretary is withholding publication of final regulations implementing the revised financial responsibility standards at this time, and details concerning time frames for additional public comment on that proposal will be set out in a separate Federal Register Notice. The portions of the September 20 NPRM that are now being incorporated into Final Regulations are discussed in detail in the following sections.

Changes: Certain portions of the proposed regulations that are dependent upon the financial responsibility ratio calculations are being held back for additional consideration, and the final regulations on the remaining portions of the September 20 NPRM are set out and discussed below.

Comments: Several commenters maintained that the current standards of financial responsibility could not be changed unless the Department engaged in the process of negotiated rulemaking, as specified in section 492 of the HEA, or that at least the spirit of that section required that the Department enter into further discussions with the community on these matters. One commenter alleged that without negotiated rulemaking, the Department could not promulgate regulations on this subject that would have legal force and effect.

Discussion: Pursuant to Section 492 of the HEA, the Secretary conducted negotiated rulemaking for the regulations that implemented parts B, G and H of the HEA as amended by the Higher Education Amendments of 1992. The promulgation of those regulations, and the procedures specified for those regulations—regional meetings, followed by negotiated rulemaking—were subject to a specific time limit set out in the statute, tied to the enactment of the 1992 Amendments. The requirement to conduct regional meetings and negotiated rulemaking for regulations implementing those parts thus did not extend to subsequent changes to those regulations. No corresponding time limits or procedures were provided in the HEA for any regulations other than the ones that were initially required due to the 1992 amendments. The Secretary, therefore, disagrees with the suggestions from the commenters that negotiated rulemaking would have been required as part of the implementation of these regulations.

Changes: None.

Section 668.15: Factors of Financial Responsibility

Comments: Many commenters supported the proposed change to the performance exception to the refund reserve requirement. These commenters also requested that the Department take prompt action to approve applications regarding several state tuition recovery funds that are still pending. Several of these commenters also suggested that the exceptions be expanded to exempt an institution that obtains a performance bond as required by a state licensing agency. This commenter maintained that such bonds typically provide for refunds to students in cases of school closure.

Several commenters supported the proposed change, but maintained that a 10 percent or 15 percent error threshold would be fairer and more appropriate, especially for institutions with very few refunds, since in those cases even one or two late refunds may exceed the 5 percent threshold. One of these commenters added that this would take into account those refunds paid a day or two late due to payments on a 30-day cycle. Several commenters noted that a threshold based on the number of refunds made late, with no consideration of the amount of money that was late in being refunded, was inadequate, because a few refunds might be substantial due to the amount of money involved, or, conversely, appreciably more refunds than a 5 percent measure could be immaterial due to the inconsequential amount of money involve. One commenter suggested that a monetary threshold be included in the performance requirement, such that the standard be that the institution did not make the greater of 5 percent or $5000 of refunds late. One commenter suggested that for institutions that make a small number of refunds every year, such that one late refund would cause the institution to exceed the 5 percent threshold, the Department take several years of refund history into account, and, if no pattern of late refunds emerges, determine that the institution meets the performance standard.

A commenter representing an accounting firm believed that an institution that satisfied the general financial standards should not be subject to the refund reserve provisions.

One commenter requested clarification regarding whether the 5 percent late refund trigger for the refund reserve requirement would be counted at each site for an institution that has additional locations, or whether the standard would be applied to the institution as a whole, including the additional sites with the main campus.

Several commenters asked that the refund reserve performance exception be clarified to include the results of an appeal process for findings regarding late refunds.

Several commenters requested clarifications of the revised refund reserve fund performance standard with regard to the standard being linked to the years covered by an auditor or the year during which the auditor conducts the audit. One of these commenters asked whether a late refund that is split among several programs is counted as one late refund or several late refunds. This commenter maintained that the former should be the case.

A commenter from a proprietary institution asked whether the 5 percent error rate would be based on the refunds examined or an extrapolation of the refunds examined. This commenter maintained that an extrapolated 5 percent error rate is not indicative of an institution that is not financially responsible, nor indicative of a reportable condition related to the payment of refunds.

Several commenters suggested that only FFEL and Direct Loan Program refunds be counted as untimely in the refund percentage because only late refunds to those programs will have financial consequences to the Federal government or the student.

Discussion: The Secretary appreciates the support this proposal generally received from the community. The Secretary, however, is not convinced by arguments that the original proposal should be changed substantively.

In particular, the Secretary believes that the only accurate way to determine whether an institution is making its refunds under the standards contained in § 668.22 is by setting a measure of refunds made or not made in a timely fashion. The Secretary does not agree with those commenters who believe that a dollar amount should be part of the threshold, such that an institution would be allowed to qualify under this exemption if the institution makes more than 5 percent of its refunds late, but the dollar amount of those refunds is low. This performance exemption is premised on providing relief to an institution that has created and maintained an efficient system that allows the institution to discharge the responsibilities it assumes by participating in a title IV, HEA program. In this case, the performance of the system must be measured on the basis

of making refunds. The Secretary does not believe that adding a dollar threshold to the 5 percent error threshold would create a better measure than the 5 percent threshold alone, since the dollar threshold will not yield additional information on how well the system is processing refunds. In fact, such a threshold would allow an institution to continue using the exemption even though its system performed with a significant error rate, so long as the dollar amount of each refund made late was low.

While the Secretary appreciates the position taken by commenters who argued the obverse (that an institution that made a few but very large refunds late should not qualify for this exemption), the Secretary believes that the more appropriate enforcement action in cases where an institution inadvertently made a few refunds of large amounts late should be taken under the standards set in § 668.22. Those standards address the act of making a refund rather than the process that controls the making of refunds, and are therefore better suited to generate appropriate sanctions, if any, in response to deficiencies in the making of a particular refund or refunds.

The Secretary also disagrees with those commenters who maintained that the Secretary should set the error rate at a higher threshold. The 5 percent threshold was meant to provide relief only in those rare instances when, although the institution's system of internal controls is generally sound, a few refunds are inadvertently made late. The Secretary does not agree that a 10 or 15 percent error threshold would capture the intent of the exemption as a performance standard that indicates that the institution does, in all but rare situations, make refunds in a timely fashion. Rather, the Secretary believes that a 10 or 15 percent error rate may indicate that serious problems exist with the institution's system of internal controls, as well as significant compliance problems.

The Secretary agrees with commenters who asserted that a single late refund should not trigger the refund reserve requirement if, due to the small number of refunds the institution makes annually, a single refund would constitute more than 5 percent of the institution's annual refunds. While the Secretary expects institutions that have small numbers of refunds to be equally responsible as institutions with large numbers of refunds in ensuring that all refunds are paid in a timely fashion, the Secretary believes that it is reasonable to allow an institution to continue utilizing this exemption if it is found to have made only one refund late during its fiscal year, even though that single refund represented 5 percent or more of the refunds the institution was required to make during that year.

In promulgating this revision to this exemption, the Secretary emphasizes that the 5 percent threshold does not give an institution license willfully to make some number of late refunds so long as the percentage of late refunds is less than 5 percent. The 5 percent threshold is meant to allow institutions to qualify under this exemption if the instances in which the institution does not meet the regulatory requirements for the payment of all its refunds are rare and exceptional. The 5 percent threshold thus allows such institutions to qualify for the exemption despite those rare and exceptional instances of late payment. But, the Secretary reminds institutions that attempts to abuse this exemption by willfully making a percentage of late refunds could result in actions taken under § 668.22. In addition, the institution's independent auditor is required to make a finding of a material weakness in the institution's procedures related to refunds if the auditor finds that the institution intentionally or systematically made late refunds, and such a finding would result in the institution losing the benefit of this exemption.

The Secretary disagrees with those commenters who asserted that only those refunds that contain FFELP or Direct Loan funds should be counted as untimely. Refunds made to grant programs must also be made in a timely fashion, not only for Federal fiscal reasons, but also because those funds may be subsequently used as aid to other needy students and should be available to those students as soon as possible. Thus, the Secretary includes refunds that do not contain FFELP or Direct Loan funds in the measure of refund performance for purposes of this exemption.

In response to other concerns raised by commenters, the Secretary wishes to clarify the following. The 5 percent threshold applies to the number of refunds made late, not to the number of programs to which funds are remitted. Late refunds will be evaluated on the combination of a main campus and any additional locations. Evaluations are also made for the period of time covered by the auditors or reviewers.

The Secretary also wishes to clarify that the procedures that occur when the letter of credit requirement is triggered are the same as current procedures. If the auditor or reviewer finds, in his or her examination of a sample of student records, that 5 percent or more of the refunds that should have been made to those students in the sample were made late, then the institution must immediately submit a letter of credit. That letter of credit then remains in place until the final report of the reviewer or auditor shows that the institution made fewer than 5 percent of its total required refunds late, or until the institution can meet the two-year performance exemption based on subsequent reviews or audits, or meets one of the other alternatives.

The Secretary, based on past experience with performance bonds, disagrees that they are an acceptable way of meeting the refund reserve requirement. The Secretary has found that the terms of coverage and conditions for collection on performance bonds are difficult to administer consistently, and do not provide the same level of protection available under letters of credit.

The Secretary is currently reviewing several applications regarding state tuition recovery funds. Such applications have not conformed to the regulatory provisions contained in 668.15(d)(2)(ii). The Secretary agrees that such funds are a good way for institutions to meet the refund reserve requirements and looks forward to receiving applications detailing such state plans that would conform to the regulatory provisions.

Changes: Because the Secretary is delaying the publication of the final rules implementing the new proposed standards of financial responsibility, § 668.15 is being amended to include this change to the two-year performance requirement. Language allowing an institution to use this exemption if the auditor or reviewer found that the institution made only one late refund has also been added, and technical changes to regulatory language have been made to make the exemption easier to understand.

Comments: One commenter agreed that the proposed standards for foreign institutions were appropriate.

Discussion: The Secretary appreciates this support of the proposal. The Secretary believes these standards appropriately set levels of oversight for foreign institutions given the level of risk represented respectively by institutions that receive $500,000 or less annually in title IV, HEA program funds, and those that receive more than $500,000 annually in such funds.

Changes: None.

Section 668.23 Compliance Audits and Audited Financial Statements

Comments: A commenter from a public institution maintained that, because of cost, a compliance audit should be required only once every two or three years for a public institution, instead of annually. A commenter from a public institution maintained that the Single Audit Act does not require that the audited financial statements of individual public institutions be submitted. One commenter requested clarification of the type of audit required of an institution that falls below the level of the OMB Circular A–133 audit requirement of $300,000.

Several commenters from accounting firms supported the requirement that audited financial statements be included in the compliance audit and that the compliance audit be prepared on a fiscal year basis, on the grounds that this would result in cost reductions to institutions without compromising the ability of the Department to perform its oversight responsibilities.

Many commenters from proprietary institutions and the certified public accountant (CPA) community opposed the new requirement. These commenters asserted that for those institutions that have a fiscal year different from an award year, the change would result in compliance audits that cover two different award years, sometimes involving a single student's file that would have to be examined under two different standards, and that this would add significant costs and burdens to institutions. In particular, some commenters also asserted that this change would result in audits being prepared during the busy season for CPAs, thereby increasing costs; that it might entail using a single auditor rather than two different auditors, which would also lead to increased costs; and, if the initial audit after the change would require the audit of a partial year, this would also increase costs. Commenters who opposed changing the reporting year for compliance audits from an award year basis to a fiscal year basis estimated that time and costs would increase in a range of 40 percent to 100 percent.

A commenter from a proprietary institution opposed the requirement that compliance audits be performed on a fiscal year basis, on the grounds that information contained on the PMS 272 Report will not match information on the final report of expenditures—the Federal Pell Grant Statement of Account and the Fiscal Operations Report and Application to Participate (FISAP) for campus-based programs. This commenter also argued that there will be no mechanism in place for the institution to receive an increased authorization to cover additional Pell Grant eligibility, since adjustments to award year authorizations must be done in the initial audit report.

One commenter from a Subchapter S corporation asserted that the combination of the compliance audit and the audited financial statement would not result in more time for an institution to complete its audit, because other government agencies require the corporation to provide audited financial statements within 120 days of the end of the institution's fiscal year. This commenter maintained that creating a combined audit requirement meant that the corporation would be required to complete both the audited financial statement and the compliance audit in that timeframe. This commenter maintained that, therefore, this requirement was impossible to meet, because a compliance audit typically takes more than five months to complete. This commenter also maintained that the combined audit would create problems for a corporation with several separate schools when the corporation submits an audited financial report to other entities (such as those involved in bonding, insurance, and banking), because the combination would consist of the financial statement and several different compliance audits that are unrelated to the institution for which the report was requested. This commenter maintained that the proposed rule does not reduce any burden other than that of a separate mailings, since the current requirements do not require duplicate information. A commenter from a proprietary institution argued that the combined audit would be burdensome to some publicly traded corporations because those companies are required to prepare an audited financial statement with the Security and Exchange Commission within three months of the institution's fiscal year end, and this would also be the time period in which the institution would be required to complete a compliance audit. One commenter recommended either that the Department negotiate with the Internal Revenue Service to allow S corporations to change their fiscal year from January 1 to December 31, or to change the award year to the calendar year.

Many commenters suggested as an alternative that an institution might either combine its audited financial statement with its compliance audit, with both covering the same period of time, or allow the institution to submit a single audit, with the financial statement and compliance audit covering different periods of time (the financial statement covering the institution's most recently completed fiscal year, and the compliance audit covering the award year). One commenter asserted that the combination is not necessary as long as the firm conducting the audit of the financial statements is subjected to the current Quality Review, and the compliance auditor and the financial statement auditor can consult with one another.

One commenter representing a guarantee agency opposed the combined audit on the grounds that the change in the submission deadline from four months to six months increased risk to students and taxpayers.

Several commenters asked for clarification if two separate auditors could perform the compliance audit and audit the institution's financial statement.

Several commenters requested more information regarding the time period to be covered by the first combined submission and the due date for the first combined submission. One of these commenters asked whether a compliance audit of less or more than 12 months would be acceptable during the transition.

A commenter from an accounting firm commented that the requirement that the audit be prepared according to Generally Accepted Government Auditing Standards (GAGAS) would mean higher costs for institutions. One commenter maintained that only public institutions should be required to use GAGAS, and all other institutions be allowed to use Generally Accepted Auditing Standards (GAAS).

Discussion: It was not the Secretary's intent to preclude the preparation of financial statement audits and compliance audits as separate reports. The Secretary will accept a financial statement audit and a compliance audit performed by different auditors provided that both audits are conducted on a fiscal year basis and are submitted together as one package. The Secretary is aware that for many institutions the award year differs from the fiscal year and that this may require that auditors perform audit testing in each of two distinct award years, both of which may be subject to different regulatory requirements. The Secretary believes that although this may require additional planning with respect to developing samples for substantive tests of details, the level and complexity of any additional work is not substantially greater than would normally be required. Auditors would still perform

reconciliation work and tests of balances relative to the award year but would now be required to supplement that work, at fiscal year end, with additional reconciliation work and tests of balances. However, the nature and extent of those tests and the amount of work associated with these activities would be minimal unless year-end testing of internal controls indicated a significant change in the reliability of the internal control structure. This may result in a modest increase in the level of work auditors must perform during peak demand periods, and consequently may result in slightly higher audit fees, depending on the auditor. Historically, auditors have been required to adapt their procedures to accommodate statutory and regulatory changes that have occurred at varying periods throughout individual award years. The Secretary believes that the benefits associated with consolidating multiple regulatory reporting requirements into a single reporting package exceed the incremental costs incurred. In addition, auditors who perform audits and attest services for participating institutions have a responsibility to be aware of changing statutory or regulatory requirements, and to develop appropriate plans for accommodating changes in those requirements.

An initial compliance audit covering a partial year will be required at the institution's first fiscal year end following the effective date of the regulations, and will cover the period of time since the institution's last compliance audit. For an institution with a fiscal year end of December 31st, an initial compliance audit will be required for the period beginning July 1, 1997 and ending December 31, 1997. In subsequent years, the compliance audit will be prepared on a fiscal year basis and will cover the period of time since the institution's last compliance audit. For an institution with a December 31st fiscal year end, the next required compliance audit and financial audit would be required to be submitted together in a single package for the fiscal year ending December 31st, 1998 not later than six months following the institution's fiscal year end. Although some commenters have suggested that the Secretary allow institutions to prepare an initial compliance audit at the end of the institution's second fiscal year following the effective date, the Secretary believes this creates an unacceptable delay with regard to his receiving notification of potentially serious compliance violations. Accordingly, the Secretary is requiring institutions to prepare a partial year compliance audit at the end of the first fiscal year following the effective date of the regulation.

For many institutions with a December 31st fiscal year end, this change will provide the Secretary with more timely information with respect to compliance audits. Under previous regulations a compliance audit for an award year ending June 30th would not have been required to be received by the Secretary until six months following a December 31st fiscal year end. By changing the requirement that a compliance audit be prepared on an award year basis to that of a fiscal year, the Secretary shortens the period in which a compliance audit is received to six months instead of nearly a year. This may also provide the Secretary with a means of ascertaining the potential impact of serious audit liabilities with respect to an institution's ability to demonstrate financial responsibility. The Secretary further believes that the consistency in reporting periods will encourage independent CPAs who perform financial statement audits to identify and properly disclose any material contingent liabilities that exist as a result of compliance violations.

In contrast, this change extends the period of time in which institutions may submit financial audits from four months under previous regulations to six months. This change should prove beneficial to institutions. In addition, the Secretary believes that a change in the reporting period from the award year to the fiscal year provides institutions with an opportunity to consolidate audit services into a single engagement rather than to incur the potentially higher costs associated with separate engagements .

The required audit submission is considered to be satisfied by an audit under the Single Audit Act and OMB Circular A–128 or OMB Circular A–133. However, for institutions that are not required to prepare such audits because the total amount of federal financial assistance is less than the applicable threshold amount, a financial audit report and a compliance audit must be prepared and submitted to the Secretary for purposes of complying with the HEA. Guidance in the preparation of the compliance audit may be sought from the U.S. Department of Education's Office of the Inspector General.

With regard to the issue of fiscal years for S corporations, the Secretary has promulgated a regulation that permits schools to synchronize their compliance audit to correspond with their fiscal year. The Secretary therefore does not believe it is necessary for an institution to be able to switch its fiscal year to correspond to the award year, but has rather provided a means for an institution to change the period covered by its annual compliance audit so that it will correspond to its fiscal year.

Existing law requires the Inspector General to take appropriate steps to assure that any work performed by non-federal auditors complies with Generally Accepted Government Auditing Standards (GAGAS). This provision reflects a clarification of existing guidance previously made available to auditors in publications available from the Department of Education's Office of the Inspector General .

Changes: Several technical changes have been made to § 668.23.

Comments: Several commenters representing proprietary institutions supported the concept of the submission of questionable audit statements to the American Institute of Certified Public Accountants (AICPA) and other parties for review as part of a fair and impartial way of settling disputes between auditors and the Department, but questioned the language contained in this proposed rule. One of these commenters questioned whether the AICPA would agree to serve in this capacity, and asserted that the reference to other parties in the proposed rule was unclear. One commenter asserted that the AICPA does not have a process for resolving accounting disputes between parties, but does have a process, through the Professional Ethics Executive Committee, by which parties may be referred for investigation and disciplinary action if there is a possible violation of professional standards, and a process, through the Accounting Standards Executive Committee, for considering whether there is a need for new accounting standards.

Some commenters suggested that it was very important that the ''other parties'' be familiar with the intricacies of the particular sector of higher education involved in the question or dispute, and that it was also very important that the Secretary create a process for providing notice and soliciting comment from experts in the particular sector associated with the question or dispute when the Secretary submits a statement for resolution.

One of these commenters maintained that the proposed procedures could be problematic because there are several different legitimate ways to reflect similar transactions.

Discussion: In exercising the Department's statutory oversight authority, the Secretary makes every effort to ensure that the regulatory standards are applied consistently

among all participating institutions. One way that the Secretary ensures that regulatory provisions are consistently applied is to evaluate the accounting principles used in the preparation of financial statements. Different representations of similar financial circumstances by preparers of those financial statements may lead the Secretary to form fundamentally different conclusions about the fiscal responsibility of the respective institutions. The Secretary looks to the auditor first as a way of ensuring consistent application of accounting principles among reporting institutions.

In proposing the mechanism described in the proposed § 668.23 (d)(2), the Secretary had intended to establish a formal procedure to resolve significant discrepancies that may exist among independent auditors in the interpretation of Generally Accepted Accounting Principles (GAAP). Notwithstanding this procedure, the Secretary, as the principal user of these financial statements, would remain the ultimate authority in determining the acceptability of any general purpose financial statement for purposes of demonstrating financial responsibility. However, several commenters had indicated that the procedure proposed in the NPRM was not workable from the standpoint of the AICPA, in that the AICPA generally took action to clarify accounting principles in the long term rather than to help adjudicate particular differences. After reviewing the concerns raised by the commenters, the Secretary agrees that the type of assistance the Department could procure from the AICPA would not necessitate the procedure proposed in the NPRM. The Secretary is, therefore, removing this proposal from the final regulations.

The Secretary, however, reiterates that the Department will generally consult with authoritative accounting bodies such as the Financial Accounting Standards Board (FASB), The Governmental Accounting Standards Board (GASB), and the AICPA when examining audited financial statements. If, after consideration of the facts, circumstances, and assumptions, the Secretary believes that a departure from GAAP exists, the Secretary will notify the institution of the finding and may provide the institution with an opportunity to cure. In the event the Secretary believes that existing accounting standards need to be changed or that existing accounting standards are silent and that more guidance is needed, the Secretary will bring the matter to the attention of the appropriate accounting standard-setting body or bodies for consideration of future changes. However, the Secretary will continue to be the final authority in determining the acceptability of any specific accounting treatment for purposes of determining the financial responsibility of an institution that participates in a title IV, HEA program.

Changes: The provision contained in the proposed § 668.23(d)(2) has been removed.

Comments: Many commenters representing proprietary institutions opposed the provision that enables the Secretary to require the submission of audited financial statements of related entities, consolidated financial statements, or full consolidating financial statements, on the grounds of excessive cost and burden. Several of these commenters maintained that all necessary information is contained in the footnotes to the audited financial statements submitted by institutions. One of these commenters maintained that this provision would be acceptable only if the requirement was limited to those instances in which the Internal Revenue Service requires consolidation. Several commenters representing proprietary institutions maintained that the provision was unacceptable and should be removed. One commenter suggested that the rule read that, if the parent corporation is willing to provide a guarantee of the financial obligation of the institution, then the financial statements of the parent corporation will be considered.

One commenter argued that a particular definition of ''related'' must be promulgated, and that this definition should be constructed so as to exclude any entity that does not have a direct and significant financial relationship with the institution.

One commenter representing proprietary institutions opposed the proposed regulation in which the Secretary may require full consolidating financial statements on the grounds of expense and the possible unavailability of financial statements of such entities (because they may not be required to prepare them for any other purpose). This commenter maintained that the requirement to submit audited financial statements be limited to institutions or to an institution's parent corporation that intends to sign the institution's program participation agreement. This commenter argued that the Secretary does not have the statutory authority to require audited financial statements of related parties other than at the level of the institution, nor does the Secretary have the authority to determine the institution's financial responsibility on the basis of a related party's financial statement unless the institution is a wholly owned subsidiary of the related party. This commenter recommended that the proposed regulations be changed to limit the requirement to provide this information for related parties only if the Department reasonably believes that the related party's performance jeopardizes the financial responsibility of the institution, based on a clear financial relationship between the entities, and that the requirement be limited to the requirement that the related party provide its most recent financial statement within six months. Further, this commenter recommended that the Department not penalize the institution if the related party does not maintain sufficient documentation to support an audited financial statement.

One commenter from a proprietary institution suggested that the Department rely on the auditor's judgement, following AICPA guidelines, about whether the institution should submit consolidated financial statements. A commenter from a public institution maintained that the Department should not require a consolidated statement in situations in which such statements are not required under GASB standards.

One commenter maintained that requiring the audited financial statement from a related party could result in significant problems, stemming from requests after the year end for a period that has not been audited (resulting in difficulty in issuing a clean opinion), and the presence of inventories and opening balances that may result in qualifications. This commenter asserted that, as a result of such difficulties, the Department may not receive what it considers acceptable audits for these parties, and that institutions may not be able to correct the problems for as long as a year.

A commenter from a proprietary institution maintained that, when an institution or institutions are owned by a corporation the financial statement of the corporation be the basis for evaluating financial responsibility, since all the assets and liabilities of the institutions are assets and liabilities of the corporation.

Discussion: The Secretary requires that an institution provide as part of its audited financial statement a detailed disclosure of all related parties consistent with the definition of a related party established in SFAS 57. The Secretary's intent is to obtain an understanding of the relationships that exist among related entities that have the ability to exert substantial influence or control. The Secretary recognizes that

the existence of related parties may lead to material transactions that are substantially different in terms and conditions from those that would occur with unrelated independent entities. The Secretary believes that this understanding is necessary in order to take into consideration an institution's total financial circumstances. This provision is intended to make available to the Secretary information important to an analysis of the financial statements that would otherwise be difficult to ascertain simply from reviewing the financial statements. The Secretary believes that by providing a reference to the definitions in SFAS 57 both institutions and their independent auditors will have a clear understanding as to the meaning of the term ''related party'' under this provision.

To determine whether an institution is financially responsible, the Secretary may also require that the institution submit audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary. This requirement represents a clarification of the existing regulatory provisions in 34 CFR 668.15(e) which provides that the Secretary may request additional information to the extent necessary to make a determination of financial responsibility. The HEA requires that the Secretary take into consideration an institution's total financial circumstances. The Secretary believes that these additional financial statements may be necessary in order to obtain an understanding of the economic substance of an institution's financial condition. The Secretary further believes that this may constitute a more accurate reflection of the institution's total financial circumstances. The Secretary also believes that this provision will provide flexibility with respect to how an institution demonstrates financial responsibility. For example, the existing regulatory language may have required several institutions, none of which was individually a separate legal entity, to provide individual audited financial statements representing each institution despite the fact that all were operating divisions of a single corporate entity. Under the new standard, the Secretary has explicit flexibility to allow the preparation of a single audited financial statement, representing the corporate entity only, in lieu of requiring these individual financial statements.

Notwithstanding the Secretary's interest in obtaining an understanding of the institution's total financial circumstances, the Secretary enters into a program participation agreement with an entity that has the legal capacity and financial capability to enter into such an agreement for the institution. In the event that the Secretary determines that the economic substance of the relationship among related parties is such that the institution would not otherwise be able to demonstrate financial responsibility on its own, the Secretary may require financial guarantees from related parties or co-signatories to the program participation agreement. In contrast, should the economic relationship among related entities be such that the total financial circumstances of the institution indicate an inability to demonstrate financial responsibility due to the existence of significant liabilities or claims on the assets of the institution, the institution shall be deemed not financially responsible. The Secretary believes that this requirement will not cause excessive burden or cost to any institution that is able to demonstrate financial responsibility independently of a related entity. However, the Secretary recognizes that for some institutions this provision may be costly. The Secretary maintains that the costs are necessary to protect the federal fiscal interests.

Changes: The Secretary clarifies requirements in this area by adding the following regulatory language to § 668.23(d)(2): ''The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable the Secretary to readily identify the related party. Such information may include but is not limited to the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.''

Comments: A commenter from a proprietary institution supported the requirement that proprietary institutions disclose the proportion of revenue the institution received from title IV, HEA program sources.

Many commenters opposed the requirement. Most of these commenters opposed the provision on the grounds that the current provision contained in § 600.5 requires only an attestation on the part of the CPA firm. Including a disclosure in the audited financial statement will increase the work required of the auditor as well as the exposure of the auditor, and thus increase the cost of the audit. These commenters also asserted that the current procedures provided sufficient information for the Department to fulfill its oversight responsibility in this area.

One commenter questioned whether the requirement was that the disclosure be separately audited, or based on the attestation engagement required by 34 CFR § 600.5. This commenter asserted that, should the former be the case, this should be reflected in a change to 34 CFR § 600.5 and in the Regulatory Flexibility Analysis. One commenter maintained that the request for this information suggested that the Department intended to use the information for purposes that extended beyond Congressional intent.

Discussion: Previously the Secretary had required an examination level ''Compliance Attestation'' to be performed within three months of the institution's fiscal year end. The Secretary believes that the revised requirement contained in these final regulations will not result in significant additional cost as the disclosure will now become part of the audit of the general purpose financial statements. The corresponding increase in cost associated with adding this disclosure is not likely to be significantly greater than the savings resulting from the removal of the requirement to perform the ''Compliance Attestation.'' Additionally, the independent auditor who performs the audit of the institution's general purpose financial statement may be able to rely to some extent on the field work of the independent auditor who will be conducting the institution's compliance audit for the same fiscal period. The Secretary requires this information to ensure compliance with provisions of the HEA that stipulate a proprietary institution may not receive more than 85 percent of total revenues in the form of Title IV program funds.

Changes: Section 600.5(e) has been removed.

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34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC37

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Program, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan 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 Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) Programs, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Pell Grant Program, the State Student Incentive Grant (SSIG) Program, and the National Early Intervention Scholarship and Partnership (NEISP) Program. These regulations further the implementation of Department of Education (Department) initiatives to reduce burden and improve program accountability. They clarify and consolidate current policies and requirements, improve the delivery of title IV, HEA program funds to students and institutions, and further protect students and the Federal fiscal interest.

DATES: Effective date: These regulations take effect on July 1, 1997. However, affected parties do not have to comply with the information collection requirements in §§ 668.16, 668.165, and 668.167 until the Department 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:

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2. For the Student Assistance General Provisions: Rachael Sternberg, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–7888;

3. For the Federal Perkins Loan Program: Sylvia R. Ross, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–8242;

4. For the Federal Pell Grant, FWS, and FSEOG programs: Kathy S. Gause, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–4690;

5. For the FFEL Programs: Patsy Beavan, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–8242;

6. For the Direct Loan Program: Rachel Edelstein, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (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 23, 1996, the Secretary published a notice of proposed rulemaking (NPRM) in the Federal Register (61 FR 49874). In the NPRM, the Secretary proposed to amend the Student Assistance General Provisions regulations (part 668) which apply to all of the title IV, HEA programs and the regulations for the Federal Pell Grant (part 690), Federal Perkins Loan (part 674), FWS (part 675), FSEOG (part 676), FFEL (part 682), and Direct Loan (part 685) programs. The Secretary proposed to amend these regulations to further the implementation of several major initiatives within the Department. These initiatives include: (1) Project EASI; (2) the President's Regulatory Reform Initiative; and (3) improved program accountability to protect students and the Federal fiscal interest. A discussion of these initiatives can be found in the preamble to the NPRM on pages 49874 through 40875.

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 to the NPRM on which a discussion of those issues can be found:

The adoption of a uniform definition of payment period for all the title IV, HEA programs as proposed in § 668.4 (pages 49875–49876).

The provision that an institution use electronic services that the Secretary provides on a substantially free basis as a new standard of administrative capability as proposed in § 668.16(o) (pages 49876–49877).

The restructuring and clarification of the provisions under subpart K, Cash Management, of the Student Assistance General Provisions regulations (pages 49877–49882).

The inclusion of a just-in-time payment method as proposed in § 668.162(c) (pages 49877–49878).

The revision of the definition of a disbursement as proposed in § 668.164(a) (page 49878).

The requirement that title IV, HEA program funds be disbursed on a payment period basis as proposed in § 668.164(c) (pages 49878–49879).

The clarification of the requirements for early disbursements as proposed in § 668.194(f) (page 49879).

The consolidation of the individual title IV, HEA program requirements regarding late disbursements as proposed in § 668.164(h) (page 49879).

The revised student notification requirements as proposed under § 668.165 (pages 49879–49880).

The exemption from the current excess cash requirements for an institution that receives funds under the just-in-time payment method as provided in § 668.166(a)(2) (pages 49880–49881).

The requirement that an institution disburse FFEL Program funds within a timeframe comparable to that permitted for disbursing funds under the other title IV, HEA programs as proposed in § 668.167(a) (page 49881).

The requirement that an institution return FFEL Program funds to a lender if the institution does not disburse those funds within specified timeframes as proposed in § 668.167(b) (page 49881).

The procedures under which the Secretary would monitor more carefully an institution's administration of the FFEL Programs as proposed under § 668.167(d) and (e) (pages 49881–49882).

The elimination of the requirement under § 682.207(b) of the current FFEL Program regulations that an institution maintain a separate bank account for FFEL Program funds as proposed in § 668.163(a) (page 49878).

The conforming changes for the campus-based, Federal Family Education Loan, Direct Loan, and Federal Pell Grant programs resulting from the adoption of a uniform definition of a payment period as proposed in §§ 674.2, 675.2, 676.2, 682.200, 685.102, and 690.2 (page 49882).

The amendments to the disbursement rules for the FFEL and Direct Loan programs as a result of the adoption of a uniform definition of a payment period as proposed in §§ 682.207, 682.604, and 685.301 (page 49882).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appear in the proposed rules.

Student Assistance General Provisions

Subpart B—Standard for Participation in the Title IV, HEA Programs

Section 668.16 Standards of Administrative Capability Electronic Services

To reflect public comment, the Secretary is revising the proposed regulations by changing the reference to ''electronic services'' to ''electronic processes.'' This revision is being made to clarify that the Secretary's intent is that institutions participate in the electronic processes, *e.g.*, electronic data exchange and the Student Financial Assistance Bulletin Board Service (BBS), by which the Secretary administers the title IV, HEA programs and that institutions are not restricted to using software and services provided by the Secretary.

Subpart K—Cash Management

Section 668.161 Scope and Purpose

The proposed regulations are revised to clarify that FFEL Program funds are held in trust by an institution for the intended student beneficiaries, the lenders, the guaranty agencies, and the Secretary.

Section 668.162 Requesting Funds

To take advantage of technological improvements in funding procedures, the Secretary anticipates the implementation by October 1, 1997, for fiscal year 1998, the Grants and Payments System (GAPS) of the Department of Education Central Automated Processing System (EDCAPS). This system, when operational, meets new Federal financial system standards, provides institutions both grant and payment information, and simplifies expenditure reporting. A key element of the new system is the identification of the source of requested funds by the specific designation assigned to those funds by the Secretary. The Secretary notifies the institution of this designation at the time the funds are authorized. Under GAPS, the institution is able to select the particular authorization under which it seeks funds from among the various authorizations that may be available. Institutions that lack the technological capability of accessing GAPS are still able to request funds from the Department by telephone or other existing methods. Regardless of the method used by an institution to request funds, any request made after implementation of GAPS during fiscal year 1998 and thereafter must include the specific designation for those funds.

Section 668.164 Disbursing Funds

Definition of Disbursement

The Secretary is revising the proposed regulations to clarify that if an institution credits a student's institutional account with title IV, HEA program funds earlier than 10 days before the first day of classes of a payment period, for example, for the purpose of preparing a tuition and fee bill for that student, the Secretary considers that the institution makes that disbursement on the 10th day before class.

Early Disbursements

The Secretary is revising the proposed regulations to clarify that, if an institution offers an educational program using semesters, trimesters, or quarters, an institution may disburse title IV, HEA program funds up to 10 days before the beginning of any payment period even if the previous payment period is not ended.

Late Disbursements

The Secretary is revising the proposed regulations to remove the requirement that, in order to make a late disbursement of a Federal Perkins Loan or an FSEOG Program award, an institution must have received from the student an acceptance of that loan or award. A late disbursement under these two programs may be made as long as the student is awarded aid prior to the date the student becomes ineligible.

The regulations are revised to allow PLUS loans to be disbursed under the late disbursement provisions.

Section 668.165 Notices and Authorizations Disbursement Notice

The Secretary is revising the proposed notice requirements to allow a parent, as well as a student, to cancel all or a portion of a loan or loan disbursement.

The Secretary is revising the proposed timeframe requiring an institution to notify a student or parent that the institution credited the student's account with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the date and amount of the disbursement, and the student's or parent's right to refuse all or a portion of a loan or loan disbursement. The revision allows the institution to provide the required notice at any point in time during a 60-day window that is no earlier than 30 days before, and no later than 30 days after, the date the institution disburses those funds.

The timeframe during which a student or parent may request a loan cancellation is revised to clarify that the student or parent may request cancellation either for 14 days from the date the notice was sent by the institution or, if the notice is sent more than 14 days before the first day of the payment period, the first day of the payment period.

Section 668.167 FFEL Program Funds

The Secretary is revising the proposed regulations to provide that an institution must return to a lender loan proceeds received by EFT or master check if the institution does not disburse the funds within (a) 10 business days following the date the institution receives the loan funds if the institution receives the funds on or after July 1, 1997 and (b) 3 business days following the date the institution receives the loan funds if the institution receives the funds on or after July 1, 1999.

The regulations are also revised to provide that, for funds that are not disbursed within the specified timeframe, the institution must return the funds to the lender no later than 10 business days after the last day those funds are required to be disbursed. The Secretary is also revising the regulations to provide that if the borrower establishes eligibility before the institution returns the loan funds to the lender, the institution may disburse those funds to the borrower.

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 the title IV,

HEA programs effectively and efficiently.

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.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the heading *Final Regulatory Flexibility Analysis*, and in the information previously stated under *Supplementary Information* and *Analysis of Comments and Changes.*

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, more than 250 parties submitted comments. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Major 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 applicable statutory authority—are not addressed. An analysis of the comments received regarding the initial regulatory flexibility analysis can be found elsewhere in this preamble under the heading *Final Regulatory Flexibility Analysis.*

Part 668—Student Assistance General Provisions

Subpart A—General

Section 668.4 Payment Period

Payment Period Definition (§ 668.4)

Comments: Many commenters supported the Secretary's efforts to provide consistency among the title IV, HEA programs through the proposed uniform payment period definition. One institution specifically endorsed the requirement that, in the case of the FFEL and Direct Loan Programs, as in other title IV, HEA programs, quarter institutions make at least one disbursement each quarter. Two commenters advocated bringing the loan programs further in line with the Federal Pell Grant Program by requiring that loan disbursements be prorated according to Federal Pell Grant Program rules. Another commenter argued for expanding the use of payment periods for loans in order to eliminate the distinction between borrower-based and scheduled academic years and the confusion over whether summer terms should be headers or trailers.

A student advocate organization supported the proposed amendment permitting clock-hour institutions or institutions that use credit hours without terms to make the second disbursement only after that student actually completes one-half the required clock or credit hours, rather than when half the number of days in the loan period have elapsed. This commenter believed this change would protect students, many of whom withdraw from trade institutions before completing one-half the required hours, from incurring double the loan obligation.

Discussion: The Secretary agrees that title IV, HEA program requirements should be made more consistent. With regard to the suggestions that the loan programs be brought further in line with the Federal Pell Grant Program, the Secretary will consider this option for the future but notes that currently there are statutory prohibitions against any further conforming changes. Further, the Secretary does not intend to eliminate the use of borrower-based academic years and scheduled academic years in the FFEL and Direct Loan Programs. These options provide institutions flexibility in awarding loans and monitoring annual loan maximums for an academic year.

Changes: None.

Comments: A significant number of commenters objected to the proposed payment period provisions. One commenter who believed the uniform payment period definition would create great inefficiency and confusion urged the Secretary to delay implementing the payment period provisions in order to consult with institutions, associations, and lenders to try to accommodate program differences. Some commenters stated that the Secretary did not identify any areas of abuse by institutions or lenders in connection with the second disbursement of loan proceeds or did not provide sufficient reasons for the proposed changes in policy. Several commenters assumed that the Secretary is proposing additional disbursement requirements on quarter and trimester institutions for the benefit of the federal fiscal interest. Many commenters who objected to the proposed payment period provisions stated that institutional default rates have significantly decreased over the past six years and suggested that there is no need for the additional burden of increased disbursements and monitoring of student progress proposed in this regulation. In response to the Secretary's efforts to streamline and simplify the disbursement rules for all title IV, HEA programs, one commenter questioned the validity of establishing the same disbursement rules for programs with different eligibility requirements and also questioned who would benefit from the proposed change.

Discussion: The Secretary continues to believe that establishing a uniform payment period definition is appropriate at this time. The Secretary does not expect the proposed changes to cause title IV, HEA program participants significant problems and, therefore, does not intend to delay revising program regulations accordingly. Although the Secretary has not identified any particular areas of abuse of the existing disbursement rules, the Secretary believes that revising these existing rules to make them more consistent facilitates the administration of the title IV, HEA programs including simplification of the delivery system and provides additional protections to limit excessive borrowing. In addition, the Secretary believes that the proposed changes are in the Federal fiscal interest.

Changes: None.

Comments: With regard to the proposed requirements for term institutions, commenters argued against the proposal to require more than two disbursements for programs using quarters or trimesters, stating that this proposal would increase the administrative burden and expenses for the institution, lenders, and guaranty agencies. Several of these commenters noted that this policy would increase the administrative burden of verifying eligibility as well. Many of these commenters suggested that institutions using academic terms and credit hours should be allowed to choose whether to make a disbursement each semester, trimester, or quarter, as applicable, or twice a year as is currently allowed. Several commenters argued that, for quarter or trimester institutions, scheduling two larger disbursements, rather than three or four smaller disbursements, is particularly appropriate for graduate and professional institutions, where no Federal Pell Grant and virtually no campus-based funding are disbursed to students. One commenter stated that requiring more frequent disbursements for quarter and trimester institutions will complicate loan processing for midyear transfers and will make the

paper financial aid transcript an absolute necessity for these transfers.

Discussion: In response to the arguments against requiring quarter or trimester institutions to disburse on a term basis rather than twice per year, the Secretary has proposed this change for two reasons. First, these disbursement rules aid students in managing their funds and may reduce overborrowing.

Second, as stated in the preamble to the NPRM, this approach simplifies the administration of the title IV, HEA programs. This change assists in the development of a single, integrated title IV delivery system.

The Secretary recognizes that an institution is required to make three disbursements of a loan for an academic year if an educational program is offered using quarters that conform to the traditional usage of that term, *i.e.*, each term consists of approximately 10–12 weeks of instruction, full-time is defined as at least 12 quarter credits, and the program's academic calendar includes three quarters in the fall, winter, and spring, and often a summer quarter. As noted, the Secretary believes that students enrolled in educational programs offered using quarters will be assisted in managing their funds and prevented from overborrowing.

Although several commenters suggested that the proposed regulations require institutions using trimesters to make more disbursements than is currently required, most trimester institutions will be required to make only two disbursements under these proposed provisions. Most traditional institutions using trimesters typically schedule only two trimesters in an academic year; therefore, these institutions are usually required to make only two disbursements for the loan period. In some instances, the Secretary is aware that an educational program may use the term ''trimester'' to describe its academic terms but those academic terms do not conform to the traditional usage, *i.e.*, each term consists of approximately 15 weeks of instruction, full-time is defined as at least 12 semester or trimester hours, and the program's academic calendar generally consists of three terms, one each in fall, spring, and summer.

If a term referred to as a trimester or quarter does not conform to the traditional usage, the references to trimesters or quarters in the title IV, HEA program regulations do not apply.

With regard to the comment concerning midyear transfers, the Secretary does not believe that the proposed changes create any extra institutional burden in processing aid for mid-year transfers.

Changes: None.

Comments: Many commenters stated that the Secretary was imposing additional requirements on clock-hour and nonterm credit-hour institutions by requiring that their students complete the necessary number of hours prior to receiving a subsequent disbursement of title IV, HEA program assistance. Commenters who objected to this proposal stated that this requirement would result in a constant readjustment of scheduled disbursements, would require institutions to monitor individual student's progress, and would result in disbursements occurring earlier than the midpoint of the loan period or later than the midpoint, depending on each individual student's progress. Commenters also argued against the proposed payment period policy because they indicated that students do not incur costs according to hours completed. These commenters argued that payment periods for these programs should be measured in length of time rather than by completion of credits.

One institution using credit hours without terms explained that scheduled breaks in the year fall close to the timing of traditional semesters. The institution noted that under the proposed regulations, because the institution does not use terms, the time when the student completes half of the credits for the year may be significantly longer than half the year in length. Another commenter who objected to the proposed requirement for credit-hour programs without terms stated that the Secretary is imposing more stringent standards on nonterm institutions than on term institutions.

Several commenters objected to the proposed policy that eliminates the current Federal Pell Grant payment period definition for clock-hour programs that are offered in terms. Clock-hour institutions with terms argued that a term is a payment period, regardless of whether the courses are measured in clock or credit hours. Commenters argued that this proposal would create cash flow problems for clock-hour institutions with academic terms and would result in students receiving their aid at unpredictable times with payments overlapping terms and academic years. The institutions explained that they assess fees on a term basis; they also argued that if they are not allowed to schedule disbursements according to terms, their students may have fewer disbursements, which might be a detriment to students with poor money management skills. Further, they noted that because institutions would not be allowed to make disbursements until after the student completes the required number of clock hours, students will not have loan funds when tuition and fees are due. Finally, these institutions argued that allowing clock-hour institutions to disburse according to academic terms would simplify the rules and streamline the disbursements of title IV, HEA program funds.

Discussion: In response to the commenters objecting to the proposed requirement that clock-hour institutions with terms track hours completed, the Secretary reminds commenters that clock-hour institutions with or without terms are currently required to track hours completed in order to make subsequent Federal Pell Grant disbursements. Under the current Federal Pell Grant Program requirements, if a student does not complete all of the clock hours in a term for which he or she has been paid, the student may not receive the payment for the subsequent term until the student has completed the clock hours for the prior term. Further, the second disbursement is reduced in accordance with the number of hours that are attributed to the first payment period. For example, a student is enrolled in a 600 clock-hour program with two terms of 300 clock hours each. In the first term, the student completes only 250 clock hours. The first payment period is extended into the second term. When the student completes the first 50 hours in the second term, the student may receive a second disbursement based on 250 clock hours (*i.e.*, the balance of the hours in the second term. The student would then receive a third disbursement based on 50 clock hours after completing the 250 hours of the second term for which he or she was paid. Under the revised payment period definition, the student receives a second disbursement after completing 50 hours in the second term and that disbursement is based on 300 clock hours. There is no third disbursement.

Through subregulatory guidance, the Secretary has directed clock-hour institutions without terms to track clock hours completed for subsequent loan disbursements. In proposing this rule, the Secretary intended to require clock-hour institutions with and without terms to track clock hours completed for purposes of disbursing subsequent loan proceeds in order to align the loan programs more closely with the Federal Pell Grant Program. However, the Secretary emphasizes to the commenters that there are differences between the disbursement rules for loans and for the Federal Pell Grant Program regarding

clock-hour programs. Because of the statutory requirement that institutions not disburse the second disbursement of a FFEL or Direct Loan until at least one-half of the loan period has elapsed (see § 428G(b) of the HEA), the Secretary proposed that programs measuring progress in clock hours may not make the second disbursement until the later of the calendar midpoint of the loan period or the date that the student completes half the clock hours in the loan period. These provisions should address the commenters' concerns that students might receive proceeds prior to the midpoint of the loan period.

In response to the clock-hour institutions that stated that the proposed payment period definitions would limit their ability to disburse as often as they currently disburse, the Secretary reminds them that they can always make smaller, more frequent, equal disbursements of the proceeds within the payment period, as long as the student is completing the required number of clock hours necessary for the next disbursement.

The Secretary also believes that it is appropriate that credit-hour institutions without terms track credit hours completed. This policy has been a long-standing requirement in the Federal Pell Grant Program, and the Secretary believes that this requirement is appropriate for loan disbursements as well. The Secretary wishes to emphasize that the loan disbursement rules differ from the Federal Pell Grant disbursement rules for credit-hour institutions without terms; these rules are found under 34 CFR 682.604(c)(7) and 34 CFR 685.301(b)(5). As discussed above, because of the statutory requirement that institutions not disburse the second disbursement until at least one-half of the loan period has elapsed, the Secretary proposed that programs measuring progress in credit hours without terms may not make the second disbursement until the later of the calendar midpoint of the loan period or the date that the student completes half the academic coursework in the loan period.

Changes: None.

Comments: Several commenters stated that the Secretary's efforts to use terms to protect students and title IV, HEA program recipients has been ineffective and that the Secretary should define a standard minimum term. These commenters further stated that some institutions have defined academic terms for as little as four weeks in length in order to circumvent federal regulations such as those for pro rata refunds.

Discussion: With regard to defining a standard minimum term, the Secretary does not believe it is appropriate to define what an institution's academic calendar must be. Further, the commenters are reminded that the loan programs require institutions to use either credit hours with standard terms or to monitor credit and clock hours earned. For the Federal Pell Grant Program, institutions can disburse according to short nonstandard terms. However, payments are prorated based on the hours in these short terms, so there is no need to require disbursements according to a defined minimum term.

Changes: None.

Comments: In the NPRM, the Secretary specifically requested comments on whether to incorporate the proposed approach or the existing Federal Pell Grant Program rules for certain remaining portions of programs less than one academic year but greater than one-half an academic year. Under the proposed approach, for credit-hour programs without terms or clock-hour programs greater than an academic year, when the remainder of the program is less than an academic year but greater than one-half an academic year, this remainder comprises two equal payment periods. Several commenters supported the proposed policy, noting that this approach allocates title IV, HEA program funds more evenly over the remaining portion of the programs than do the current Federal Pell Grant provisions.

One commenter stated that the proposal to change the determination of payment periods for the remainder of certain programs longer than one year in length would require major changes in software programs that have been designed to pay under the existing payment period definitions. The commenter stated that the change would decrease the amount of Federal Pell Grant funds awarded in the third payment period of a program greater than one year, but less than two, and would place additional, unnecessary financial burden on both students and institutions. This commenter also stated that the 1994 attribution rules were eliminated in reference to loan payments, but that this change appears to be suggesting that attribution rules are again effective. Another commenter argued against the proposed rule because, the commenter stated, this rule would result in some students receiving less Federal Pell Grant funding when cross-over periods are used. This commenter suggested that the strict cut off for award-year eligibility be revised to allow students impacted by this policy to either receive more than a full Federal Pell Grant in a given award year or that the concept of cross-over payment be redefined to allow a student to receive payment from a subsequent award year for a payment period completed in the prior award year. Another commenter similarly argued that institutions be allowed to disburse more than one Federal Pell Grant to degree-seeking students completing more than one academic year during an award year.

One commenter stated that the commenter's organization did not have sufficient time for analysis of whether the Federal Pell Grant approach or the proposed approach should be adopted for the final rule. Therefore, the commenter suggested either a pilot program to collect data or allowing institutions to choose either the existing Federal Pell Grant approach or the proposed approach, as long as they use one approach consistently.

Discussion: Although one commenter suggested that these rules would result in decreased Federal Pell Grant awards in some circumstances, the Secretary assures the commenter that the total amount of Federal Pell Grant awarded under the proposed rules would be the same as the amount awarded under the existing rules. For programs that are longer than one year in length but less than two, where the remaining period of enrollment is greater than half an academic year, the student would receive a smaller third disbursement than under the current rules, but the fourth disbursement would be earlier and larger, and the total amount would be the same.

With regard to the question concerning whether a student whose payment period includes a cross-over period would receive less Federal Pell Grant funding under the proposed rule, the Secretary acknowledges that in some limited cases recipients may receive less Federal Pell Grant funding under these provisions than under the current provisions. However, the Secretary reminds the commenter that even under the current provisions, some students receive reduced Federal Pell Grant amounts when their payment period is not included as a cross-over period as a result of the timing of the academic schedule. When these regulations become effective, institutions can adjust their academic calendars to ensure that their students are not affected by the cross-over payment period restrictions.

In response to the suggestion that institutions be allowed to disburse more than one Federal Pell Grant in a given award year, the Secretary recognizes that there was a statutory provision that

would have allowed the Secretary to increase the number of Federal Pell Grant awards a recipient can receive within one award year; however, there has never been any appropriation available to fund additional Federal Pell Grants. Therefore, the Secretary does not intend to increase the number of Federal Pell Grant awards a recipient can receive within one award year.

Changes: None.

Comments: One commenter asked for clarification concerning the meaning of the phrase, ''other academic term'' in proposed § 668.4(a). This commenter further noted a contradiction between proposed § 668.4(a) and proposed 34 CFR 685.301(b)(5), as this latter section provides that institutions using nonstandard terms cannot disburse Direct Loans according to the nonstandard terms. This commenter suggested defining payment periods for nonstandard terms as the periods of time needed to complete the first and second halves of the programs, as measured in clock or credit hours.

Another commenter asked for clarification as to how to apply payment periods to nonstandard term programs when the academic year exceeds a 12-month period or calendar year. The commenter noted that, in accordance with 34 CFR 682.603(f)(2), a loan period may not exceed 12 months. Therefore, the commenter suggested that payment periods are greatly disproportional to the loan period. The commenter gave an example where the first payment period could be nine months for an academic year that is 18 months in duration, even though the loan period is 12 months. This commenter stated that the proposed changes do not accommodate eligible programs with an academic year exceeding 12 months.

Discussion: The commenter is correct in noting a difference in language between proposed § 668.4(a) and the Direct Loan disbursement rules found in proposed 34 CFR 685.301(b)(5). There is also a difference in the proposed FFEL rules under 34 CFR 682.604(c)(7). The reason for this disparity is that institutions can disburse according to ''other academic terms,'' that is, nonstandard terms, in the Federal Pell Grant Program. In the loan programs, institutions using nonstandard terms cannot disburse according to these terms. For nonstandard term credit-hour institutions, institutions are required to disburse the second loan disbursement on the later of the calendar midpoint between the first and last scheduled days of class or the date that the student has completed half the academic coursework in the loan period. The slight difference between the Federal Pell Grant Program's and the loan programs' disbursement rules exists because of the statutory requirement that institutions not disburse the second disbursement of a Direct or FFEL loan until at least one-half of the loan period has elapsed. See § 428G(b) of the HEA. Also, Federal Pell Grant Program requirements allow institutions to disburse Federal Pell Grants according to nonstandard terms because Federal Pell Grant funds are prorated according to the number of hours in the term relative to the number of hours in the academic year. Institutions may not disburse Direct Loan or FFEL program loans according to nonstandard terms; unlike under the Federal Pell Grant Program, loans are not prorated based on the number of hours in a term.

The commenter above correctly noted that a loan period cannot be greater than 12 months. Institutions disbursing loans would not be able to certify or originate a loan for a period greater than one year in length. Institutions with an academic year longer than 12 months would be required to schedule disbursements according to the rules in 34 CFR 682.604(c)(7) and 34 CFR 685.301(b)(5), as applicable.

Changes: None.

Comments: One commenter noted that the Secretary is moving towards all title IV, HEA program funds being disbursed at the same time and asked whether the Secretary would propose that certain Federal Pell Grant recipients be subject to the 30-day delayed disbursement required for first-time, first-year FFEL and Direct Loan student borrowers.

Discussion: The Secretary does not intend to propose that Federal Pell Grant recipients be subject to the 30-day delay required for first-time, first-year borrowers. Although the Secretary has proposed certain changes in order to promote conformity among disbursement rules for different programs, the Secretary does not believe that all restrictions within certain programs should be implemented across all of the title IV, HEA programs. Just as the Secretary does not propose to require multiple disbursement of Federal Pell Grants for students enrolled in one payment period only, the Secretary believes it is not necessary to require that any Federal Pell Grant recipients be subject to a 30-day delay in disbursements.

The Secretary notes that under the Federal Pell Grant Program, institutions have the authority to make disbursements at such times as best meet the needs of students. See 34 CFR 690.76(a). The Secretary notes, however, that delaying disbursement for institutional purposes to avoid refund requirements would not be in compliance with 690.76(a).

Changes: None.

Comments: One institution suggested that the language in this section identifying payment periods as the ''period of time in which the student completes [the first or second half of the program] as measured in credit or clock hours,'' does not require that the student must successfully complete the credit or clock hours in a payment period. This institution argued that, for a student who did not successfully complete the hours in a payment period, the institution should determine financial aid eligibility, based on the institution's satisfactory academic progress policy. Another commenter asked which concept of payment period completion would be used: scheduled hours or hours actually completed.

Discussion: The Secretary intends that institutions subject to these provisions, *i.e.*, institutions offering programs using credit hours without terms or clock hours, monitor credit or clock hours that are *successfully* completed including excused absences as provided in § 668.164(b)(3). For credit-hour programs without terms and clock-hour programs, students may not receive subsequent disbursements until they have actually completed the required number of credit or clock hours.

Changes: None.

Comments: One commenter noted that proposed § 668.4(b)(3) provides an exception to the payment period definition for programs where students do not earn any credits until the last day of the year. The commenter noted that the section refers back to paragraphs (b)(1) and (b)(2), which affect not only credit-hour institutions without terms but also clock-hour institutions. The commenter asked, therefore, whether the Secretary intends to apply this rule to programs using credit hours without terms only or to both credit-hour programs without terms and all clock-hour programs.

Discussion: As under the current Federal Pell Grant Program regulations, the Secretary intends that this provision apply only to educational programs without terms that measure progress in credit hours.

Changes: The Secretary has added a clarification that § 668.4(b)(3) applies only to eligible programs that measure academic progress using credit hours.

Comments: Several commenters suggested that the proposed policy would affect the current refund provisions. One commenter stated that defining payment periods by completion of credit hours is in

contradiction to the pro rata refund regulations that require refunds to be calculated based on the portion of the period of enrollment. Several commenters noted under this proposed policy, certain institutions would be required to make fewer, and therefore, larger disbursements; thus, students who withdraw early will owe greater repayments than if funds had been disbursed according to academic terms.

One institution objected to the universal payment period definition specifically because if the first payment period changes to the completion of the first half of the academic year, and the student leaves before the completion of the payment period, what the student would have received in grants will now come out of pocket.

One commenter stated that if the institution must use as a minimum 450 hours for a period of enrollment as a basis for charges, but can only disburse 289.5 hours worth of Federal Pell Grant funds, there may be a balance due which would be reflected as an unpaid scheduled cash payment for refund purposes.

Discussion: With regard to the general comment that the proposed payment period policy would affect refunds provisions, the Secretary notes that the requirements for disbursements of title IV aid are not related to title IV refund requirements. In response to the commenter who stated that refunds must be calculated based on the portion of the period of enrollment, the Secretary wishes to clarify that the refund calculation determines the unearned portion of the actual charges for the period of enrollment for which the student was charged. Although one commenter suggested a relationship to the amount of grants received and the refund calculation, the Secretary notes that the refund calculation does not determine the source from which an institution earns funds. Several commenters noted that the proposed payment period provisions would result in institutions making fewer, and therefore, larger disbursements; however, institutions are reminded that they are allowed to schedule smaller, more frequent, disbursements within a payment period, rather than making one disbursement per payment period. Finally, in response to the commenter who noted a possible discrepancy between the minimum number of clock hours that may be used as a basis for charges vs. the amount of Federal Pell Grant funds that may be disbursed, the Secretary notes that such a discrepancy may exist under the current disbursement rules and, therefore, is not a result of the proposed changes to the payment period requirements.

Changes: None.

Comments: Several commenters objected to the Secretary's proposal that, for a student enrolled in an eligible clock-hour program, the institution may include excused absences for up to 10 percent of the clock hours in the payment period in determining whether the student has completed the payment period, stating that this proposal dictates an attendance policy to clock-hour institutions. One commenter stated that mandating 10 percent of the clock hours in a payment period as the maximum excused absences an institution may include in determining whether the student has completed the payment period impinges on academic freedom and that the satisfactory academic progress regulations, as well as State and accrediting agency oversight, already address this area. This commenter noted that many colleges maintain no attendance requirements.

On the other hand, one student advocate organization generally supported the proposed regulation's policy regarding excused absences for clock-hour institutions. However, this commenter suggested lowering the percentage of excused absences that could be counted towards attendance from 10 percent to 5 percent, arguing that if these programs are meaningful, students should not be permitted to miss so many hours and still receive Federal aid.

Discussion: As stated in the preamble to the proposed rule, except where an accrediting agency or State licensing agency sets a more rigorous standard, the Secretary believes that excused absences of more than 10 percent of clock hours in a payment period would impair the educational attainment of the student and would not make the best use of Federal funds (60 FR 49879). This requirement is for purposes of title IV, HEA programs only and does not infringe on academic prerogatives of the institution. Institutions can adopt another policy for other purposes.

Changes: None.

Comments: Many commenters argued that, if the loan period is only one term, only one disbursement should be required. Several commenters stated that for a student using the loan for living expenses, getting the second disbursement halfway through the term does not adequately cover the student's financial needs. One institution suggested that if the Secretary cannot change the regulations for all institutions, the Secretary might establish eligibility criteria for certain institutions that would be allowed to make one disbursement in a single-term situation. One commenter pointed out that allowing for a single disbursement of a loan when the payment period is only one term would further align loan disbursement rules with Federal Pell Grant disbursement rules.

One experimental site institution that is exempt from the multiple disbursement requirements for single semester loans noted that it has received positive feedback from students regarding single disbursements for one term. This institution recognized that the multiple disbursement requirement is statutory and stated its support for efforts to remove this statutory requirement. Another experimental site institution that is exempt from multiple disbursement requirements for single-term loans asked for confirmation that the multiple disbursement requirement for single payment periods in these regulations will not affect the exemption for experimental site institutions.

Discussion: The Secretary reminds commenters that unless institutions have received waiver under the Experimental Sites Program (authorized under § 487A(d) of the HEA), the statute requires multiple disbursements of loan proceeds for single-term loans. See § 428G(a) of the HEA. These regulations do not affect the experimental site institutions that are exempt from this requirement. The Secretary will take into consideration the commenter recommendations in the context of HEA reauthorization.

Changes: None.

Comments: In proposed 34 CFR 682.604(c)(7)(ii), commenters suggested replacing the proposed phrase, ''academic coursework'' with the term ''credit hours'' because, the commenters stated, this phrase is more specific.

Discussion: The Secretary has used the phrase ''academic coursework'' rather than credit hours in 34 CFR 682.604(c)(7)(ii) and in 34 CFR 685.301(b)(5)(ii) for two reasons. First, this phrase provides institutions with flexibility to measure progress by other means than credit hours. If they choose to do so, they can make this determination based on credit hours completed; however, they can also use other measures such as lessons completed in those circumstances where the midpoint of a student's academic program does not coincide with the midpoint in credit hours earned. In addition, some institutions do not allow students to earn credits until the end of a program or academic year. Under this proposed provision, even if the institution does not award credit hours until the end of the

program or academic year, the student could receive the second loan disbursement according to another measure of progress. Also this policy is consistent with the similar circumstances addressed in § 668.4(b)(3).

Changes: None.

Comments: Several institutions advocated allowing unequal loan disbursements, noting that while the proposed regulations provide that loans must be disbursed in equal installments, educational costs are often unequal across terms.

One institution currently addresses the problem of unequal costs by scheduling three disbursements for one type of loan (*e.g.*, subsidized) and two disbursements for another (*e.g.*, unsubsidized) for the same student and notes that this practice would not be permitted according to the proposed regulations.

Another institution noted that the Direct Loan software allows institutions to make unequal disbursements and argued that unequal disbursements also be permitted in the FFEL Program.

One institution expressed concern that the equal disbursement requirements would reduce the amount the student would receive in situations where at least one-half the loan period has elapsed prior to the first disbursement so that the first disbursement is combined with a subsequent disbursement.

Discussion: The Secretary notes that the statute requires equal disbursements of loan proceeds. See § 428G(c)(3) of the HEA. The Secretary will take into consideration allowing unequal disbursements in the context of HEA reauthorization. With regard to the comment from the institution that schedules subsidized and unsubsidized loan disbursements differently in order to meet the student's unequal costs, this practice goes against the statutory intent that all loans for a student be disbursed in equal installments. Similarly, the Secretary reminds Direct Loan institutions that, even though the software for the Direct Loan program does not reject unequal disbursements, the statute prohibits Direct Loan institutions from scheduling unequal disbursements.

Finally, with regard to the question of whether the equal disbursement requirements would reduce the amount the student would receive in situations where at least one-half the loan period has elapsed prior to the first disbursement, the Secretary assures the commenter that this provision does not reduce the amount the student would receive. For example, in a quarter situation where a disbursement is not made until after the start of the second quarter, the institution could combine the first and second disbursement in one transaction. Subsequently, the institution could disburse the final installment in the third quarter. In this situation, statute and regulations permit the combined first and second disbursements to exceed the amount of the final disbursement.

Changes: None.

Subpart B—Standards for Participation in Title IV, HEA Programs

Section 668.16 Standards of Administrative Capability

Electronic Processes (§ 668.16(o))

Comments: Most commenters supported the concept of moving to electronic processes in the delivery of title IV, HEA program assistance. Many commenters recognized and supported the need for institutions to use electronic processes in order to move to a Project EASI delivery system and encouraged the Secretary to use the best available electronic services. One association commenter stated that the Secretary must be aggressive with regard to institutions' capabilities to participate in information sharing via electronic means. Another commenter stated that mandating the use of electronic processes would enhance the level of student services at institutions. Another commenter supported this provision because the commenter believed it was essential to achieving Project EASI's goal of providing comprehensive, current student information.

Discussion: The Secretary very much appreciates, and thanks the financial aid community for, its support in moving to greater use of electronic processes and its contributions to developing and implementing Project EASI. The Secretary believes that, by working with the community in these areas, we will be able to improve services for students and institutions.

Changes: None.

Comments: Several commenters believed that the Secretary proposed to restrict institutions to using electronic services provided only by the Secretary. Some commenters were concerned that, while the preamble to the notice of proposed rulemaking indicated that an institution would be able to use software developed by the Secretary or software developed by the institution or its vendor, the proposed regulations only referenced electronic services provided by the Secretary. Other commenters were concerned that the proposed regulations would not allow an institution to be considered administratively capable if it participated in electronic services through an agency such as the Pennsylvania Higher Education Assistance Authority. Another commenter was concerned that an institution would be unable to comply with the proposed regulations through a third-party servicer. The commenters suggested that the Secretary should clarify this provision.

Discussion: As some of the commenters noted, it is not the Secretary's intent to restrict institutions to using only software and services provided by the Secretary. Nor is it the Secretary's intent to restrict the ability of institutions to comply with the requirement by employing third-party servicers. The Secretary agrees with the commenters that the provision needs clarification since it is his intent that institutions have the ability to participate in electronic processes such as electronic data exchange and the BBS, but that institutions should have available options to achieve compliance other than by using software or products that the Secretary provides.

Changes: The Secretary has revised the reference to ''electronic services'' in § 668.16(o) to refer instead to ''electronic processes.''

Comments: One commenter stated that the Federal Register notice announcing the electronic processes in which an institution must participate should address not only the electronic processes or functionalities an institution must be capable of performing but should include other information such as optimal system configurations and network configurations.

Discussion: The Secretary very much appreciates the commenter's concerns but does not believe that the addition of this information would be appropriate for publication in the Federal Register. The Secretary believes that it is more appropriate to include this type of information in the other publications that he provides that include such items as systems specifications and record layouts.

Changes: None.

Comments: Many commenters were concerned that the Secretary should provide institutions reasonable notice and timeframes to implement these processes. The commenters were concerned that some institutions may not immediately have the necessary resources to participate in electronic processes. The commenters believed that additional training of staff would be needed. One commenter suggested that notice was needed by December 1 prior to an award year. Another commenter

also indicated that the Secretary should provide as much advanced notice as possible of the electronic processes which the Secretary expects to require over the next several years so that institutions may include these expectations in securing the necessary resources.

Discussion: The Secretary agrees with the commenters concern that institutions be provided advanced notice of electronic processes in which they are expected to participate. The Secretary expects to provide such notice as soon as the information is available. Under the current systems development cycles by award year, the Secretary expects to be able to provide notice before December 1 prior to the award year. To the extent it is possible to provide a notice covering subsequent award years, the Secretary will provide such notice.

With respect to training, the Secretary agrees that additional training is needed for institutional personnel and expects to announce shortly additional training opportunities that will be available in all 10 regional training facilities.

Changes: None.

Comments: Some commenters believed that the Secretary should use open networks such as the Internet to provide electronic interfaces rather than rely on the Title IV Wide Area Network. One commenter was concerned that security was not adequate on the Internet. Another commenter believed that it would be beneficial for all institutions to use the Title IV Wide Area Network but that it should be recommended, instead of being required, during the 1997–98 award year. Another commenter believed institutions should be expected to participate in the Title IV Wide Area Network, to receive Institutional Student Information Records (ISIRs), and to participate in the National Student Loan Data System. The commenter questioned whether the Student Financial Assistance Bulletin Board System (BBS) was duplicated in other forums.

Discussion: The Secretary is currently exploring issues related to the use of open systems like the Internet including such issues as security, authentication, and reliability. The Secretary's primary concern, however, is that institutions begin to use electronic processes for delivering title IV, HEA program assistance regardless of the network configurations that may be available to implement a particular electronic process. For example, the BBS is currently available through two electronic networks: the Title IV Wide Area Network and the Internet (the Internet address is: http://sfa.ed.gov). If the Secretary requires institutions to be able to access the BBS, using either electronic network would satisfy the requirement.

Comments: A few commenters proposed that the Secretary provide additional administrative cost allowances to allow institutions to meet the requirement to use electronic processes. One commenter was concerned that the proposed regulations were an unfunded mandate to the States. The commenter believed that the administrative cost allowance was not sufficient to cover the costs to institutions of using electronic services.

Discussion: The current administrative cost allowances are set by specific statutory authorizations and appropriations and the Secretary, therefore, is unable to provide a specific administrative cost allowance for funding institutions using electronic processes. The Secretary will take into consideration these comments while developing proposals in the context of HEA reauthorization.

The Secretary does not agree with the comment that these requirements are an unfunded mandate. Institutions are provided with administrative cost allowances to administer the title IV, HEA programs, and these funds may be used by the institution for funding institutional use of electronic processes that the Secretary does not expect to have significant cost implications.

Comments: Two commenters were concerned about the meaning of the phrase ''at no substantial charge to the institution.'' One commenter believed that the Secretary should absorb all the costs of the central processor's services.

Discussion: The Secretary considers an electronic process to be offered to an institution at no substantial charge if the process is provided for free or there are generally no additional charges for normal business activity. For example, an institution may make regular phone calls to a customer service office but, if an institution makes excessive phone calls, the Secretary believes it is appropriate to charge for use beyond that normally needed even though the Secretary is requiring institutions to use that process.

Changes: None.

Comments: One commenter questioned the benefit of using electronic processes and requested that institutions be able to receive exemptions from this requirement. Another commenter was concerned that the Secretary needed to develop an alternative, cost-effective option for small institutions.

Discussion: As the Secretary noted in the preamble discussion of this requirement in the proposed regulations, the Secretary believes that the use of electronic services by institutions is essential to achieving better services for students and institutions, the Project EASI goal of an integrated student aid delivery system for students and institutions, and necessary improvements in program accountability. As a result, the Secretary does not expect to provide for any alternative processes such as using paper documents. With respect to small institutions, the Secretary notes that a number of options are available to, and are currently being used by, small institutions. These institutions either are using the services and free products provided by the Department; or are using the products and services of private vendors, third-party servicers; or are using the Internet directly.

Changes: None.

Comments: One commenter opposed the proposed regulations because the commenter thought that institutions, that the commenter believed offered quality educational programs, would have difficulty meeting the requirement. Another commenter opposed the proposed regulations because the commenter believed that they would result in the elimination of all small institutions because they rely on Federal information.

Discussion: The Secretary recognizes that some institutions may have difficulty in meeting the requirement. The Secretary does not believe that it need result in the elimination of any small institutions because small institutions are already participating in electronic processes directly or are participating through third-party servicers.

Changes: None.

Comments: Two other commenters questioned whether an institution's electronic capabilities indicated that an institution was administratively capable.

Discussion: The Secretary believes that an institution's participation in electronic processes are essential to its demonstrating administrative capability. The Secretary believes that institutional use of electronics will result in business processes that improve service to, and reduce burden on, students and will result in improved institutional administration and accountability.

Changes: None.

Subpart K—Cash Management

Section 668.161 Scope and Purpose

Comments: One commenter, on behalf of student legal aid services

organizations, supported the Secretary's stated goals with regard to the purpose of the cash management regulations, and specifically appreciated the incorporation of the goal to minimize costs that accrue to students under the title IV, HEA loan programs as proposed in § 668.161(a)(1)(iii).

One commenter on behalf of the lending community recommended that the Secretary clarify in regulations that the cash management rules under subpart K apply to a third-party servicer employed by the institution to distinguish between other third-party servicers employed by lenders and guaranty agencies.

A few commenters on behalf of the lending community expressed concerns about proposed § 668.161(a)(3)(iii) with regard to the use of the term ''disburse'' to mean the same as deliver loan proceeds under 34 CFR 682 of the FFEL Program regulations. These commenters were worried that the distinction between the terms ''disburse'' and ''deliver'' would be eliminated in the FFEL Program regulations. The commenters pointed out that under the FFEL Programs a lender or escrow agent is the disbursing agent who *disburses* the funds to the institution who, in turn, *delivers* the funds to the borrower and that the distinction is important in determining interest that accrues to the government and to borrowers. One commenter noted that current provisions regarding restricted interest arose out of Negotiated Rulemaking discussions. The commenter argued that the current definition of disbursement in the FFEL program regulations allows the lender to utilize a readily identifiable date for this purpose and that the definition should be retained under the FFEL Program regulations.

Several commenters writing on behalf of the lending community opined that because FFEL Program funds are provided by lenders, rather than the Secretary, and unlike other title IV, HEA programs those funds are private capital, FFEL Program funds are held in trust by the institutions for the student beneficiaries, the lenders and the Secretary, and the distinction should be noted in this section.

Discussion: The Secretary disagrees with the commenter who suggested that § 668.161(a)(2) be revised to distinguish between third-party servicers employed by institutions and other third-party servicers employed by lenders and guaranty agencies. The Student Assistance General Provisions regulations govern institutions and their third-party servicers. The rules that govern lenders, guaranty agencies and their third-party servicers are found in 34 CFR 682 of the FFEL Program regulations. Therefore, it is unnecessary to distinguish in these regulations that the third-party servicers affected are those employed by institutions.

With respect to the concerns raised regarding the use of the term ''disburse'' under subpart K to mean the same as ''deliver loan proceeds'' under the FFEL Program regulations, the Secretary wishes to clarify that this is not a change from current rules.

For the FFEL Programs, the Secretary is cognizant of the distinction made in the HEA between a ''disbursement'' by a lender and ''delivering the proceeds of the loan'' by an institution to a borrower. The definition of disburse under the FFEL Program regulations remains unchanged for purposes of determining interest due. As discussed previously in the cash management NPRM of September 29, 1994 (59 FR 49766–49773), the term disburse solely as used in subpart K, corresponds to the concept of delivery of proceeds under the FFEL Program regulations in order to prevent confusion by utilizing a single term for all title IV, HEA programs to which certain rules and timeframes under subpart K apply. In the most recent NPRM, the Secretary merely relocated the explanation from the definitions section, which was eliminated, to § 668.161, Scope and purpose. The Secretary will take into consideration this issue in the context of HEA reauthorization.

The Secretary agrees with those commenters who suggested that a distinction should be made between those funds provided by the Secretary and those funds provided by lenders and guaranty agencies for purposes of clarifying that an institution holds FFEL Program funds in trust and may not use those funds for any unintended or unauthorized purpose.

Changes: Section 668.161(b) is revised to clarify that FFEL Program funds are held in trust by an institution for the intended student beneficiaries, the lenders, the guaranty agencies, and the Secretary.

Comments: One commenter requested clarification concerning the applicability of the provisions of these regulations to State institutions in a State with an agreement between the State and the U.S. Department of the Treasury (Treasury) under the Cash Management Improvement Act of 1990 (CMIA). The commenter recommended that provision for the CMIA agreements be incorporated into these regulations.

Discussion: The Secretary agrees with the validity of the commenter's concern regarding the applicability of the provisions of these regulations to State institutions in a State with an agreement with the Treasury under the CMIA. Such an agreement is uniquely negotiated between the Treasury and the State and concerns requesting and transferring funds between a State and the Treasury. Further, a State's agreement with the Treasury is specific as to the federally funded programs that are covered. For these reasons the Secretary does not believe it is necessary or appropriate to incorporate specific references to CMIA agreements into these regulations.

Changes: None.

Section 668.162 Requesting Funds

Just-In-Time Payment Method (§ 668.162(c))

Comments: While most commenters understood and supported the Secretary's plans to transition the operations of the title IV, HEA programs into an integrated delivery system and to improve program accountability, many commenters expressed reservations about the implementation of the just-in-time payment method.

Their reservations primarily were due to their perceptions that there was a lack of specificity concerning operational features, concerns regarding potential expenses and reporting burden, issues such as the unpredictability of changes in student eligibility, and a belief that the Secretary was addressing issues of fraud and abuse that should be addressed through enforcement actions. Commenters were concerned about whether there would be adequate Department staff and resources to ensure that all requested funds would be sent to institutions within adequate timeframes. Some commenters recommended that the Secretary develop a pilot to provide adequate testing of the new payment method.

Commenters were also concerned that institutions would lose flexibility under this payment method as opposed to the advance payment method under which an institution may receive Federal funds without providing information on the students for whom the funds are intended. The commenters stated that financial aid offices are at their busiest just before the start of classes, and the commenters believed that they would be coping with an increase in reporting activity that would be time-consuming and staff-intensive. Other commenters were concerned that a student's funds might be held up due to processing problems; thus, the student would be forced to take out a short-term loan, to borrow from family or friends, or to withdraw from the institution.

Discussion: As the Secretary noted in the preamble to the NPRM, the just-in-time payment method is a core element to creating the Project EASI vision of a student-centered integrated student aid delivery system. Providing student-level information for one or more programs in a single process and using that same information to provide funds to institutions is the basis for reengineering the delivery system and reducing duplicative, uncoordinated, and unreconcilable systems. The Secretary believes that using a just-in-time payment method in a reengineered delivery system will result in improved business processes and better management of the title IV, HEA programs and will improved accountability at problem institutions. The Secretary recognizes and very much appreciates the concerns that the commenters have expressed. The Secretary believes that many of these concerns will be addressed in the design of the system that will support the just-in-time payment method. The Secretary understands that further work is needed on the development of the system before the system can be implemented, and the Secretary plans to further involve institutions and other participants in the Title IV, HEA Programs in the development of the system. In addition, when the system is further developed, the Secretary expects to use this payment method only at institutions that volunteer to participate in it. Moreover, the Secretary will permit those institutions to choose the particular Title IV, HEA programs to run under the just-in-time method. Thus, for example, an institution may volunteer to participate in the just-in-time method for the Pell Grant program only and continue to receive funds under the advance system of payment for the Direct Loan and campus-based programs.

Changes: None.

Section 668.163 Maintaining and Accounting for Funds

Comments: A number of commenters supported the Secretary's proposal to eliminate the requirement under § 682.207(b) that an institution maintain a separate bank account for FFEL Program funds. One commenter expressed concern that not requiring a separate account may provide an opportunity for institutions to abuse title IV, HEA program funds.

Discussion: The Secretary appreciates the commenters support of this proposal. The Secretary continues to believe that there is no longer any compelling reason to require a separate account for FFEL Program funds provided by EFT or master check. The Secretary further believes that, by requiring an institution to comply with the bank account notification requirements and the accounting and financial records prescribed in this section, he will greatly reduce the opportunity for institutions to abuse Federal funds.

Changes: None.

Section 668.164 Disbursing Funds

Definition, Disbursement

Comments: Several commenters requested that the Secretary clarify the discussion in the preamble that ''a disbursement occurs when an institution makes the benefits of title IV, HEA program funds constructively available to students.'' These commenters maintained that it is difficult, if not impossible, to determine the difference between funds made constructively available and bill preparation that includes crediting the student's account. The commenters argued that since institutions consider a student's title IV, HEA program awards as a payment toward tuition and fee charges, students realize the benefits of their title IV, HEA program awards when institutions allow them to enroll for and attend classes even though institutions have not yet received Federal funds for those awards.

A few other commenters suggested that the preamble discussion that ''the Secretary does not consider that a disbursement is made if, solely for the purpose of preparing a bill for a student, an institution must credit the student's account at the institution'' be codified in final regulations to avoid any misunderstanding between the preamble and the regulations.

Many commenters representing institutions and higher education associations objected to the provision that a title IV, HEA program disbursement occurs on the date that an institution credits a student's account or pays the student or parent directly with institutional funds used in advance of receiving title IV, HEA program funds. Some of these commenters regarded this provision as an intrusion in the way that institutions bill students and post payments to student accounts and questioned whether the Secretary has the authority to regulate the use of institutional funds in this manner. Other commenters believed that an institution should have a choice in determining whether to use institutional funds in advance of title IV, HEA program funds since the institution is solely liable for any funds advanced. In addition, the commenters stated that at many institutions tuition is generally billed and payable long before acceptable disbursement dates for title IV, HEA program purposes. At these institutions, students are not considered to be ''officially enrolled'' until tuition is paid in cash or by institutional credit, with such payments or credits occurring many months prior to the start of classes. Another commenter believed that the use of institutional funds to credit a student's account should not be held to the same requirements as a credit of actual title IV, HEA program funds. This commenter, along with other commenters, noted that in many cases the crediting of institutional funds is the result of a ''short-term loan'' from the institution to the student (*e.g.,* to enable the student to pay for off-campus housing) pending the institution's receipt of title IV, HEA program funds and the subsequent disbursement of those funds to the student. Still another commenter maintained that the ability to credit a student's account with institutional funds prior to the receipt of title IV, HEA program funds offers important administrative flexibility to institutions to manage workload and was adamant in stating that until title IV, HEA program funds are utilized no disbursement of any Federal funds has taken place. One commenter recommended that the Secretary include in the final regulations the exception to the definition of disbursement found in the preamble discussion of the proposed regulations concerning institutions that, in order to create a bill, must credit the student's account on the general ledger. The commenter was referring to the discussion in the preamble of the proposed regulations where the Secretary noted that he does not consider that a disbursement is made if, solely for the purpose of preparing a bill for a student, an institution must credit the student's account at the institution by making a general ledger entry.

Discussion: The Secretary appreciates the commenters' concerns regarding the proposed definition of ''disbursement'' and the apparent ambiguities surrounding that term both in the proposed regulation itself and in the preamble. The Secretary hopes to clarify that term in the following discussion and in a revision to the final regulations.

It is the Secretary's view that a disbursement of Title IV, HEA program funds occurs when an institution credits a student's account or pays a student directly, and indicates that the source of that payment is a Title IV, HEA program. Thus, if an institution credits a student's account at the institution with $1,200 and indicates on the account that the $1,200 credit is a

Federal Pell Grant award, the institution has made a Federal Pell Grant disbursement regardless of whether the institution used its own funds or federal funds for that credit.

On the other hand, if the institution simply makes a memo entry for billing purposes or credits a student's account and does not identify the credit as a credit for a title IV, HEA program, the Secretary considers that the institution did not make a Title IV, HEA program disbursement. For example, if the ledger entry calls the credit an ''estimated Federal Pell Grant,'' the Secretary does not consider the institution to have made a Federal Pell Grant disbursement. Consequently, it is the institution that controls whether a payment to a student is a Title IV, HEA program payment.

The Secretary understands that there are institutions that are required by State or local law to credit a student's tuition and fee account with Title IV, HEA program funds in order to send the student a tuition and fee bill. In addition the Secretary believes that there are other institutions that, because of accounting and billing systems constraints, also credit students' accounts in order to generate billing statements. These institutions may send these bills far in advance of the first date that an institution can disburse Title IV, HEA program funds under these rules. The Secretary further understands that these institutions credit a student's tuition and fee account with Title IV, HEA program funds but do not actually take Federal funds to satisfy these credits until they are permitted to do so under the cash management rules.

The Secretary has amended the definition of the term ''disbursement'' to accommodate these institutions. Under the amended definition, the Secretary will not recognize that a disbursement of Title IV, HEA program funds takes place until the first day that such a disbursement can take place, 10 days before the first day classes, or 30 days after the first day of classes for FFEL or Direct Loan proceeds for a first year first time borrower.

The Secretary acknowledges that some institutions may need to make administrative or systems changes to comply with these new requirements. Therefore, the Secretary may not take an adverse action against an institution that fails to satisfy the requirements during the 1997–98 award year if the Secretary determines that the institution had insufficient time to make the necessary changes.

Changes: The Secretary is revising the definition ''disbursement'' in § 668.164(a) to provide that if an institution credits a student's institutional account with title IV HEA program funds earlier permitted under the provisions of § 668.164 solely for the purpose of preparing a tuition and fee bill for that student, the Secretary will recognize that disbursement as being made on the first day that it would be permitted to be made under that section.

Direct Loan Disbursements (§ 668.164(d)(3))

Comments: Several commenters questioned the significance of the provision that requires that institutions disbursing Direct Loans to student accounts must first credit Direct Loan funds to the student's account to pay for outstanding current and authorized charges. These commenters asked why the Secretary does not require Federal Perkins Loan Program and FFEL Program loans disbursed to student accounts to be applied first to the student's account to cover outstanding current and authorized charges and suggested that the Secretary may be moving away from parity between the Direct Loan and FFEL programs.

Discussion: This provision is based on the statutory requirement that Direct Loans be applied to the student's account for tuition and fees, and in the case of institutionally owned housing, to room and board. See § 455(j)(1) of the HEA. This requirement does not result in any significant inequity between the FFEL and Direct Loan programs. Rather, this provision simply promotes the use of EFT to student accounts as a means of disbursing to borrowers. This statutory requirement only applies to schools that actually disburse funds directly to student accounts. Furthermore, this statutory requirement does not require that Direct Loan funds must be credited to the student's account prior to other funds, *i.e.,* grants and other loans. This provision simply requires that if there is any outstanding balance for current outstanding or authorized charges on the student's account when Direct Loan funds are disbursed to that account, Direct Loan funds must be applied to those outstanding charges before any Direct Loan funds are disbursed directly to the borrower.

Changes: None.

Early Disbursements (§ 668.164(f))

Comments: One commenter was concerned about the requirement that an institution may disburse title IV, HEA program funds on the later of 10 days before the first day of class or the end of the prior payment period in which the student received title IV, HEA program funds. The commenter believed that this requirement would delay disbursements until after classes would have started in instances where the time between payment periods is less than 10 days. The commenter believed, for example, that if only seven days separated two quarters, the disbursement for the second payment period would be delayed until the third day of classes in the second quarter.

Two other commenters were concerned that the requirements were a change from current requirements for educational programs using academic terms and credit hours. For these educational programs, the commenters understood the current requirements to allow an institution to make a disbursement up to 10 days prior to the subsequent term. For example, one of these commenters noted that, when one term ends on Friday and the next term begins on a Monday, the current regulations (34 CFR 668.165(c)) provide that an institution may make a disbursement up to 10 days prior to the Monday on which the subsequent term begins.

Discussion: In general, under proposed § 668.164(f), an institution would be able to disburse funds for a subsequent payment period the later of (1) 10 days before the first day of classes of the payment period, or (2) the date the student completes the previous payment period for which he or she receives title IV, HEA program funds. Under the proposed regulations, in the first commenter's example, the institution would be able to make a disbursement for the second quarter up to seven days prior to the beginning of the second quarter instead of three days into the second quarter as the commenter believed.

The Secretary agrees with the comments of the other two commenters that the proposed regulations would be a change in the requirements. The Secretary intended to coordinate the requirements for early disbursements with the implementation of the disbursement of all title IV, HEA assistance by payment periods. The Secretary did not intend to change the current policy for educational programs offered using semesters, trimesters, or quarters that allows an institution to disburse title IV, HEA assistance up to 10 days prior to the beginning of a payment period regardless of the ending date of the prior payment period.

Changes: The Secretary has revised the requirements in § 668.164(f) to provide that, in the case of an educational program offered using semesters, trimesters, or quarters, an institution may disburse title IV, HEA program assistance up to 10 days prior to the beginning of any payment period.

This revision is also in accordance with the disbursement requirements for the FFEL and Direct Loan programs for educational programs that do not use semesters, trimesters or quarters.

Late Disbursements (§ 668.164(g))

Comments: Several commenters expressed support for the proposal to consolidate the late disbursement requirements into the cash management subpart of the regulations. They believed that this proposal would promote clarity and that the uniformity will enhance program efficiency.

One commenter believed that a conflict has been created in the Secretary's effort to consolidate the Federal Pell Grant Program rules with the other title IV, HEA program's late disbursement rules in § 668.164(g). The commenter stated that the proposed provision in paragraph (g)(2) gives an institution discretion to make late disbursement payments to a student for up to 90 days after the student's last date of attendance to pay for educational costs that the student incurred while enrolled. The commenter stated that § 690.78 of the current Federal Pell Grant regulations *requires* the institution to disburse funds to a student if the student requests those funds within 15 days after the last date of his or her enrollment ends in the award year. If the student has not picked up the payment at the end of the 15-day period, then he or she forfeits the right to it. However, an institution could use its discretion to disburse Federal Pell Grant funds after the 15th day.

Discussion: The Secretary appreciates the commenters' support for the proposal to consolidate the late disbursement provisions into the cash management subpart of the regulations.

The Secretary does not agree with the commenter that there is a conflict between the provisions of § 690.78 and the proposed rule in § 668.164(g) because they each deal with a different matter. Section 690.78 deals with the situation where an institution pays an eligible student by check but the student does not pick up the check. That section indicates that the student forfeits his or her right to the check after a certain time. Section 668.164(g)(2) deals with the situation where a student becomes ineligible before the institution makes a payment to that student and the circumstances under which the institution can make that payment anyway.

Changes: None.

Comments: One commenter representing a guaranty agency objected to the proposal that in order to make a late payment of an FFEL Program loan, before the date the student became ineligible, an institution must have received a SAR from the student or an ISIR from the Secretary, and must have been certified the student's loan application. The commenter indicated that this proposal would penalize students due to the institution's failure or inability to drawdown ISIRs before a student became ineligible. The commenter believed that if the student is otherwise eligible and the institution draws down (or obtains) the student's ISIR or SAR prior to the disbursement of funds, the institution should be able to deliver the loan to the student. The same commenter also indicated that the certification of a loan application after the date on which the borrower becomes ineligible does not impact program integrity since the institution would still be required to certify a cost of attendance which only covers costs incurred by the student during the period when the student was eligible.

One commenter questioned why there are different proposed rules for loans and grants. The commenter objected to the proposal that disbursement of loans may only be made if the student has graduated or completed the loan period, while grant payments may be made regardless of the student's status. The commenter believes that the loan provisions should match the late disbursement provisions for Federal Pell Grants.

Discussion: Under the FFEL Programs, the HEA requires that an institution certify that a student is an eligible student at the time it certifies the student's loan application. Therefore, the commenter's suggestion is not legally supportable. In addition, the Secretary believes that in order for an institution to make a late disbursement to an ineligible student, that student must meet a core requirement: he or she must have applied for those funds and the institution must received an ISIR or an SAR with an official EFC before he or she became ineligible.

The Secretary also disagrees with the commenter who believes the late disbursement provisions should be identical for loans and Federal Pell Grants. Under the HEA, an institution is prohibited from making a late second disbursement of a Direct Loan or FFEL loan unless the student had graduated or successfully completed the period of enrollment for which the loan was intended. No legal restriction applies to grants.

Changes: None.

Comments: Several commenters objected to the proposed requirement that would make a written acceptance of a Federal Perkins Loan or an FSEOG Program award from a student a condition for making a late disbursement. The commenters noted that the Federal Perkins Loan and FSEOG Program regulations do not require signed acceptance letters. The commenters view this proposal, therefore, as unnecessarily burdensome.

Several commenters writing on behalf of guaranty agencies, student loan servicers, and education associations believed that in paragraph (g)(3) the proposed language, ''If a *student* qualifies for a late disbursement . . .'', should be changed to read, ''If a *borrower* qualifies for a late disbursement . . .''. The commenters stated that the current proposed language using the word ''student'' restricts the approval of late disbursements to student borrowers, and fails to account for PLUS loans made to parent borrowers who are eligible to receive a late disbursement.

Discussion: The Secretary agrees with the commenter's objections regarding late disbursements of a Federal Perkins Loan or an FSEOG Program award and has made appropriate changes.

The Secretary also agrees with the commenters that the proposed regulations restrict the approval of late disbursements to student borrowers and fails to account for PLUS loans made to parent borrowers, and will revise the section accordingly.

Changes: The Secretary revises paragraph (g) to remove the proposed provision that would require an institution to have received from the student an acceptance of the Federal Perkins Loan or an FSEOG Program award before making a late disbursement. Instead the institution will merely have to show that it awarded a student a loan or grant before the student became ineligible.

The Secretary also revises paragraph (g) to allow for PLUS loans to be disbursed under these same late disbursement provisions.

Comments: One commenter writing on behalf of a consumer law center objected to the Secretary's discussion of documented educational costs that student's incur before they become ineligible. The commenter believed that the preamble statement leaves the impression that the Department is creating a lesser standard of proof for institutional charges. The commenter believed that this would permit institutions to charge students with improper and inflated costs. For example, the commenter was concerned that the preamble discussion would allow an institution to charge students who have withdrawn after just two

weeks for *all* the term's books and supplies regardless of whether the student received them or returned them. According to the commenter, inflated add-on expenses have been a serious problem area with some institutions, particularly those that require high-cost supplies and that have their own book distribution and even publishing companies. The commenter further questioned whether the Department intends to sanction such overcharges. The commenter suggested that the preamble of the final regulations specify that the individual student's alleged costs must be documented, and that any policy the institution develops must be based solely on books or supplies *actually received* by the student and not returned to the institution. The commenter concluded by suggesting that the preamble of the final regulations specify that such policies developed by the institution must comply with pertinent State law, if any, on the issue of permissible charges to students.

Discussion: The Secretary believes that the commenter misconstrued the intent and effect of the Secretary's preamble discussion on this matter. The Secretary sought only to expand the means by which an institution might account for educational costs without the added burden of requiring each student to keep a detailed expenditure account. The preamble discussion did not address what the commenter was concerned about, improper and inflated institutional charges.

It was not the Secretary's intent for that this discussion appear to sanction unscrupulous practices. With regard to the commenters suggestion that the preamble should state that institutional policies on permissible charges to students must comply with State law since the Secretary assumes that institutions must comply with applicable State laws at all times.

Changes: None.

Comments: Many commenters writing on behalf of loan servicers, guaranty agencies, education associations, and business officers overwhelmingly supported the 90-day timeframe for making a late disbursement after the date a student becomes ineligible. However, these commenters were concerned about conflicting policies, such as the 60-day late disbursement timeframe in the current FFEL Program regulations. The same commenters indicated that since funds are *disbursed* by the lender and *delivered* by the institution, in some instances, especially with check disbursements, a lender may meet the 90-day *disbursement* requirement but the institution could not deliver the proceeds to the student borrower within the 90-day timeframe. These commenters concluded by suggesting that the provision be revised to reflect that late disbursements may be delivered by the institution provided the lender disburses funds, or the institution draws down funds, within 90 days after the date the student becomes ineligible.

Discussion: The Secretary agrees with the commenters that the 90-day late disbursement timeframe should coincide with the current FFEL Program regulations, and that corresponding changes are needed to remove conflicting policies referenced in those regulations. Section 668.164(g) provides that if a student is eligible for a late disbursement, the institution is permitted to make the late disbursement within 90 days after the date the student becomes ineligible. Contrary to the suggestion of the commenters, the Secretary requires that the delivery of the FFEL Program loan proceeds to the student (or parent) by the institution must be made within this 90 day period. Therefore, a lender would have to make a disbursement to the school that would provide sufficient time for the school to comply with this requirement.

Changes: The Secretary revises the late disbursement provisions found in 34 CFR 682.207 of the FFEL Program regulations to conform to the changes in § 668.164(g).

Section 668.165 Notices and Authorizations

Award Notice (§ 668.165(a)(1))

Comments: One commenter, writing on behalf of student legal aid services organizations, strongly supported the proposed requirement concerning notification by the institution of the amount of funds a student could expect to receive under each title IV, HEA program and how and when those funds would be disbursed. The commenter also supported the proposal that, if those funds include Direct Loan or FFEL Program funds, the notification indicate the amounts of subsidized loans and the amount of unsubsidized loans. The commenter further noted that there is apparently a proposal under review to eliminate a question on the FFEL loan application that provides the applicant with the opportunity to indicate whether he or she wishes to apply for a subsidized or an unsubsidized loan. The commenter cautioned that the notice requirement in § 668.165(a) should not be used as a reason to eliminate that question on the application.

A couple of commenters suggested that the notification requirement regarding the amount of subsidized and unsubsidized loans duplicates information provided by lenders.

Discussion: The Secretary would like to emphasize that the notice requirement regarding the amount of subsidized and unsubsidized loans is not intended to eliminate a borrower's right to choose whether to apply for a subsidized or unsubsidized loan. As to the commenters suggestion that this notice requirement may duplicate information otherwise provided by lenders, the Secretary believes that it is useful for an institution to provide a student with his or her total aid package even though some of the information provided to the student might be also provided by others at other times.

Changes: None.

Comments: One commenter was concerned that the institution may not have definitive information regarding the amount and types of loans that will be disbursed until the lender issues a disclosure notice. In addition, the commenter cautioned that while institutions indicate when a disbursement should be made, sometimes lenders do not adhere to these dates, and students expect that whatever dates are given to them are sacrosanct.

Another commenter, writing on behalf of the lending community, suggested that this section be revised further to state that if the amount of loan funds or subsidy type (*i.e.*, subsidized or unsubsidized) changes after the institution's initial notification, the institution or its agent must notify the borrower within 30 days after the change.

Discussion: With respect to the comment that the institution may not have definitive information regarding the amount and types of loans that will be disbursed, the Secretary reminds institutions that they are responsible for certifying, and thus requesting from the lender, a specific type and amount of loan, or in the case of a Direct Loan of originating a specific type and amount. However, the Secretary understands that in some limited number of instances, the lender may reduce the certified amount of the loan as a result of a borrower's request or enforcement edits. The Secretary also understands that the actual disbursement received from the lender might differ slightly from what the institution expected because of loan fees and rounding differences. Thus, the Secretary allows the information provided in this notice to include the gross amount of the loan disbursement or a close approximation of the net

disbursement amount. The Secretary considers that an institution meets the notice requirement if it provided the best information it had.

With regard to the comment that some lenders do not adhere to the disbursement dates requested by the institution, the Secretary reminds both institutions and lenders that the FFEL Program regulations require the lender to comply with the disbursement dates provided by the institution, assuming that the requested dates meet all statutory and regulatory requirements.

With respect to the suggestion that the notice requirement be expanded to require an institution or its agent to notify a borrower within 30 days regarding loan changes, the Secretary believes that it is not necessary to proscribe specific timeframes for either the initial notice or any required revisions.

Changes: None.

Comments: A few commenters agreed with the proposal to notify students about PLUS funds. One commenter expressed concern about the violation of the privacy of a parent borrower under the PLUS programs when the notice is sent to the student.

Discussion: The Secretary believes that the student should be informed of all title IV, HEA aid awarded to, or on their behalf. The Secretary believes that right outweighs any privacy right a parent may have with regard to a PLUS loan.

Changes: None.

Disbursement Notice (§ 668.165(a)(2))

Comments: Many commenters writing on behalf of business officers and financial aid administrators disagreed with the proposed changes in the notification requirements regarding the disbursement of Direct Loan, Federal Perkins Loan Program, or FFEL Program funds that are provided *via* EFT or master check. Several commenters disagreed that any such notification should be required of institutions. These commenters argued that student and parent borrowers are notified of loan amounts, estimated disbursement dates, and their rights and responsibilities, including those regarding the cancellation of loans, several times during the application process by the institution, lenders, guaranty agencies, or the Secretary. Many commenters felt that adequate information was already provided to borrowers through award letters, loan counseling, debt reduction efforts on behalf of the institution, and other required notifications such as on the promissory note and in terms and conditions publications.

A few commenters suggested that if additional information regarding students' and parents' loan disbursements, rights, and responsibilities needs to be disclosed to borrowers, the information should be provided by lenders, included on the promissory notes, or in other consumer disclosure notices already required. One commenter suggested the notification be added to the award notice under paragraph (a)(1) of this section. The commenters indicated that another notice would be administratively burdensome, costly, and unnecessarily confusing to students and parents. One commenter thought that the proposal was contrary to President Clinton's directive to Federal agencies to reduce regulatory and paperwork burden.

Discussion: The Secretary appreciates the detailed comments submitted by all parties regarding the requirement that an institution notify a student or parent borrower of the date and amount of Direct Loan, FFEL, and Federal Perkins loan funds that are disbursed by crediting the student's account at the institution. The Secretary considers the initiation of an EFT of title IV, HEA program loan funds to a student's or parent's bank account and the subsequent withdrawal of funds from that account to pay for tuition and fees or other authorized charges, to be the same as directly crediting the student's account at the institution and therefore subject to these notification requirements.

The Secretary wishes to emphasize that this notice requirement is not new but is a continuation of existing requirements. The provision reflects the Secretary's continuing view that a borrower is entitled to be informed when his or her title IV loan funds are being used by the institution to pay institutional charges thereby generally making the borrower liable for those loan funds.

Changes: None.

Comments: Several commenters specifically opposed allowing a student or parent to cancel a loan that had been disbursed, citing increased administrative burden and inconvenience. Two commenters argued that the cancellation notice is unnecessary, because an EFT already requires an authorization and therefore, a borrower's right to have funds delivered by check is protected, and the current rules already require a notice to the borrower that loan funds have been credited to his or her account. The commenters contended that the proposed rule was designed to undermine the premise by which the loan was requested. A few commenters suggested that students and parents would ''game'' the system and misuse the federal loan programs as cash flow assistance or short-term bridge loans pending receipt of other funds with which they intend to pay their tuition, fees, room and board.

Discussion: The Secretary believes that regardless of the manner in which a loan is provided to an institution, and regardless of the way the institution chooses to disburse that loan, the borrower should have the opportunity to decline that loan at, or close to, the time the funds are disbursed and the debt incurred. Since a borrower has this opportunity if loans are disbursed in the form of checks, the Secretary believes an alternative option should be available for EFT and master check disbursements. The Secretary believes that the borrower's authorization of an EFT transfer takes place too early in the loan process to satisfy this consideration.

The Secretary disagrees with the commenters who suggested that this requirement would be overly burdensome. The Secretary developed this requirement with the existing notice system in mind. As a result, an institution can piggyback on other required notices, it does not have to send a separate notice. This matter is further discussed under another series of comments.

With respect to the commenters who suggested that the notification will lead to students and parents ''gaming'' the system and using Federal funds as cash flow assistance, the Secretary disagrees that the required notification will in any way influence whether a student or parent would act in such a manner.

Changes: None.

Comments: Many commenters supported the notification requirement. A handful of commenters indicated that their institutions grant cancellation requests of a student or parent request even after the loan has been disbursed. Several commenters writing on behalf of the lending community expressed support of the cancellation provision likening it to a ''right of recession'' period provided for under other consumer loans.

Some commenters writing on behalf of financial aid administrators expressed concern regarding how the cancellation provisions would affect the requirement that a title IV, HEA credit balance must be paid within 14 days after the first day of classes or within 14 days after the date on which the credit balance occurs, whichever is later. The commenters thought there would be a conflict between the 14-day credit balance rule and the 14-day loan

cancellation provision and that institutions would be required to cancel a loan or loan disbursement by returning institutional funds to cover a loan when all or a portion of the loan was already paid to the student or parent. The commenters concluded that the institution would have to then bill the student or parent for those funds.

A few commenters writing on behalf of financial aid administrators were concerned about how the 14-day cancellation provision would affect institutional refunds as required under § 668.22. One commenter contended that the cancellation provision ignored an institution's right to retain title IV, HEA program funds earned by the institution under refund regulations. This commenter argued that if a borrower decided to withdraw and cancel a loan, the institution may be denied that portion of the loan to which it may be entitled under its refund policy. It would then be required to bill the student for the unpaid amount of the tuition and fees to which the institution was entitled.

Discussion: The Secretary appreciates the support of the commenters for this provision.

The Secretary disagrees with the commenters regarding any conflict between the loan cancellation provisions and the credit balance provisions. When a borrower exercises his or her right to request the cancellation of a loan or loan disbursement, the borrower can only request that the institution cancel and return to the lender those loan funds that the institution used to pay institutional charges or is still holding on behalf of the borrower. Thus, if an institution released title IV, HEA program loan funds to the student or parent as part of a credit balance and then received a request to cancel the loan, it would not be required to return those funds previously released to the student or parent.

The Secretary agrees with the commenters who pointed out that the cancellation provisions may have an impact on an institutional refund under § 668.22. The Secretary reminds the commenters that the refund requirements determine the unearned portion of the actual charges for the period of enrollment for which a student has been charged, not the source from which the institution earns funds. The determination of the amount of aid received by, or on behalf of, the student takes place before a refund is calculated. If students or parents avail themselves of the cancellation provision, a refund calculation may reflect greater unpaid charges than would have existed if the loan had not been cancelled. The Secretary points out that, contrary to the commenter's assertion, there is no ''portion of the loan to which it (the institution) may be entitled under its refund policy'' when a student withdraws.

The institution, after returning the requested loan funds to the lender, would simply calculate the refund without consideration of the cancelled loan, much as it would do if the loan had never been disbursed or the student refused to accept a late disbursement. Any time a refund calculation establishes unpaid charges to which the institution is entitled that have not been paid by another source, the institution may bill the student for the unpaid amount. The Secretary assumes that the student who requested the loan cancellation understood the implications of that request and its impact on remaining debt to the institution.

Changes: None.

Comments: A commenter writing on behalf of student legal services organizations supported the cancellation provision but suggested that the Secretary include language in the regulations that allows a student or parent to refuse a loan or loan disbursement in whole or in part. A significant number of the commenters agreed with the Secretary that student and parent borrowers should be informed of their rights to cancel a loan or loan disbursement, but disagreed with the proposed timeframe within which the institution would be required to notify the student or parent borrower. The commenters said the timeframe was too short, and in many cases would require a completely separate notice to be sent out by the institution. Most commenters suggested that the timeframe be extended from the 20-day window between 10 days before the disbursement and 10 days after the disbursement, to a timeframe that allows for the notice to be easily included in monthly statements already prepared and issued by the institutions. These commenters cited increased administrative burden and the cost of systemic changes for an additional notice, which would ultimately be passed on to the students, as reasons to extend the timeframe. Other commenters contended that such a narrow timeframe in combination with the few number of students or parents who would take advantage of the cancellation provision would increase administrative burden on the institutions without providing much, if any, additional benefit.

A few commenters were concerned that due to the proposed changes in the definition of disbursement under § 668.164, the 10-day timeframe on either side of the disbursement would be difficult to determine. One commenter suggested that the beginning date of the notification timeframe be pushed back at least to 15 days prior to the first day of a payment period to allow a cancellation to be made before the institution might need to process a refund. At least one commenter suggested that there be no required timeframe; that the institution be provided flexibility in determining when to notify students and parents.

Discussion: The Secretary agrees with the commenter that a borrower should be allowed to cancel all or a portion of his or her loan. With regard to the number of thoughtful comments provided concerning the timeframes proposed for the notification by the institution to the borrower, the Secretary is persuaded that a change is necessary. Therefore, the Secretary is expanding the timeframe from a 20-day window to a 60-day window. Institutions will be required to provide the notice to the borrower by the institution no earlier than 30 days before the disbursement of the loan funds and no later than 30 days after the disbursement. The Secretary believes that this 60-day window will provide sufficient flexibility for institutions to utilize existing systems and processes to provide information to borrowers that a loan debt has been, or is about to be incurred and of the right of the borrower to request that the debt be cancelled.

However, in order to ensure that the borrower has sufficient time to exercise his or her cancellation rights, the Secretary is also modifying the proposed timeframe placed on the borrower with regard to how quickly he or she must notify the institution of the request to cancel all or a part of the loan. The institution must honor such a request from the borrower if it is received by the institution no later than 14 calendar days from the day the institution sent the notice to the borrower, or the first day of classes for the student, whichever is later. This extension up to the first day of classes will allow the borrower who receives the required notice 30 or 40 days before the beginning of classes (early disbursement allowed 10 days before the first day of classes of a payment period) the opportunity to consider other funding options and request the cancellation before incurring the obligation.

The Secretary notes that an institution is free to agree to a borrower's request

for loan cancellation after the timeframe established by this rule.

Changes: The notice requirements in § 668.165(a)(2)(ii) are amended to allow a student or parent to cancel all or a portion of a loan or loan disbursement. The timeframe under § 668.165(a)(3)(i) is amended to allow the institution to provide the required notice no earlier than 30 days before, and no later than 30 days after, the date the institution has disbursed, or will disburse loan funds. The timeframe during which a student or parent may request a loan cancellation is amended to provide that the student or parent has a minimum of 14 days from the date the notice was sent by the institution to request a cancellation. If the notice is sent out prior to the first day of classes the student or parent has 14 days or until the first day of classes to request a cancellation, whichever is longer.

Comments: A few commenters wondered how this cancellation provision would affect the rule that borrowers can have a loan cancelled within 120 days of the disbursement if the net amount (minus the guarantee and insurance fees) of the loan is returned, and prepaid after 120 days if the gross amount of the loan is returned (including the guarantee and insurance fees).

A few commenters indicated that if the notice in § 668.165(a)(2) is provided electronically the institution should not be required to request receipt of that notice. One commenter expressed doubt that such an electronic notification could realistically be provided for the majority of students and parents. The commenter contended that because this opportunity could not be utilized by many institutions, that the overall result is increased administrative burden on institutions. The commenter urged the Secretary to retain the current notification requirements.

Discussion: The 14-day cancellation provision does not eliminate or change the provisions that allow a borrower to return the net amount of an FFEL or Direct Loan program loan within 120 days or the gross amount of the loan after 120 days.

The Secretary does not believe that because some institutions do not have the capability to notify students or parents electronically that other institutions should be prohibited from utilizing electronic means of notification. In addition, the Secretary continues to believe that a ''return receipt'' for notices sent electronically is necessary in order to ensure that the electronic notification has been properly transmitted.

Changes: None.

Comments: A commenter writing on behalf of student legal services organizations suggested that the 14-day timeframe allowed for the borrower to request cancellation of the loan be from the date the notice is received by the student or parent rather than on the date the notice was sent by the institution. The commenter also suggested that the Secretary expand the timeframe within which a student or parent has to request a loan or loan disbursement cancellation to at least 60 days from receipt of the notice. The commenter noted that this period would parallel the Federal Fair Credit Billing Act, (15 U.S.C. 1666), which is part of the Consumer Protection Credit Act and provides credit card consumers with 60 days from the receipt of a credit card bill to dispute a charge. Under that Act the creditor must acknowledge a complaint within 30 days, and within 90 days either correct the error or explain why it cannot be corrected. The commenter argued that giving the borrower adequate time from receipt of the notice within which to ascertain whether or not a loan is truly necessary will foster sound borrowing practices and ultimately reduce loan defaults.

Discussion: The Secretary chose to make the timeframe run from the date of the institution's notice rather than from the date the student received the notice to avoid having the institution incur the cost and burden of sending such a notice return receipt requested. The Secretary continues to believe that the cost and burden is to great and the benefit to small to change that procedure. On the other hand, when the Secretary was considering these timeframes, the Secretary allowed for the relatively long timeframe of 14 days to take into account that the time period ran from the date of the notice rather than the date the borrower received the notice. In the event of a dispute, the institution would bear the burden of proving when it sent the questioned notice.

With regard to the reference to consumer credit, the Secretary points out that, unlike the consumer credit example cited, the purpose of this notice and cancellation provision is to acknowledge the fact that student loan debt is incurred, not when the promissory note is signed, but when the institution disburses the loan. These proposals are not designed to allow the student to ''test'' the product and then to make a determination that it is faulty and request that the debt be cancelled.

Changes: None.

Comments: Commenters writing on behalf of financial aid administrators believed that the institution should be able to let the borrower know of the possible impact of cancellation at the time the institution notifies the student or parent of his or her right to cancel a loan or loan disbursement.

Discussion: The Secretary agrees and encourages institutions to keep their students well-informed. However, the Secretary reminds institutions that they must not, in their attempt to provide this information, imply that the loan or loan disbursement cannot be cancelled if the cancellation leaves a balance owed to the school.

Changes: None.

Student and Parent Authorizations (§ 668.165(b)(1))

Comments: One commenter, writing on behalf of student legal aid services organization, asked for clarification of whether a student must have a title IV, HEA credit balance in order to take advantage of the authorization provisions in § 668.165(b)(1)(iii). The commenter also disagreed with the proposal to remove the current restriction prohibiting an institution that fails to meet the financial responsibility requirements from holding a student's or parent's title IV, HEA credit balance funds, and the proposal to remove the language stating that an institution, in holding title IV, HEA program funds, is acting as a fiduciary for the benefit of the student or parent. The commenter suggested that a paragraph be added to the regulations that prohibits institutions placed on reimbursement from obtaining student or parent authorizations, and further suggested that the Secretary retains the authority to prohibit institutions from holding student's or parent's title IV, HEA funds upon a determination of demonstrated weakness in administrative or financial capability.

Discussion: In response to the commenter's question, the Secretary wishes to make clear that a student or parent must have a title IV, HEA credit balance under § 668.164(e) in order to take advantage of the authorization provisions under § 668.165(b)(1)(iii).

The Secretary agrees in part with the commenter who suggested that the Secretary prohibit an institution on the reimbursement payment method from obtaining authorizations to hold a student's or parent's title IV, HEA program funds. The Secretary believes that a fixed rule may not be warranted under all circumstances. If the Secretary determines that there is demonstrated weakness in administrative or financial capability at an institution, the Secretary will take appropriate administrative action against the

institution which may include preventing it from obtaining student and parent authorizations under § 668.165.

With regard to the request by the commenter that the regulations in this section include a statement stating that the institution acts as a fiduciary for the benefit of the student or parent, the commenter is referred to § 668.161(b).

Changes: Section 668.165(b)(1)(iii) has been amended to give the Secretary discretion to prohibit institutions that have been placed on the reimbursement payment method by the Secretary from holding student funds in excess of allowable charges.

Comments: A few commenters questioned the necessity of a written authorization from the student, or parent in the case of PLUS funds. These commenters also questioned the necessity of obtaining written authorizations to use title IV, HEA program funds to pay prior-year charges, charges not included in the cost of attendance, and even future charges. One commenter contended that students and parents should be allowed to authorize the use of title IV, HEA credit balance funds for future charges because the funds, especially loan funds, are the student's or parent's which they must repay. The commenter argued that there is no logic to the practice of letting credit balance funds be used for prior-year charges but not for future-year costs. One commenter argued that students already sign a statement saying they will use aid for educational purposes. The same commenter questioned why an institution would want to pay a student credit balance funds when the student owes a debt to the institution from a previous year or for other charges. The commenter contended that this requirement causes more work for the institutions, confusion to students and parents, and results in no positive benefits to anyone.

Discussion: The Secretary continues to believe that any student or parent authorization under this section must be in writing. A student or parent should have control over the title IV, HEA program funds he or she receives for educational costs in excess of tuition and fees, and the Secretary believes that demonstration of that control must be documented. The Secretary notes that title IV, HEA program funds in excess of current-year tuition and fee charges are the students' funds and students are entitled to receive those funds within the specified timeframe.

With regard to comments concerning the use of current year funds to pay for prior-year charges or for future year charges, the HEA clearly indicates that title IV, HEA program funds are awarded to students to pay current year charges. In fact, the HEA requires that the student sign a ''Statement of Educational Purpose'' that includes a promise that any funds received will be used to meet educational expenses for that year. However, in response to institutional comments about the administrative problems of lingering prior-year charges on student accounts, the Secretary has authorized a limited exception and permits title IV, HEA program funds to be used to cover minor prior-year charges, if the institution had obtained the written authorization of the student to use those funds in that manner. There is no similar justification for extending this exception to future years and therefore this limited exception will not be extended into any future year. Therefore, an institution must release to the student any current year title IV funds remaining in the student's account at the end of an award year (or loan period).

Changes: None.

Single Authorization Throughout Period During Which a Student is Enrolled at the Institution (§ 668.165(b)(3))

Comments: Several commenters writing on behalf of financial aid administrators and the lending community supported the Secretary's proposal to eliminate the requirement that an institution must notify a student or parent annually of the provisions contained in an authorization previously provided to the institution. The commenters appreciated the reduction in administrative burden placed on institutions. One commenter supported the Secretary's efforts to identify areas where regulatory relief can be granted and urged the Secretary to continue these efforts. A few commenters suggested that this single authorization for the entire period during which a student is enrolled at the institution be extended to EFT authorizations.

One commenter on behalf of student legal aid services organizations opposed the removal of the requirement for annual authorizations and the annual extension procedures. The commenter indicated that keeping the current system was important since cancellations or modifications are not retroactive. The commenter argued that an annual notice advising students of their right to directly receive title IV, HEA credit balance funds is of minimal burden to institutions and is an important piece of consumer information for students.

Discussion: The Secretary appreciates the commenters' support of the proposal to eliminate an annual notice outlining authorizations previously provided to the institution.

With regard to the commenters opposition to these changes, the Secretary wishes to remind institutions that the initial authorization provided by the student must clearly and conspicuously provide the student with information about his or her right to cancel or modify the authorization at any time, as well as the implications of each of the authorized actions.

The Secretary will consider in the future the commenters' suggestion that a single authorization be provided for EFT transactions.

Changes: None.

Cancellation of a Student or Parent Authorization (§ 668.165(b)(4))

Comments: One commenter thought an institution should pay credit balances three days rather than 14 days after the institution receives a notice that a student or parent is cancelling an authorization to hold title IV, HEA program funds.

Discussion: The Secretary appreciates the commenter's position that title IV, HEA program funds should be paid timely. However, the Secretary continues to believe that the 14-day timeframe strikes a balance between institutions with check-writing authority that may issue a check upon demand, and institutions that cannot provide these funds as quickly because they must rely on a central office or State agency to issue a check.

Changes: None.

Payment of Funds Authorized to be Held on Account at the Institution (§ 668.165(b)(5))

Comments: Several commenters disagreed with the Secretary's proposal to require an institution to pay any remaining balance on loan funds by the end of the loan period for which those funds were intended, and to pay any remaining balance on any other title IV, HEA program funds by the end of the last payment period in the award year for which those funds were intended, notwithstanding any authorization obtained by the institution. One commenter writing on behalf of business officers argued that institutions would be required to pay funds to students contrary to the students' expressed wishes. The commenters contended that once the title IV, HEA program funds are held by the institution at the student's request, they have lost their federal character. One commenter questioned the need for new rules to govern an area that the commenter felt is sufficiently governed by existing rules. One commenter

asserted that unless there is evidence of fraud or mismanagement, the Secretary should allow institutions to establish an arrangement with students and parents regarding funds that are not expended by the end of the loan period or payment period. The commenter insisted that it is unnecessary for the Secretary to micromanage this activity.

Discussion: As discussed in an earlier section of this preamble, the Secretary believes that title IV, HEA program fund are provided for a specific period of time, and the institution must provide remaining title IV, HEA loan program funds to the student by the end of the loan period and the remaining balance of other title IV, HEA program funds by the end of the last payment period of the award year for which they were intended.

Changes: None.

Section 668.167 FFEL Program Funds

Comments: Many commenters strongly objected to the Secretary's proposal that an institution return to a lender any loan funds that the institution does not disburse to eligible students within three business days after the institution receives those funds, if those funds are provided by the lender via EFT or master check. Some commenters believe that such an abbreviated period for disbursement of EFT and master check loan proceeds will adversely impact the entire delivery system of the FFEL Programs and impede the ability to administer title IV, HEA program funds in an efficient manner. A few commenters supported the reduction in the timeframe to three business days.

Some commenters cited the proposed regulatory requirement as unreasonable, unrealistic, and not administratively feasible and noted that most institutions disburse in three days if possible. The commenters suggested that some situations may arise that require funds to be held longer and that the Secretary should take those situations into consideration in establishing a timeframe. Examples of such situations include drop/add period changes, loan counseling requirements, enrollment verification, history changes, reviewing prior-term attendance to ensure credits were completed, receiving financial transcripts, the provision of necessary information by students, and late registration. Some commenters suggested that corruption of a file, a data-match problem with the system, or satisfying multiple system interfaces each could be a two- or three-day process. A commenter noted that if an overaward occurs between the time the Stafford loan application is processed and the funds arrive at the institution, it will usually take more than three days to contact the student to see if there are additional expenses to consider to reduce the overaward or to see if there are other avenues to take to reduce/eliminate the overaward. Some commenters expressed concern that returning funds to the lender is typically a more difficult process than receiving the funds. The commenters suggested that the opportunity for errors in the entire delivery process are greatly increased when funds are returned to the lender and must be reissued. They stated that many lenders have a policy that once a disbursement is returned, the loan is cancelled, thus requiring the student to submit a new loan application. Some institutions expressed concern that their processing systems are not as automated as some institutions and they must do a recertification manually for each student. The institution's inability to verify eligibility quickly would necessitate the return of the funds to the lender and a need to request them again. The commenters believed this would prove distressing to the students and lenders. Some institutions noted that although they can accept funds electronically, they manually check the loan amount against the awarded amount and manually post to the financial aid account. Other commenters noted that the act of sending funds back to the lenders requires a physical check, because some lenders and financial institutions currently do not allow the institution to return funds by EFT. They expressed concern that this would require more paperwork and processing for both the financial aid and business offices, taking time away from other EFTs which may have arrived in the meantime.

The commenters generally believed that review of student files and records that are needed for a successful distribution of title IV, HEA program funds may take more than three business days. Some commenters expressed concern that limited staff or staff unavailability might render the institution unable to comply with the three-day window. In some cases, the loss of a single staff person upsets the checks and balances the institution works so diligently to create and would render the institution unable to deliver EFT or master check funds to student accounts in the prescribed timeframe. Some commenters expressed concern that they do not have the capability to add staff, sophisticated programming, or even new systems designed to accommodate the loan delivery process within three business days.

Some commenters suggested that the computer capabilities and institutional procedures vary so greatly from institution to institution that such a restricted timeframe may cause some institutions to consider reverting to the use of paper checks which is far less efficient. A commenter expressed concern that lenders and servicers often using the same guaranty agency provide EFT roster information in different formats. The commenter stated that some agencies send the information on diskettes, and some still send hard copy rosters. Some commenters suggested that the disbursement roster, though issued at the same time, may not arrive on the same date as the EFT or master check. The commenters suggested that the use of Commonline format will help, when it becomes more widespread. However, they note that until that day, it is physically impossible for a college with high student volume at peak periods to perform the required edit checks and process loan disbursements within three business days. The commenters suggested a range of anywhere from 10 to 30 days in the number of days for an institution to disburse loan funds to a borrower. Most commenters suggested that a reasonable range would be 7 to 15 business days. Some commenters suggested that even 30 days was insufficient time to deliver loan proceeds. Some commenters expressed concern that the NPRM language, as currently written, did not clearly identify what is to be done within the proposed timeframes, *i.e.*, return the funds to the lender or disburse those funds to a student or parent for a payment period. Some commenters suggested technical corrections to § 682.603 and § 682.604 to conform to the timeframes for delivering loan proceeds.

Discussion: Given the procedural and systemic changes necessary to implement this provision, the Secretary recognizes that the proposed change mandating that funds be returned to a lender within three business days after the institution receives the funds may initially place an unfair administrative burden on institutions. However, the Secretary continues to believe that loan funds received via EFT and master check should be disbursed within a shorter timeframe than currently exists to minimize interest costs to both the Federal taxpayer (subsidized loans) and to the borrower (unsubsidized loans). Accordingly, the Secretary believes that the intent of this requirement may best be accomplished by a phase-in. Thus, the Secretary has determined that for

funds received from lenders during the period of July 1, 1997 through June 30, 1999, and may take up to 10 business days to deliver those funds to a student or return those funds to the lender. Starting on July 1, 1999 that period is reduced to three business days. The Secretary believes that the phase-in of this requirement will provide institutions and FFEL lenders and guaranty agencies ample time to implement procedural and systemic changes.

In addition, the Secretary has provided for exceptional circumstances such as determining the midpoint in a clock-hour program or academic year or the need for a student complete entrance interviews.

The Secretary clarifies that if the institution does not disburse the funds in accordance with the specified timeframe, the institution is required to return those funds to the lender within 10 business days after the last day the funds could have been disbursed. However, the Secretary recognizes that in some instances, students may establish eligibility to receive loan funds before loan funds are returned to the lender. Therefore, the Secretary clarifies that if a student becomes eligible for the loan funds during the 10 business day period in which the institution is processing the return of the loan proceeds and the institution has not yet returned those funds to the lender, the institution may deliver the funds to the student.

The Secretary also notes that suggested technical corrections that are not germane to these regulations will be considered in a future FFEL technical corrections package.

Changes: The Secretary is revising § 668.167(b) to provide that, for FFEL Program funds that a lender provides by EFT or master check to an institution on or after July 1, 1997 but before July 1, 1999, the institution must return those funds to the lender if it does not disburse them to the student or parent within 10 business days following the date the institution receives the funds. FFEL Program funds received by EFT or master check on or after July 1, 1999, must be returned if the institution does not disburse them within 3 business days following the date the institution receives the funds.

The Secretary is also revising § 668.167(b) to provide that the institution must return funds that were not disbursed within the specified timeframe promptly to the lender but no later than 10 business days after the last day those funds could have been disbursed. The Secretary is further revising the § 668.167(b) to provide that an institution may disburse funds to a borrower rather than return them to the lender if the borrower is eligible to receive those funds and the institution disburses those funds within the timeframe required for the return of those funds.

FFEL Institutions on the Reimbursement Payment Method (§ 668.167(d))

Comments: Several commenters, including institutions, and higher education associations, agreed that the reimbursement method may be appropriate for institutions that have difficulties administering Federal student aid funds, but strongly opposed the proposal to extend reimbursement limitations to FFEL Program funds. These commenters believed that since FFEL Program funds are disbursed by private lenders, the Secretary does not have the statutory authority to prevent these loan funds from reaching students. In addition, the commenters indicated that this proposal was inappropriate because it would place an enormous burden on affected institutions and would cause complications and worry for innocent borrowers. These commenters were also concerned that lenders would refuse to serve students at institutions subject to the proposed FFEL reimbursement procedures because of increased loan cancellations, borrower complaints, and other unspecified burdens to lenders.

One commenter representing a consumer banking association opposed the FFEL reimbursement procedures noting that the proposed limitations have never before been placed on the FFEL Program funds and that Congress has not provided for a ''reimbursement'' payment method for funds disbursed by a lender. The commenter asserted that students have a statutory right under the HEA to FFEL Program funds and that the Secretary does not have the statutory authority to withhold FFEL Program funds from borrowers.

Other commenters representing institutions declared that it made no sense to extend the reimbursement payment method to the FFEL Programs noting that lenders and guaranty agencies already exercise oversight of this loan program and that the Secretary's involvement in the loan certification process would only add unnecessary burden. The commenters added that the proposed procedures would cause delays that would have a negative impact on students and institutions.

One commenter representing a guaranty agency requested the Secretary to clarify why an institution placed on the reimbursement payment method should have more time (30 days) to disburse FFEL Program funds than an institution that is not on reimbursement (3 days). The commenter believed that an institution on reimbursement should be aware of the time needed to provide the necessary documentation to the Secretary and should thus schedule loan disbursements accordingly.

Two commenters representing a nonprofit lender and secondary market and another commenter representing a national loan association suggested that instead of allowing institutions on reimbursement to hold FFEL Program funds for 30 days, the Secretary should require those institutions to follow the 30-day delayed disbursement requirements now in place for first-year, first-time borrowers. The commenters believed this 30-day delay would provide sufficient time for the Secretary to review borrower records. Alternatively, the first commenters requested the Secretary to clarify in final regulations the difference between the proposed timeframes for disbursing, holding, and returning FFEL Program funds. The commenters were concerned that loan proceeds for eligible students would be unnecessarily returned to lenders and wished to limit the number of circumstances under which this would happen.

Another commenter representing a guaranty agency agreed with the Secretary's goal of increased assurance of compliance and equitable treatment across programs in which an institution participates but believed that the differences in the delivery system for the FFEL Programs may require a different solution. The commenter suggested that the Secretary work with all the parties in FFEL Program delivery process, especially guarantors, to develop more efficient yet still reliable methods for accomplishing the Secretary's goal. As a possible alternative to the proposed rule, the commenter offered that an institution placed on the reimbursement payment method be required to work with its primary guarantor to monitor and ensure compliance. The Secretary could still, within such a system, specify the level of monitoring that would be required. The commenter concluded that one major advantage to developing such a plan would be that in many cases the guarantor would be able to be on-site at the institution more quickly and frequently and would be already familiar with the institution's situation and systems through previous guaranty agency reviews.

One commenter from a legal organization representing student loan borrowers supported the reimbursement

proposal for FFEL Program funds. The commenter stated that because institutions that are now placed on reimbursement for Federal Pell Grant funds have unfettered access to student loan funds, such institutions increase vigorously their recruiting and student loan activity to make up for Federal Pell Grant shortfalls. In addition, the commenter asserted that since reimbursement is often a precursor to an institution closing, students incur debts although it is almost inevitable that they will not receive the education and training for which that debt was incurred. The commenter noted that depending on the timing of the institution's closure vis-a-vis the student's enrollment, the closed institution discharge provision in 20 U.S.C. 1087(c) may require the Federal government to pay for such ill-advised loans to students at institutions on Federal Pell Grant reimbursement. The commenter concluded the reimbursement proposal was a measured and sound approach since it would require the Secretary's approval of a loan certification or disbursement on a case-by-case basis. Furthermore, the commenter agreed with the Secretary that the reimbursement limitations proposed for institutions that participate solely in the FFEL Programs would protect the Federal fiscal interest as well as the students' financial interests.

Discussion: The Secretary disagrees with the commenters who asserted that the Secretary has no authority to prevent an institution from certifying an FFEL loan application or disbursing loan proceeds to a borrower until certain conditions are met. The Secretary notes that section 432(a)(1) of the HEA authorizes the Secretary ''to prescribe such regulations as may be necessary to carry out the purposes of this part, ...'' Moreover, the conditions that must be met by an institution before it can disburse a loan or certify a loan application all relate to whether the borrower or applicant is eligible to receive an FFEL loan disbursement. Certainly, the Secretary has the authority to determine whether a recipient of title IV, HEA program funds is eligible to receive those funds, regardless of the source of those funds.

Finally, with regard to the comment that the Secretary is not authorized to establish a reimbursement system of payment for the FFEL Program, the Secretary reminds the commenter that institutions are not being place under the reimbursement system of payment for the FFEL Program. A critical component of the reimbursement system of payment is that an institution uses its own funds to make a title IV, HEA program payment and then seeks reimbursement from the Secretary for that payment. The Secretary is not requiring institutions to make such a payment to receive FFEL Program funds.

The Secretary also disagrees with the commenters who stated that is made no sense to extend the reimbursement payment method to the FFEL Programs because lenders and guaranty agencies exercise oversight of institutions participating under these loan programs. The Secretary notes that lender and guaranty agency oversight of institutions participating under the FFEL Programs is not exclusive but rather complimentary to the Secretary's oversight of institutions participating under all of the title IV, HEA programs. Moreover, since an institution is placed on reimbursement primarily because it failed to adequately or properly administer the title IV, HEA programs, the Secretary believes it is not only logical but compelling to subject FFEL Program funds to the level of review currently required of all other title IV, HEA program funds.

The Secretary thanks the commenters supporting the proposed reimbursement rules and appreciates their suggestions. With regard to the suggestion that the Secretary require institutions placed on reimbursement to follow the 30-day delayed disbursement requirements (now in place only for first-year, first-time borrowers) for all borrowers, the Secretary believes the suggested requirement would unnecessarily delay the disbursement of FFEL Program funds to eligible borrowers. Under the suggested requirement, an institution would certify a loan application by requesting the lender to provide loan funds 30 days after the date those funds would normally be provided. While the Secretary agrees that this procedure may minimize the return of FFEL Program funds to lenders, it would delay the disbursement of loan funds to all borrowers by 30 days. In contrast, under the proposed rules an institution is not precluded from disbursing or certifying a loan for a borrower earlier than 30 days provided that the institution seeks and obtains the Secretary's approval within that time.

The Secretary agrees with the merits of the recommendation that an institution placed on reimbursement be required to work with its primary guarantor. Therefore, under an arrangement where the guaranty agency is an entity approved by the Secretary as provided under § 668.167(d)(2), a guaranty agency may choose to work with institutions that are under the reimbursement payment method.

With regard to the comment as to why an institution placed on the reimbursement payment method should have more time (30 days) to disburse FFEL Program funds than an institution that is not on reimbursement (3 days), the additional time reflects the time an institution needs to submit documentation to the Secretary to support a student's eligibility for a FFEL Program loan, and the time the Secretary will take to review that documentation. However, that extra period of time is available only if the lender sends the FFEL funds to the institution by EFT or master check.

Changes: The Secretary is revising § 668.167(c)(2) to remove its applicability to an institution placed on reimbursement when the lender provides loan funds by paper check. In these instances the institution may retain the loan funds without disbursing them only for the 30-day timeframe provided in § 668.167(b)(1)(iii).

Final Regulatory Flexibility Analysis

The Secretary has determined that some small entities are likely to experience economic impacts from the proposed regulations. Thus, the Regulatory Flexibility Act (RFA) requires that an Initial Regulatory Flexibility Analysis (IRFA) of the economic impact on small entities be performed and that the analysis, or a summary thereof, be published in the notice of proposed rulemaking. The IRFA was performed and a summary was published. This Final Regulatory Flexibility Analysis (FRFA) discusses the comments received on the IRFA and fulfills the RFA requirements.

Summary of significant issues raised by the public comments on the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the Department of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Changes were made in the final rule as a result of public comments. The biggest change that was made was to allow for a phase-in period of the shorter periods that institutions will hold title IV, HEA program funds before disbursing them.

Comments: The Secretary received eight comments on the methodology of the estimation of the economic impacts from five commenters. All five commenters stated that the initial analysis underestimated the economic costs. One stated that these regulations would cause the institution to hire a new full-time employee at a cost of

$30,000 per year. One simply asserted that the estimated cost of $230 for 10 hours is too low for these regulations but did not provide any more information. One commenter proposed that the just-in-time payment method would impose an increased paperwork burden that was not analyzed.

Discussion: The Secretary believes the paperwork burden estimates used in the NPRM are accurate. A new full-time staff person would supply about 2,000 hours of labor in a year. This is much more than is required for compliance with these regulations, which is estimated to be about 200 hours. However, there were several areas that might impose economic impacts of a smaller magnitude than were analyzed in the IRFA. These were discovered as a function of the comments received and a re-analysis of the rule.

Changes: The FRFA analyzes components that may impose economic impacts that the IRFA did not analyze.

Comments: Some commenters apparently did not understand the IRFA analysis. One commenter confused the estimate for the paperwork for the entire sector (10 hours per institution×175 institutions=1750 burden-hours) as the burden for a single institution. Another commenter stated that it would take substantially more than 10 hours for institutions to participate in the reimbursement payment method.

Discussion: The paperwork estimate for institutions that would be put on reimbursement as a result of this rule corresponds to the marginal increase in paperwork for institutions that are already on reimbursement for other title IV, HEA programs. As a result of these comments, the Secretary reanalyzed the paperwork burden and validated the earlier estimate of 10 hours per institution.

Changes: The FRFA will contain more easily understandable language to avoid the confusion in the IRFA.

Comments: Three commenters stated that delays on reimbursement might be longer that 18–20 days. One commenter suggested that it was important to look at more than just the average payment delay, since there may be a substantial number of small entities that experience significantly longer delays. It was suggested by several commenters that delays can be as long as 6 weeks.

Discussion: This is another area where the commenters apparently did not understand the IRFA analysis. The IRFA states that the average delay is 18–20 days. However, in calculating the interest costs, the more conservative delay estimate of 30 days was used. Delays of periods longer than 30 days that are attributable to the Department's action or inaction would not affect a significant number of small (or large) entities.

Changes: The FRFA will contain more easily understandable language to avoid the confusion in the IRFA.

Comments: One commenter took issue with the analysis of the number of disbursements associated with the reimbursement payment method. The commenter stated that the more typical situation would be for as many as 6 or 8 or more disbursements in a year, causing the institution to obtain a series of different short-term loans at varying face amounts to operate during the delay.

Discussion: This is another area where the commenter apparently did not understand the IRFA analysis. There is no presumption about the timing of the disbursements. Each loan is required by existing statute and regulations to be disbursed in at least two installments. These are the two installments that we analyzed. Small entities in the situation described would probably establish the need for a revolving fund with a bank. The costs associated with establishing such a fund is comparable to the costs we have outlined.

Changes: The analysis will discuss this situation.

Comments: One commenter took issue with the costs associated with the electronic processes component. This commenter stated that some institutions might have to buy a new computer, pay long distance charges, and install a dedicated phone line.

Discussion: This is an area where the IRFA did not analyze these costs. As a result of this comment, the FRFA does discuss the possibility that some institutions may have to purchase computer equipment. The FRFA also discusses the possibility that institutions may have to purchase some computer training or be charged by the Department for technical assistance calls. However, phone calls are free to the Department's 800 number. The Secretary does not think it would be necessary for a small institution to require a dedicated phone line to participate in the electronic processes of the Department.

Changes: The FRFA will discuss these costs.

Comments: Three commenters stated that the breadth of the IRFA analysis was insufficient. They stated that the analysis needs to look at more components than the reimbursement provision.

Discussion: The Secretary has reanalyzed the regulation and found additional areas where economic impacts may be imposed on small entities. The FRFA contains a discussion of these impacts. However, the IRFA does contain an analysis of the most significant economic impacts. While the additional areas of analysis of economic impacts may not, by themselves, constitute a significant economic impact, when taken together they might.

Changes: The summary of the FRFA looks at more than just reimbursement.

Comments: Two commenters stated that the Department must analyze this rule in conjunction with another NPRM that was published at the same time. These commenters indicated that the ''Financial Responsibility'' rule would have the effect of putting more institutions on the reimbursement payment method and that this analysis of the ''Cash Management'' rule should consider the economic impact on those institutions as well.

Discussion: The Secretary agrees with the general concept that proposed rules should be analyzed for their joint impact. In this particular situation, however, the proper place for that discussion is in the ''Financial Responsibility'' regulations. The costs of institutions being provisionally certified and then being put on reimbursement would occur as a result of any changes in the ''Financial Responsibility'' requirements. The effect of the ''Cash Management'' regulations is to extend reimbursement to FFEL. The costs of being put on reimbursement that would be imposed by any changes in the ''Financial Responsibility'' regulations would include the costs of being put on reimbursement for all title IV, HEA programs (consistent with this regulation). That is, the cost of being put on reimbursement for those institutions would be marginally higher as a result of these regulations. However, the public comment period has been extended on this component of the proposed ''Financial Responsibility'' regulations. The analysis of these costs will be included in the preamble to the final Financial Responsibility regulations.

Changes: The FRFA for both regulations will point out the cross-effects as outlined here.

Description of the reasons why action by the Department is being considered and a succinct statement of the objectives of, and legal basis for, the proposed rule.

The Secretary proposes these regulatory changes to further the implementation of the Department of Education initiatives to reduce burden and improve program accountability. More information about the need and

justification for the proposed rule can be found in the preamble to the NPRM.

Description and estimate of the number of small entities to which the proposed rule will apply.

The Secretary has adopted the U.S. Small Business Administration (SBA) Size Standards for this analysis. The RFA directs that small entities are the sole focus of the Regulatory Flexibility Analysis. There are three types of small entities that are analyzed here. They are: for-profit entities with total annual revenue below $5,000,000; non-profit entities with total annual revenue below $5,000,000; and entities controlled by governmental entities with populations below 50,000. An estimate of the proportion of entities in each of these categories was calculated using the best available data from the National Center for Education Statistics Integrated Postsecondary Education Data System (IPEDS) survey for academic year 1993–94. These estimates were applied to Department administrative files, where no data element for total revenue is available. The estimates are that 1,690 small for-profit entities, 660 small non-profit entities and 140 small governmental entities will be covered by the proposed rule. Where exact data were not available to estimate the proportion of small entities, data elements were chosen that would have overestimated, rather than underestimated, the proportion.

Estimate of the number of institutions experiencing economic impacts from rule and estimates of the economic impacts.

This rule can be partitioned for analysis purposes into 12 components. Each component is analyzed separately. As discussed in the response to comments above, each component was reanalyzed for possible adverse economic impacts as a result of comments received. The following components are expected to have a positive or neutral economic impact: uniform payment period; restructure regulations; just-in-time payment method; separate bank accounts; payment period; late disbursements; and, excess cash exemption. The following components have the potential to impose adverse economic impacts on small entities: electronic processes; student notification; disbursement timeframes/returning undisbursed funds; and reimbursement extension to FFEL. A summary of the analysis of the economic impact of each of these components follows.

Electronic Processes Component

Institutions will be required to use electronic processes that the Secretary provides on a substantially free basis. Institutions may have to obtain computer hardware and computer training in order to participate. It is estimated that a new computer would cost $1,500 and computer training might cost as much as $500. Institutions that are heavy users of technical assistance may be charged as much as $100 per year for this assistance. Changing to electronic processes may require changes in an institution's accounting system and/or the institution's SFA delivery system. The costs of these changes are entirely dependent on the characteristics of the institution under consideration and can not be reliably estimated.

Student Notification Component

This component increases these students notification and authorization requirements on institutions. This is estimated to require an additional 195.6 hours, as discussed in the paperwork burden section. Using a loaded labor rate of $20.00 per hour, this would cost $3,912 per institution. It is further estimated that between one and three students per thousand will take advantage of the loan cancellation provision. It is assumed that most of these students will arrange for an alternative method of paying for their postsecondary education and there will be no additional economic costs associated with accommodating their request since current regulations require such requests to be accommodated. However, there may be a few students who have changed their mind about attending the postsecondary education program within the first few days. It is this student that these regulations are designed to protect. The cost of unenrolling such a student will vary from program to program, but is estimated to be between $100 and $1,000. Data do not exist that would allow for precise estimation of the number of small entities that would experience adverse economic impacts. However, if we assume that each small entity has approximately 100 students, then between three and eight institutions will need to unenroll a student each year and be required to obtain a refund from that student outside of the student's loan proceeds. These estimates are based on the best professional judgment of student financial aid staff knowledgeable in this area. Data are not readily available that would allow for more precise estimation of these costs.

Disbursement Timeframes Component

Currently, institutions are not allowed to request loan funds from lenders sooner than 13 days before the first day of classes of the payment period. This component clarifies that this timeframe applies to all loan disbursements, not just the first disbursement. This component also clarifies that, in the case of students who are subject to delayed disbursement, the institution cannot request loan funds more than three days before the loan funds are scheduled to be made available to the borrower. The economic impact of this component is described below in the context of returning funds not disbursed within three days.

Returning Undisbursed Funds Component

This provision will change the time that institutions can keep their funds, requiring institutions to return funds not disbursed within 3 business days (or an additional 10 under certain circumstances), except that this provision will be phased in gradually over 3 years. This analysis compares the cost when the provision is fully phased in. There is a potential loss of funds for those institutions who have been delaying 45 days and putting the money in interest-bearing accounts. It is assumed that between 40 percent and 60 percent of small entities are currently receiving funds through EFT transfers and that these institutions are holding funds between 30 and 40 days. Lenders bill the Department for in-school interest subsidy payments three days after disbursing them electronically. Thus, the Department is paying between 27 and 37 days of in-school interest subsidy to lenders without the student having the use of these funds for educational expenses. At the same time, institutions will lose the use of these funds for the same period (30 to 40 days). The economic impact of losing the use of these funds is difficult to quantify. Not enough is known about the cash flow practices of particular institutions to determine the impact, but it is assumed to have some impact.

Reimbursement Extension to FFEL Component

This component will require institutions that participate in the FFEL program and that are on the reimbursement payment method for other title IV, HEA programs, or for which the Secretary determines there is a need to strictly monitor FFEL Program funds, to submit documentation from existing sources to the Secretary or an approved entity, that supports the certification of FFEL Program applications or supports intended disbursements of FFEL Program funds. The FFEL Program disbursements at an

institution could be delayed for an estimated average of 18–20 days until approval for those certifications or disbursements is received by the institution, costing the institution potential interest expenses and paperwork expenses for the submission of supporting documentation. For this analysis, the delay was assumed to be longer than the 18–20 day average. This analysis uses a 30-day period, even though the average is 10–12 days less.

As of July 31, 1996, there were 307 institutions being paid on a reimbursement basis, estimated at 257 for-profit entities, 36 non-profit entities, and 14 governmental entities. Of the 307 institutions, 175 participated in the FFEL Programs and had loan activity during the 1995 fiscal year. Where exact data were not available to estimate the cost to small entities, data elements were chosen that would have overestimated rather than underestimated the cost. For example, information is not available on the proportion of these institutions that are small versus the number that are large. For this analysis, in order to prevent an underestimate, all 175 institutions were assumed to be small entities.

The economic impact that these entities would experience is that associated with the need to advance funds to student before receiving the payment from the Secretary. Some entities that have funds readily available will be losing the interest that those funds would have received had they been deposited in an interest-bearing account. Some entities that do not have funds readily available may be required to borrow funds in order to operate during the 18–20 days prior to receiving funds from the Secretary. Since the borrowing rate is higher than the saving rate, only the latter case is analyzed. However, it is understood that this represents an overestimate of the actual costs experienced by real entities. Also, since some entities will experience longer delays that the 18–20 day average, this analysis considers that funds will be borrowed for 30 days since delays are rarely, if ever, longer than this for institutions on the reimbursement method of payment. In order to provide a reasonable range for the cost estimates, the Secretary analyzed the case for small entities with low FFEL volume and small entities with high FFEL volume.

More than 60 percent of the 175 institutions that could be affected by these proposed regulations had a FFEL programs loan volume of less than $900,000 during the 1995 fiscal year. Therefore, for most institutions, based upon an interest rate equal to the prime rate plus 4 percent (8.25%+4%=12.25%) for two short-term loans, one for each disbursement for a period of 30 days, the cost per institution would be an estimated $9,062 in interest expenses. The potential loss of interest earnings that could have accrued for the delayed FFEL Program funds during that time is estimated at 3 percent equaling an estimated $2,219.

In addition to the interest expenses, there would be an estimated cost of $230 per institution for increased paperwork as a result of submitting to the Secretary or approved entity documentation in support of the certification of loan applications or the disbursement of FFEL Program funds to eligible borrowers. The cost is a result of an estimated increase of 10 hours of paperwork by an employee at a loaded labor rate of $20 per hour, and $3.00 in postage for an average of 10 mailings.

Less than 15 percent of the 175 institutions identified had a loan volume of $3,300,000 or greater. For an institution in this category, the interest expenses for the total amount of loan commitments under the same conditions above would equal an estimated $33,226. The potential loss of interest earnings on those funds equals an estimated $8,137 per institution.

As a result, the total potential cost per school in interest expenses and increased paperwork for the 105 small entities, subject to the extension of the reimbursement payment method provisions of this regulation, with FFEL volume below $900,000 is estimated at $11,511. For the approximately 26 small entities subject to the extension of the reimbursement payment method provisions of this rule with FFEL Program volume above $3,300,000, the total potential cost per school is estimated at $41,593. These costs are estimates and the costs experienced by actual institutions will undoubtedly be different. These estimates should be used as illustrative examples only of the expenses incurred by low and high volume schools. Middle volume schools will have expenses between these two extremes.

Description of the steps the Department has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

The Department has undertaken several actions in these regulations to minimize the economic impacts on small (and large) entities. For instance, the adoption of a uniform payment period is expected to simplify administration of the title IV, HEA programs. The final rule removes some prescriptive requirements for maintaining funds in separate accounts for institutions under the just-in-time payment method. The final rule simplifies and removes redundant provisions in the late disbursement regulations.

In addition, the final rule includes a gradual phase-in of the new disbursement timeframes. This phase-in is a change from the proposal described in the NPRM. This change was undertaken in response to public comment regarding the economic impacts of the new timeframes. This step will help to minimize the economic impact on small (and large) entities.

Description of significant alternatives which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

While the Department considered alternative means of satisfying many specific provisions, as discussed in the preamble to both the NPRM and the preamble to this final rule, there are no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the impact on small entities. The proposed approach balances regulatory reform and improved accountability in a proper fashion. Consistent with the Secretary's regulatory relief initiative, participating institutions are subject to the minimum requirements that adequately protects the Federal fiscal interest. In fact, several components of the proposed rule reduce the regulatory burden on participating institutions. The Secretary believes that the proposed approach is the least complicated and burdensome for small (and large) entities involved in the administration of the title IV, HEA programs while still allowing for the proper protection of the Federal fiscal interests and the interests of students and their parents.

For the purposes of performing this regulatory flexibility analysis, the alternative of ''no action'' could be considered a significant alternative. If the Secretary did not undertake any action in this area, small (and large) entities would not experience the economic impacts imposed by these regulations. However, as described in the preamble to the final rule, the Secretary believes that this action is required to further Department initiatives and to better protect the Federal fiscal interest. This is discussed further below.

The factual, policy, and legal reasons for selecting the alternative adopted in the final rule.

The factual, policy, and legal reasons for selecting the alternative adopted in the final rule are discussed above and elsewhere in this preamble. The alternative ''no action'' would not adequately protect the Federal fiscal interest, as discussed above and elsewhere in this preamble.

The use of the proposed requirement will enable the Secretary to better discharge the responsibilities of managing the title IV, HEA programs funds, to promote parallel requirements across the title IV, HEA programs, and to better safeguard the Federal fiscal interest and the interests of students.

Why each one of the other significant alternatives to the rule considered by the Department which affect the impact on small entities was rejected.

The alternative ''no action'' was rejected because this alternative would not adequately protect the Federal fiscal interest, as discussed above and elsewhere in this preamble.

Conclusion

A substantial number of small entities are likely to experience significant economic impacts from the proposed rule. However, the Secretary has concluded that the costs are outweighed by the benefits. In this case, the benefits are better protection of the Federal fiscal interest and improved service to students.

The adverse economic impacts experienced by some small (and large) entities is balanced by the positive economic impacts accruing to the U.S. taxpayer. These positive impacts arise (1) from the ability of the Secretary to ensure that eligible students receive title IV, HEA program funds in the amount for which they are eligible in cases where there is a need to strictly monitor title IV, HEA program funds at an institution and, (2) from the protection of students and the Federal interest in the title IV, HEA programs.

The use of the proposed requirement will enable the Secretary to better discharge the responsibilities of managing the title IV, HEA programs funds, to promote parallel requirements across the title IV, HEA programs, and to better safeguard the Federal fiscal interest and the interests of students.

Waiver of Notice of Proposed Rulemaking

In accordance with Section 431 (b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), 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 rules and regulations. However, the Secretary amends § 668.162(a) as a final rule to revise the procedure for presenting cash requests to the Department under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) for rules of agency procedure.

Paperwork Reduction Act of 1995

Sections 668.16, 668.165, 668.167 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Education has submitted a copy of these sections to OMB for its review. (44 U.S.C. 3504(h)).

Assessment of Educational Impact

In the NPRM published September 23, 1996, the Secretary requested comment 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 rules 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, Reporting and recordkeeping requirements.

34 CFR Part 674, 675, and 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan Programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan Programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program)

Dated: November 22, 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, and 1141, unless otherwise noted.

Subpart A—General

2. Section 668.4 is added to read as follows:

§ 668.4 Payment period.

(a) *Payment period for an eligible program that has academic terms and measures progress in credit hours.* For a student enrolled in an eligible program that is offered in semesters, trimesters, quarters, or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter, or other academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes the first half of the program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of the program as measured in credit or clock hours.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year as measured in credit or clock hours—

(A) The first payment period is the period of time in which the student completes the first half of the academic

year as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the second half of that academic year;

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a complete academic year—

(A) The first payment period is the period of time in which a student completes the first half of the remaining portion of the eligible program as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the remainder of the eligible program; and

(iii) For any remaining portion of an eligible program that is not more than half an academic year as measured in credit or clock hours, the payment period is the remainder of that eligible program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if a student is enrolled in an eligible program that measures progress in credit hours and the student cannot earn half the credit hours in the program under paragraph (b)(1) of this section or half of the remaining portion of the eligible program under paragraph (b)(2)(i) and (b)(2)(ii) of this section until after the calendar midpoint between the first and last scheduled days of class, the second payment period begins on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework.

(4) If, in an academic year, in a program of less than an academic year, or in the remaining portion of an eligible program under paragraph (b)(2) of this section, an institution chooses to have more than two payment periods, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070 *et seq.*)

Subpart B—Standards for Participation in Title IV, HEA Programs

3. Section 668.16 is amended by removing ''and'' at the end of paragraph (m)(2)(ii), removing the period at the end of paragraph (n), and inserting ''; and'', and adding a new paragraph (o) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(o) Participates in the electronic processes that the Secretary—

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the Federal Register.

* * * * *

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

4. Subpart K is revised to read as follows:

Subpart K—Cash Management

§ 668.161 Scope and purpose.

(a) *General.* (1) This subpart establishes the rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. This subpart is intended to—

(i) Promote sound cash management of title IV, HEA program funds by an institution;

(ii) Minimize the financing costs to the Federal government of making title IV, HEA program funds available to a student or an institution; and

(iii) Minimize the costs that accrue to a student under a title IV, HEA loan program.

(2) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(3) As used in this subpart—

(i) The title IV, HEA programs include only the Federal Pell Grant, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs;

(ii) The term ''parent'' means a parent borrower under the PLUS programs;

(iii) With regard to the FFEL Programs, the term ''disburse'' means the same as deliver loan proceeds under 34 CFR Part 682 of the FFEL Program regulations; and

(iv) A day is a calendar day unless otherwise specified.

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures and requirements under this subpart.

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. FFEL program funds are also held in trust for the lenders and guaranty agencies, in addition to the student beneficiaries and the Secretary, under 34 CFR 682.207. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.,* use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

§ 668.162 Requesting funds.

(a) *General.* (1) The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution in advance of the institution's need for those funds (advance payment method), by the date the institution needs those funds (just-in-time payment method), or by reimbursing an institution for disbursements already made to eligible students and parents (reimbursement payment method).

(2) Each time an institution requests funds from the Secretary, the institution must identify the amount of funds requested by program and fiscal year designation that the Secretary assigned to the authorization for those funds.

(b) *Advance payment method.* Under the advance payment method—

(1) An institution submits a request for funds to the Secretary. The institution's request for funds may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to a bank account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) *Just-in-time payment method.* Under the just-in-time payment method—

(1) For each student or parent that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student or parent. As part of those records, the

institution reports the date and amount of the disbursements that it will make or has made to that student or that student's parent;

(2) For each record the Secretary accepts for a student or parent, the Secretary provides by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement;

(3) When the institution receives the funds for each record accepted by the Secretary, the institution may disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement; and

(4) The institution must report any adjustment to a previously accepted record within the time established by the Secretary in a notice published in the Federal Register.

(d) *Reimbursement payment method.* Under the reimbursement payment method—

(1) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student's account or paid a student or parent directly with its own funds;

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(3) As part of the institution's reimbursement request, the Secretary requires the institution to—

(i) Identify the students for whom reimbursement is sought; and

(ii) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and pays the institution that amount, if the Secretary determines with regard to that student or parent that the institution—

(i) Accurately determined the student's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds paid to the student or parent; and

(iii) Submitted the documentation required under paragraph (d)(3) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.163 Maintaining and accounting for funds.

(a)(1) *Bank or investment account.* An institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

(2) For each bank or investment account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each account the phrase ''Federal Funds''; or

(ii)(A) Notifying the bank or investment company of the accounts that contain title IV, HEA program funds and retaining a record of that notice; and

(B) Except for a public institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintaining a copy of that statement.

(b) *Separate bank account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank or investment account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing or investment account.* (1) An institution must maintain the Fund described in § 674.8(a) of the Federal Perkins Loan Program regulations in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on Fund proceeds are retained by the institution as part of the Fund.

(2) Except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

(3) An institution does not have to maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—

(i) The institution drew down less than a total of $3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;

(ii) The institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year; or

(iii) The institution requests those funds from the Secretary under the just-in-time payment method.

(4) If an institution maintains Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial $250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over $250.

(d) *Accounting and internal control systems and financial records.* (1) An institution must maintain accounting and internal control systems that—

(i) Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and

(ii) Identify the earnings on title IV, HEA program funds maintained in the institution's bank or investment account.

(2) An institution must maintain its financial records in accordance with the provisions under § 668.24.

(e) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

(Authority: 20 U.S.C. 1094)

§ 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided in paragraph (a)(2) of this section, an institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays a student or parent directly with—

(i) Funds received from the Secretary;

(ii) Funds received from a lender under the FFEL Programs; or

(iii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2) If, earlier than 10 days before the first day of classes of a payment period,

or for a student subject to the requirements of § 682.604(c)(5) or § 685.303(b)(4) earlier than 30 days after the first day of the payment period, an institution credits a student's institutional account with institutional funds in advance of receiving title IV, HEA program funds, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes, or the 30th day after the beginning of the payment period for a student subject to the requirements of § 682.604(c)(5) or § 685.303(b)(4).

(b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) For a student enrolled in an eligible program at an institution that measures academic progress in clock hours, in determining whether the student completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence if—

(i) The institution has a written policy that permits excused absences; and

(ii) The number of excused absences under the written policy for purposes of this paragraph does not exceed the lesser of—

(A) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR part 600.11(b);

(B) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(C) Ten percent of the clock hours in the payment period.

(4) For purposes of paragraph (b)(3) of this section, an ''excused absence'' is an absence that a student does not have to make up.

(c) *Direct payments.* An institution pays a student or parent directly by—

(1) Releasing to the student or parent a check provided by a lender to the institution under an FFEL Program;

(2) Issuing a check or other instrument payable to and requiring the endorsement or certification of the student or parent. An institution issues a check by—

(i) Releasing or mailing the check to a student or parent; or

(ii) Notifying the student or parent that the check is available for immediate pickup;

(3) Initiating an electronic funds transfer (EFT) to a bank account designated by the student or parent; or

(4) Dispensing cash for which an institution obtains a signed receipt from the student or parent.

(d) *Crediting a student's account at the institution.*

(1) Without obtaining the student's or parent's authorization under § 668.165, an institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy current charges for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Room, if the student contracts with the institution for room.

(2) After obtaining the appropriate authorization from a student or parent under § 668.165, the institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

(i) Current charges that are in addition to the charges described in paragraph (d)(1) of this section that were incurred by the student at the institution for educationally related activities; and

(ii) Minor prior award year charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs.

(3) If an institution disburses Direct Loan Program funds by crediting a student's account at the institution, the institution must first credit the student's account with those funds to pay for outstanding current and authorized charges.

(4) For purposes of this paragraph, current charges refers to charges assessed the student by the institution for—

(i) The current award year; or

(ii) The loan period for which an institution certified or originated a loan under the FFEL or Direct Loan programs.

(e) *Credit balances.* Whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of all title IV, HEA program funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but—

(1) No later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(2) No later than 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(f) *Early disbursements.* Except as provided under paragraph (f)(3) of this section—

(1) If a student is enrolled in a credit-hour educational program that is offered in semester, trimester, or quarter academic terms, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is 10 days before the first day of classes for a payment period.

(2) If a student is enrolled in a credit-hour educational program that is not offered in semester, trimester, or quarter academic terms, or in a clock hour educational program the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of—

(i) Ten days before the first day of classes of the payment period; or

(ii) The date the student completed the previous payment period for which he or she received title IV, HEA program funds, except that this provision does not apply to the payment of Direct Loan or FFEL program funds under the conditions described in 34 CFR 685.301 (b)(3)(ii), (b)(5), and (b)(6) and 34 CFR 682.604 (c)(6)(ii), (c)(7), and (c)(8), respectively.

(3) The earliest an institution may disburse the initial installment of a loan under the Direct Loan or FFEL programs to a first-year, first-time borrower as described in 34 CFR 682.604(c) and 34 CFR 685.303(b)(4) is 30 days after the first day of the student's program of study.

(g) *Late disbursements*—(1) *Ineligible students who may receive a late disbursement.* An institution may make a late disbursement under paragraph (g)(2) of this section, if the student became ineligible solely because—

(i) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(ii) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for late disbursements.* An institution may disburse funds under a title IV, HEA program to an ineligible student and to the parent of an ineligible student as described in

paragraph (g)(1) of this section if, before the date the student became ineligible—

(i) The institution received a SAR from the student or an ISIR from the Secretary and the SAR or ISIR has an official expected family contribution calculated by the Secretary; and

(ii)(A) For a Direct Loan Program loan, the institution created the electronic origination record for that loan. An institution may not make a late second or subsequent disbursement of a Direct Subsidized or Direct Unsubsidized loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(B) For an FFEL Program loan, the institution certified an application for that loan. An institution may not make a late second or subsequent disbursement of a Stafford loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(C) For a Direct Loan or FFEL Program loan, the student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in 34 CFR 682.604(c)(5) or 685.303(b)(4);

(D) For a Federal Pell Grant Program award, the institution received a valid SAR from the student or a valid ISIR from the Secretary; and

(E) For a Federal Perkins Loan Program loan or an FSEOG Program award, the student was awarded a loan or grant.

(3) *Making a late disbursement.* If a student or a parent borrower qualifies for a late disbursement under paragraphs (g) (2) and (3) of this section, the institution—

(i) May make that late disbursement of title IV, HEA program funds only if the funds are used to pay for educational costs that the institution determines the student incurred for the period in which the student was enrolled and eligible; and

(ii) Must make the late disbursement no later than 90 days after the date that student becomes ineligible under paragraph (g)(1) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan or FFEL Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) If an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student, or parent of—

(i) The date and amount of the disbursement;

(ii) The student's right, or parent's right to cancel all or a portion of that loan or loan disbursement and have the loan proceeds returned to the holder of that loan. However, the institution does not have to provide this information with regard to FFEL Program funds unless the institution received the loan funds from a lender through an EFT payment or master check; and

(iii) The procedures and the time by which the student or parent must notify the institution that he or she wishes to cancel the loan or loan disbursement.

(3) The institution must send the notice described in paragraph (a)(2) of this section—

(i) No earlier than 30 days before and no later than 30 days after crediting the student's account at the institution; and

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must require the recipient of the notice to confirm receipt of the notice and must maintain a copy of that confirmation.

(4) (i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan or loan disbursement.

(ii) The institution must return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations if the institution receives a loan cancellation request either—

(A) Within 14 days after the date the institution sends the notice described in paragraph (a)(2) of this section; or

(B) If the institution sends the notice described in paragraph (a)(2) of this section more than 14 days prior to the first day of the payment period, by the first day of the payment period.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations.

(5) An institution must inform a student or parent in writing or electronically regarding the outcome of any cancellation request.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Disburse title IV, HEA program funds to a bank account designated by the student or parent;

(ii) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(d)(2) that are included in that authorization; and

(iii) Except if prohibited by the Secretary under the reimbursement method, hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent under § 668.164(e).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under § 668.164(d)(2), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(iii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(iii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment

period in the award year for which they were awarded.

(Authority: 20 U.S.C. 1094)

§ 668.166 Excess cash.

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, that an institution does not disburse to students or parents by the end of the third business day following the date the institution received those funds from the Secretary. Except as provided in paragraph (b) of this section, an institution must return promptly to the Secretary any amount of excess cash in its account or accounts.

(2) The provisions in this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) *Excess cash tolerances.* (1) If an institution draws down title IV, HEA program funds in excess of its immediate cash needs, the institution may maintain the excess cash balance in the account the institution established under § 668.164 only if—

(i) In the award year preceding that drawdown, the amount of that excess cash balance is less than—

(A) For a period of peak enrollment at the institution during which that drawdown occurs, three percent of its total prior-year drawdowns; or

(B) For any other period, one percent of its total prior-year drawdowns; and

(ii) Within the next seven days, the institution eliminates its excess cash balance by disbursing title IV, HEA program funds to students or parents for at least the amount of that balance.

(2) For the purposes of this section, a period of peak enrollment at an institution occurs when at least 25 percent of the institution's students start classes during a given 30-day period. For any award year, an institution calculates the percentage of students who started classes during a given 30-day period by—

(i) For the prior award year in which the 30-day period began, determining the number of students who started classes during that period;

(ii) Determining the total number of students who started classes during the entire award year used in paragraph (b)(2)(i) of this section;

(iii) Dividing the number of students in paragraph (b)(2)(i) of this section by the number of students in paragraph (b)(2)(ii) of this section; and

(iv) Multiplying the result obtained in paragraph (b)(2)(iii) of this section by 100.

(3) For the purpose of determining the total amount of title IV, HEA program funds under paragraph (b)(1)(i) of this section, an institution that participates in the Direct Loan Program may include, for the latest year for which the Secretary has complete data, the total amount of loans guaranteed under the FFEL Program for students attending the institution during that year.

(c) *Consequences for maintaining excess cash balances.* (1) If the Secretary finds that an institution maintains in its account excess cash balances greater than those allowed under paragraph (b) of this section, the Secretary—

(i) As provided in paragraph (c)(2) of this section, requires the institution to reimburse the Secretary for the costs the Secretary deems to have incurred in making those excess funds available to the institution; and

(ii) May initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more title IV, HEA programs under subpart G of this part.

(2) For the purposes of this section, upon a finding that an institution has maintained excess cash, the Secretary—

(i) Considers the institution to have issued a check on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

(ii) Calculates, or requires the institution to calculate, a liability for maintaining excess cash balances in accordance with procedures established by the Secretary. Under those procedures, the Secretary assesses a liability that is equal to the difference between the earnings that the excess cash balances would have yielded if invested under the applicable current value of funds rate and the actual interest earned on those balances. The current value of funds rate is an annual percentage rate, published in a Treasury Financial Manual (TFM) bulletin, that reflects the current value of funds to the Department of Treasury based on certain investment rates. The current value of funds rate is computed each year by averaging investment rates for the 12-month period ending every September. The TFM bulletin is published annually by the Department of Treasury. Each annual bulletin identifies the current value of funds rate and the effective date of that rate.

(Authority: 20 U.S.C. 1094)

§ 668.167 FFEL Program funds.

(a) *Requesting FFEL Program funds.* In certifying a loan application for a borrower under § 682.603—

(1) An institution may not request a lender to provide it with loan funds by EFT or master check earlier than—

(i) Twenty-seven days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirteen days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

(2) An institution may not request a lender to provide it with loan funds by check requiring the endorsement of the borrower earlier than—

(i) The first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirty days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

(3) (i) An institution may not request a lender to provide it with loan funds by EFT or master check for any Federal PLUS Program loan earlier than provided in paragraph (a)(1) of this section.

(ii) An institution may not request a lender to provide loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than provided in paragraph (a)(2) of this section.

(b) *Returning funds to a lender.* (1) Except as provided in paragraph (c) of this section, an institution must return FFEL Program funds to a lender if the institution does not disburse those funds to a student or parent for a payment period within—

(i) Ten business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT or master check on or after July 1, 1997 but before July 1, 1999;

(ii) Three business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT and master check on or after July 1, 1999; or

(iii) Thirty days after the institution receives the funds if a lender provides those funds by a check payable to the borrower or copayable to the borrower and the institution.

(2) If the institution does not disburse the loan funds as specified in paragraph (b)(1) or (c) of this section, the institution must return those funds to the lender promptly but no later than 10 business days after the date the

institution is required to disburse the funds.

(3) If an institution must return loan funds to the lender under paragraph (b)(2) of this section and the institution determines that the student is eligible to receive the loan funds, the school may disburse the funds to the student or parent rather than return them to the lender provided the funds are disbursed prior to the end of the applicable timeframe under paragraph (b)(2) of this section.

(c) *Delay in returning funds to a lender.* An institution may delay returning FFEL program funds to a lender for—

(1) Ten business days after the date set forth in paragraph (b)(1) of this section if—

(i)(A) The institution does not disburse FFEL Program funds to a borrower because the student did not complete the required number of clock or credit hours in a preceding payment period; and

(B) The institution expects the student to complete required hours within this 10-day period; or

(ii)(A) The student has not met all the FFEL Programs eligibility requirements; and

(B) The institution expects the student to meet those requirements within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section for funds a lender provides by EFT or master check if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

(d) *An institution placed under the reimbursement payment method.* (1) If the Secretary places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-based programs, the institution—

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary's approval of a disbursement or certification request, the Secretary may—

(i) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check the institution receives from a lender;

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under § 668.164; and

(iii) Prohibit the institution from certifying a borrower's loan application.

(e) *An institution participating solely in the FFEL Programs.* If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to monitor strictly the institution's participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

(Authority: 20 U.S.C. 1094)

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 674.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

7. Section 674.2(b) is amended by removing the definition of the term ''*Payment period''.

8. Section 674.16 is amended by removing in paragraphs (d) (1) and (e) ''§ 668.165'' and adding, in its place, ''§ 668.164''; by removing paragraph (g) and by redesignating paragraphs (h), (i), and (j) as paragraphs (g), (h), and (i), respectively.

PART 675—FEDERAL WORK-STUDY PROGRAMS

9. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

10. Section 675.2(a) is amended by revising the introductory clause to read as follows:

§ 675.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR 668:

* * * * *

11. Section 675.2(b) is amended by removing the definition of the term ''*Payment period''.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

12. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070–3, unless otherwise noted.

13. Section 676.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 676.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

14. Section 676.2(b) is amended by removing the definition of the term ''*Payment period''.

* * * * *

§ 676.16 [Amended]

15. Section 676.16 is amended by removing in paragraph (c) ''§ 668.165'' and adding, in its place, ''§ 668.164''; by removing paragraph (e) and by redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

16. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

17. Section 682.200(a)(1) is amended by adding the term ''payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 682.200 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

18. Section 682.207 is amended by removing the word ''separate'' and adding, ''in accordance with § 668.163 after the word ''maintained'' in paragraph (b)(1)(ii)(B); removing the word ''separate'', and adding ''in accordance with § 668.163'' after the word ''maintained'' in paragraph

(b)(1)(ii)(C); removing the word ''separate'' and adding ''in accordance with § 668.163'' after the word ''maintained'' in paragraph (b)(1)(v)(B)(*1*); revising paragraphs (c)(3) and (4) and adding new paragraph (c)(5); and revising paragraph (d) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) * * *

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school.

(4) If one or more scheduled disbursements have elapsed before a lender makes a disbursement and the student is still enrolled, the lender may include in the disbursement loan proceeds for previously scheduled, but unmade, disbursements.

(5) A lender is not required to make more than one disbursement if a school is not in a State.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i)(A) Only if the school certified the loan application and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(B) Only if the student completed the first 30 days of his or her program of study if the student was a first-year, first time borrower as described in § 682.604(c)(5) of this section; and

(C) Only if the student graduated or successfully completed the period of enrollment for which the loan was intended, in the case of a second or subsequent disbursement.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with (d)(1) of this section at the time the lender sends the loan proceeds to the school.

19. Section 682.603 is amended by amending paragraph (b)(4) by adding the word ''and'' after the semicolon; revising paragraph (b)(5); removing paragraph (b)(6); removing and reserving paragraph (c); and revising paragraph (h)(1) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(b) * * *

(5) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c)(6).

* * * * *

(h) *Requesting loan proceeds.* (1) Pursuant to paragraph (b)(5) of the section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in § 668.167.

* * * * *

20. Section 682.604, paragraph (a) is amended by revising the paragraph heading, designating the text as paragraph (a)(1), and adding new paragraphs (a)(2) and (a)(3); paragraph (b) is amended by revising the paragraph heading; paragraph (b)(2)(ii) is removed and reserved; paragraph (b)(2)(iii) is amended by removing ''34 CFR Part 668'' and adding, in its place, ''§ 668.26''; paragraph (c)(2)(i) is amended by removing ''45'' and adding, in its place, ''30''; paragraph (c)(2)(ii)(A) is amended by removing ''45'' and adding, in its place, ''30''; paragraph (c)(2)(ii)(B) is amended by removing ''668.165(b)(2)'' and adding, in its place, ''668.164(e)''; paragraphs (c)(3)(i) and (ii) are revised; paragraph (c)(4) is amended by removing ''§ 682.605(c)'' and adding, in its place, ''§ 668.22(j)''; paragraphs (c)(6) through (c)(9) are added; paragraph (d)(1)(i) is amended by removing ''§ 668.165(c)(2)'' and adding, in its place, ''§ 668.164''; paragraph (d)(2) is revised; paragraph (d)(3) is amended by removing ''or does not begin attendance on a delayed basis as provided in § 682.604(b)(2)(ii),'' and removing ''30 days after the first day of that period of enrollment'' and adding, in its place, ''the period specified in § 668.167''; and paragraph (e) is revised to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *General.* (1) * * *

(2) Prior to a school delivering or crediting an FFEL loan account by EFT or master check, the school must provide the student or parent borrower with the notice as described under § 668.165.

(3) If the school is placed under the reimbursement payment method as provided under § 668.162, a school shall not disburse a loan, as provided in § 668.167.

(b) *Releasing loan proceeds.* * * *

(c) * * *

(3) * * *

(i) Deliver the proceeds to the student or parent borrower as specified in § 668.164; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section and § 668.164, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds not later than the timeframe specified in 668.164.

* * * * *

(c) * * *

(6) Notwithstanding any other provision of this section, unless § 682.207(c) (4) or (5) applies—

(i) If a loan period is more than one payment period, the school shall deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school shall make at least two deliveries of loan proceeds during that payment period. The school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period.

(7) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not deliver a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(8) If an educational program measures academic progress in clock hours, the school may not deliver a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the school, that the student has completed half of the clock hours in the loan period.

(9) The school must deliver loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(d) * * *

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3) of this section, a school may not deliver loan proceeds earlier than the timeframe specified in § 668.164.

* * * * *

(e) *Processing a late disbursement.*

(1) A school may process a late disbursement received from a lender under § 682.207(d) in accordance with § 668.164(g).

(2) If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's educational charges, the school shall return the balance of the borrower's loan proceeds to the lender with a notice certifying—

(i) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period or payment period; and

(ii) The borrower's corrected financial need for the loan for that period of enrollment or payment period.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

21. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

22. Section 685.102 is amended in paragraph (a)(1) by adding the term ''payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 685.102 Definitions.

(a) (1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

23. Section 685.301 is amended by revising paragraph (b) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) Unless paragraph (b)(5), (6), or (7) of this section applies, an institution shall disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), or (6) of this section applies—

(i) If a loan period is more than one payment period, the school shall disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school shall make at least two disbursements during that payment period. The school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods; or

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not make a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework in the loan period.

(6) If an educational program measures academic progress in clock hours, the school may not make a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the clock hours in the loan period.

(7) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(8) A school not in a State is not required to make more than one disbursement.

* * * * *

24. Section 685.303(d) is revised to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(d) *Late Disbursement.* A school may make a late disbursement according to the provisions found under 34 CFR 668.164(g).

25. Section 685.303(c) is amended by removing the citation ''668.165'' at the end of the paragraph and adding, in its place, ''668.164''.

§ 685.309 [Amended]

26. Section 685.309(e) is amended by removing the citation ''668.164'' at the end of the paragraph and adding, in its place, ''668.163''.

PART 690—FEDERAL PELL GRANT PROGRAM

27. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

28. Section 690.2 is amended by revising the section heading, adding the term ''Payment period'' in alphabetical order in paragraph (a) and revising the introductory clause of paragraph (a) to read as follows:

§ 690.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

§ 690.3 [Removed and reserved]

29. Section 690.3 is removed and reserved.

30. Section 690.75 is amended by removing paragraph (b) and by redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

§ 690.78 [Amended]

31. Section 690.78 is amended by removing in paragraph (a) ''§ 668.165'' and adding, in its place, ''§ 668.164''.

[FR Doc. 96–30393 Filed 11–27–96; 8:45 am]

BILLING CODE 4000–01–P

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207–AA38

Tolls for Use of Canal; Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule announces a two-phase toll-rate increase—8.2 percent on January 1, 1997 followed by a 7.5 percent increase on January 1, 1998. Record traffic demand on the Canal's transit capacity has necessitated an expanded and accelerated capital program. Absent a toll increase, the Commission anticipates capital program expenditures will contribute to a significant deficit in FY's 1996–1998. The toll increase is legally mandated to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements.

This action increases toll rates for: merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, from $2.21 to $2.39 per PC/UMS Net Ton in January 1997, and to $2.57 in January 1998; vessels in ballast without passengers or cargo, from $1.76 to $1.90 per PC/UMS Net Ton in January 1997, and to $2.04 in January 1998; and other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, from $1.23 to $1.33 per ton of displacement in January 1997, and to $1.43 in January 1998.

In addition, on July 1, 1997, the Commission will begin applying new rules of measurement to on-deck, container carrying capacity for inclusion of a portion of that volume in PC/UMS Net Tonnage.

DATES: Effective date: This rule is effective on January 1, 1997. The first toll rate increase of 8.2% is applicable January 1, 1997. The on-deck, container-carrying capacity measurement rule is applicable July 1, 1997. The second toll rate increase of 7.5% is applicable January 1, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street NW, Suite 1050, Washington, DC 20006–5402. Telephone: (202) 634–6441, Fax: (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM; or the Office of Financial Management, Panama Canal Commission, Balboa Heights, Republic of Panama (Telephone: 011–507–272–3194, Fax: 011–507–272–3040).

SUPPLEMENTARY INFORMATION: On September 3, 1996, a notice of proposed rulemaking was published in the Federal Register (61 FR 46407) in which the Panama Canal Commission (PCC) proposed a two-phase toll-rate increase—8.2 percent in January 1, 1997 and 7.5 percent in January 1, 1998. This was coupled with an amendment to become effective January 1, 1997 to apply rules of measurement which would include in PC/UMS Net Tonnage a portion of the volume of the container-carrying capacity on or above the main deck. The notice of proposed rulemaking also provided that, if for any reason, the on-deck measurement provision was not adopted as proposed, the general toll-rate increase would be adjusted to 8.7 and 7.9 percent, respectively.

To ensure maximum notice and participation in the rulemaking process, PCC issued a press release on August 19, 1996 that was distributed to more than 125 publications worldwide, including special business and shipping publications as well as all major news services. Information on the proposal was also faxed directly to approximately 400 shipowners and operators, maritime organizations and port authorities. Additionally, the press release and the analysis were made available in the Internet (http://www.pananet.com/pancanal). The Administrator personally sent letters via facsimile on August 21, 1996 to the 40 top users of the Canal to advise them that they would each be called to discuss the proposal to be published in the Federal Register. Over 25 of these users were subsequently reached and encouraged to comment on the proposal before any decisions were finalized. On August 28, 1996, in an effort to further disseminate information on the proposal, the Administrator and a delegation from the PCC staff met with the Camara Maritima de Panama (Panama Maritime Chamber), whose members represent Canal users from around the world. On September 25, 1996 a follow-up letter was faxed to 40 top users of the Canal and 311 shipowners, operators and maritime organizations encouraging comments and attendance at the public hearings. Thereafter, the Administrator met or corresponded with various shipping interests explaining the proposal and soliciting input from the customers.

At that time, a written analysis explaining the proposed toll increase was made available to interested parties. This analysis stated that traffic levels were rapidly approaching the Canal's existing operating capacity which, unless addressed, could undermine PCC's longstanding commitment to quality customer service, including the target average 24-hour Canal Waters Time (CWT). To meet this challenge, PCC's Board of Directors approved management's recommendation to increase and accelerate the capital program to ensure a Canal operating capacity that meets future traffic demands and an acceptable long-term quality of transit service. More specifically, the PCC's capital program for FY's 1996–1998 totals $248 million; an additional $228 million is programmed for FY's 1999–2000. This capital program will augment and advance the implementation of many modernization and improvement programs in response to projected customer requirements. The toll rate increase was established to meet the projected significant deficits in FY's 1996–1998 alone from capital expenditures to expand Canal operating capacity. At current toll rates, total operating expenses and capital expenditure requirements are estimated to exceed revenues by $2.2 million in FY 1996, $34.5 million in FY 1997 and $69.7 million in FY 1998.

The proposed rulemaking document explained why costs of PCC's expanded capital program prompted PCC to focus on the exclusion of on-deck earning capacity from its toll base. The analysis noted PCC's belief that the increasing use of on-deck spaces for the carriage of cargo has resulted in an inequitable distribution of operating costs. The Commission proposed to implement measurement rules to more accurately reflect the true earning capacity of modern vessels. Specifically, the measurement rules here adopted authorize PCC to determine which ships qualify for the assessment and to calculate the corresponding volume of on-deck container capacity (VMC). The VMC is then multiplied by the fraction .031 to establish the portion included in PC/UMS Net Tonnage.

Written comments were solicited and received from the public and hearings were held in Washington, DC on October 8, 1996, and in Panama, Republic of Panama on October 10, 1996. A complete record of the proceedings, including the data and comments submitted by interested parties, are included in the Panel Report to the Board of Directors. The views presented by interested parties, as well as other relevant information, were considered by the Board of Directors during its Executive Session on November 22, 1996. Based upon this review, and in order to meet previously reviewed traffic forecasts, requirement to expand Canal operating capacity, justification for an accelerated capital program, impact of that program on future deficits, funding alternatives, consequences to the Canal's competitive position and international commerce, and other related information, the Board voted to approve a two-phase toll-rate increase—8.2 percent on January 1, 1997 followed by a 7.5 percent in increase on January 1, 1998.

The Board also approved the on-deck measurement rule, but agreed to delay its implementation until July 1, 1997. The Board concluded that consistency in all Canal toll assessments required that tolls be based on net vessel tons of earning capacity in open spaces on or above the main deck as well as in enclosed spaces below deck. The system adopted captures most of this earning capacity in an easily-administered process by including a fraction of on-deck container-carrying capacity in PC/UMS Net Tonnage. The six-month implementation delay responds to Canal customers who have expressed concerns about the specific impact of the measurement rule change on individual vessels. Postponing implementation of the measurement rule for six months will allow customers to calculate the actual impact of the change based on new tonnage certificates PCC will issue before July 1, 1997.

The Panel Report more fully addresses the comments submitted by interested parties, either in writing or in testimony at one of the public hearings. In the Report, the Panel has attempted to respond to the most significant comments. On or after December 2,

1996, upon request, the Panel Report will be provided to any interested party.

Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover nearly as practicable, all costs of maintaining and operating the Panama Canal as well as to provide capital for plant replacement, expansion and improvements. It is evident from all the information that for the Canal to remain self-sufficient, the two-phase toll increase and the adoption of measurement rules applicable to on-deck, container carrying capacity are required.

List of Subjects in 35 CFR Part 133 and 135

Measurement, Navigation, Panama Canal, Vessels.

Accordingly, 35 CFR parts 133 and 135 are amended as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 is revised to read as follows:

Authority: 22 U.S.C. 3791–3792, 3794.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of Toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.39 per PC/UMS Net Ton—that is, the Net Tonnage determined in accordance with part 135 of this chapter, effective January 1, 1997, and $2.57 per PC/UMS Net Ton, effective January 1, 1998.

(b) On vessels in ballast without passengers or cargo, $1.90 per PC/UMS Net Ton, effective January 1, 1997, and $2.04 per PC/UMS Net Ton, effective January 1, 1998.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.33 per ton of displacement, effective January 1, 1997, and $1.43 per ton of displacement, effective January 1, 1998.

PART 135—RULES FOR MEASUREMENT OF VESSELS

3. The authority citation for part 135 is revised to read as follows:

Authority: 22 U.S.C. 3791–3792, 3794.

4. Section 135.2 is amended by adding at the end thereof a new sentence to read as follows:

§ 135.2 Vessels generally to present tonnage certificate or be measured.

* * * In addition, these same vessels shall provide documentation, such as plans and classification certificates, with sufficient information to determine the volume of the maximum capacity of containers that may be carried on or above the upper deck, or VMC as defined in section 135.13(a)(11).

5. In § 135.3, the heading and paragraph (a) are revised to read as follows:

§ 135.3 Determination of total volume and VMC.

(a) Determination of total volume and VMC used to calculate PC/UMS Net Tonnage shall be carried out by the Panama Canal Commission. In so doing, however, the Commission may rely upon total volume and VMC information provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates. Total volume and VMC information presented to the Commission shall be subject to verification, and if necessary, correction as necessary to ensure accuracy to a degree acceptable to the Commission.

* * * * *

6. Section 135.13 is amended by revising the formula for determining PC/UMS Net Tonnage in paragraph (a), by adding new paragraphs (a)(10) and (a)(11), and by revising paragraph (b) to read as follows:

§ 135.13 Determination of PC/UMS Net Tonnage.

* * * * *

(a) * * *

$$\text{PC/UMS Net Tonnage} = K_4(V) + K_5(V) + CF_1(VMC)$$

* * * * *

(10) ''CF_1''=.031 for ships which the Commission determines are designed to carry containers on or above the upper deck; otherwise ''CF_1''=0. In making the foregoing determination, the Commission may consider documentation provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates.

(11) ''VMC''=the volume (in cubic meters) of maximum capacity of the containers that can be carried on or above the upper deck. This volume may be calculated by multiplying the maximum number of containers by 29.2 m^3, or by other generally accepted methods that meet the Commission's accuracy standards. VMC will not include any container capacity that is included in ''V''.

(b) For vessels subject to transitional relief measures, the existing Panama Canal Net Tonnage as specified on the certificate issued by the Commission plus CF_1 (VMC) shall be the PC/UMS Net Tonnage. In such case, the formula for determining PC/UMS Net Tonnage is: PC/UMS Net Tonnage=Panama Canal Net Tonnage+CF_1(VMC).

7. Section 135.14 is amended by adding a new paragraph (d) to read as follows:

§ 135.14 Change of PC/UMS Net Tonnage.

* * * * *

(d) If the VMC of a vessel is changed due to any physical modification after the vessel's PC/UMS Net Tonnage has been determined at the Canal, the PC/UMS Net Tonnage may be revised by the Commission.

8. Section 135.15 is amended by adding new paragraphs (d) and (e), to read as follows:

§ 135.15 Calculation of volumes.

* * * * *

(d) VMC may be calculated by multiplying the maximum number of containers by 29.2 m^3, or by other generally accepted methods that meet the Commission's accuracy standards.

(e) For purposes of this part, the outside dimension of a container is 8 ft.×8 ft.×20 ft., or 36.25 m^3. These parameters will be used for determining the maximum above-deck container capacity.

9. Section 135.31 is amended by adding at the end thereof a new sentence to read as follows:

§ 135.31 Transitional relief measures.

* * * Vessels subject to relief measures shall provide Canal authorities with sufficient documentation, such as plans and classification certificates, for the Commission to determine the VMC.

10. Section 135.41 is amended by revising the first sentence to read as follows:

§ 135.41 Measurement of vessels when volume information is not available.

When an ITC 69 or suitable substitute and documentation for the calculation of the VMC are not presented, or when the certificate, substitute or VMC documentation presented does not meet accuracy standards acceptable to the Commission, vessels will be measured in a manner that will include the entire cubical contents of V and VMC as defined in this part. * * *

11. Section 135.42 is amended by adding a new paragraph (c) to read as follows:

§ 135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

* * * * *

(c) VMC may be determined by any accepted method or combination of methods, including but not limited to, simple geometric formulas, multiplication of a container by 29.2 m^3, or other standard mathematical formula. The on-deck container capacity of a vessel for VMC purposes will be determined by the Commission.

Dated: November 25, 1996.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 96–30488 Filed 11–27–96; 8:45 am]

BILLING CODE 3640–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96–8 CARP]

Copyright Office; Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress announces a cost of living adjustment of 3.0% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1995, to October, 1996.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Tanya Sandros, Copyright Arbitration Royalty Panel Specialist, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 22, 1992, the Copyright Royalty Tribunal published in the Federal Register final rules governing the terms and rates of copyright royalty payments with respect to certain uses by noncommercial educational broadcast stations of published nondramatic musical works and published pictorial, graphic and sculptural works. 57 FR 60957 (December 22, 1992). The Copyright Royalty Tribunal determined in that proceeding that colleges, universities, and other noneducational institutions which are not affiliated with National Public Radio would pay a royalty rate adjusted each year according to changes in the Consumer Price Index for the use of copyrighted published nondramatic musical compositions. 37 CFR 304.10. Accordingly, the Tribunal published a cost of living adjustment on December 1, 1993. 58 FR 63294 (December 1, 1993).

On December 17, 1993, Congress abolished the Copyright Royalty Tribunal. Copyright Royalty Tribunal Reform Act of 1993 (CRT Reform Act), Pub. L. 103–198, 107 Stat. 2304. The CRT Reform Act directed the Library of Congress and the Copyright Office to adopt the rules and regulations of the CRT as found in chapter 3 of 37 CFR. 17 U.S.C. 802(d). The Office subsequently reissued the CRT regulations on December 22, 1993. 58 FR 67690 (December 22, 1993).

In a later action, former 37 CFR 304.10, which calls for the annual cost of living adjustments to rates paid by college and university radio stations, was renumbered 37 CFR 253.10. 59 FR 23964 (May 9, 1994).

Accordingly, the Copyright Office of the Library of Congress is hereby performing the annual cost of living adjustment pursuant to the 1992 public broadcasting rate adjustment proceeding.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1995, to the most recent Index published before December 1, 1996, was 3.0% (1995's figure was 153.7; 1996's figure is 158.3, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is $217, each, and $50 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for Part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. 37 CFR 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $217 annually.

(2) For all such compositions in the repertory of BMI, $217 annually.

(3) For all such compositions in the repertory of SESAC, $50 annually.

* * * * *

Dated: November 22, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–30483 Filed 11–27–96; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND4–1–6459a, UT8–1–6460a, CO20–1–6461a, MT14–1–6462a; FRL–5282–1]

Clean Air Act, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the States of North Dakota, Utah, Colorado and Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: EPA approved the State Implementation Plan revisions for the States of North Dakota, Utah, Colorado and Montana (January 11, 1994 in 59 FR 1485, January 11, 1994 in 59 FR 1485, January 28, 1994 in 59 FR 4003, March 4, 1994 in 59 FR 10284, respectively) for the purpose of establishing Small Business Stationary Source Technical and Environmental Compliance Assistance Programs. This notice amends those approvals to incorporate by reference the States' Programs, and deletes the following sections from part 52, chapter I, title 40 of the Code of Federal Regulations: § 52.1833 of subpart JJ—North Dakota, § 52.2348 of subpart TT—Utah, § 52.347 of subpart G—Colorado, and § 52.1389 of subpart BB—Montana.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 28, 1997

unless, by December 30, 1996, adverse or critical comments are received.

If the 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. The 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 January 28, 1997.

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.

DATES: This action is effective January 28, 1997, unless adverse or critical comments are received by December 30, 1996. If the effective date is delayed timely notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Meredith Bond, Mail Code 8P2–A, EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 312–6438.

SUPPLEMENTARY INFORMATION:

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 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, or $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended 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) of the APA as amended.

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 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Dated: February 13, 1996.

Jack McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(34) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(34) On October 19, 1992, the Governor of Montana submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to be incorporated into the Montana State Implementation Plan as required by section 507 of the Clean Air Act.

(i) Incorporation by reference.

(A) Montana Code Annotated, Sections 75–2–106, 75–2–107, 75–2–108, 75–2–109 and 75–2–220, to establish and fund a small business stationary source technical and environmental compliance assistance program, effective April 24, 1993.

(ii) Additional Materials.

(A) October 19, 1992 letter from the Governor of Montana submitting a Small Business Stationary Source Technical and Environmental Compliance Assistance Program plan to EPA.

(B) The State of Montana plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program, adopted by the Board of Health and Environmental Sciences on September 25, 1992, effective September 25, 1992.

§ 52.1389 [Removed]

3. Section 52.1389 is removed.

Subpart TT—Utah

4. Section 52.2320 is amended by adding paragraph (c)(30) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(30) On November 9, 1992, the Governor of Utah submitted a plan for the establishment and implementation of a Small Business Assistance Program to be incorporated into the Utah State Implementation Plan as required by section 507 of the Clean Air Act.

(i) Incorporation by reference.

(A) Utah Code, Title 19, Chapter 2, Air Conservation Act, Sections 19–2–109.1 and 19–2–109.2, to establish and fund a small business stationary source technical and environmental compliance assistance program, effective April 27, 1992.

(ii) Additional Materials.

(A) November 9, 1992 letter from the Governor of Utah submitting a Small Business Assistance Program plan to EPA.

(B) The State of Utah plan for the establishment and implementation of a Small Business Assistance Program, promulgated September 30, 1992 by the Utah Air Quality Board, effective December 1, 1992.

§ 52.2348 [Removed]

5. Section 52.2348 is removed.

Subpart G—Colorado

6. Section 52.320 is amended by adding paragraph (c)(63) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(63) On November 18, 1992, the Governor of Colorado submitted a plan for the establishment and implementation of a Small Business Assistance Program to be incorporated into the Colorado State Implementation Plan as required by section 507 of the Clean Air Act.

(i) Incorporation by reference.

(A) Colorado Revised Statutes, Sections 25–7–109.2 and 25–7–114.7, to establish and fund a small business stationary source technical and environmental compliance assistance program, effective July 1, 1992.

(ii) Additional materials.

(A) November 18, 1992 letter from the Governor of Colorado submitting a Small Business Assistance Program plan to EPA.

(B) The State of Colorado plan for the establishment and implementation of a Small Business Assistance Program, adopted by the Colorado Air Quality Control Commission on October 15, 1992, effective October 15, 1992.

§ 52.347 [Removed]

7. Section 52.347 is removed.

Subpart JJ—North Dakota

8. Section 52.1820 is amended by adding paragraph (c)(25) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(25) On November 2, 1992, the Governor of North Dakota submitted a plan for the establishment and implementation of a Small Business Assistance Program to be incorporated into the North Dakota State Implementation Plan as required by section 507 of the Clean Air Act.

(i) Incorporation by reference.

(A) Executive Order 1992–5, executed May 21, 1992, to establish a Small Business Compliance Advisory Panel.

(ii) Additional Materials.

(A) November 2, 1992 letter from the Governor of North Dakota submitting a Small Business Assistance Program plan to EPA.

(B) The State of North Dakota plan for the establishment and implementation of a Small Business Assistance Program, adopted by the North Dakota State Department of Health and Consolidated Laboratories on October 23, 1992, effective October 23, 1992.

§ 52.1833 [Removed]

9. Section 52.1833 is removed.

Editoral Note: This document was received at the Office of the Federal Register on November 22, 1996.

[FR Doc. 96–30327 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[IN75–1; FRL–5648–7]

Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: On March 3, 1978, the EPA published a final rule designating part of Porter County, Indiana as nonattainment for sulfur dioxide (SO_2) and the remainder of Porter County as ''better than national standards'' (43 FR 8962). On October 5, 1978, the EPA designated the formerly nonattainment portion of Porter County (the area bound on the north by Lake Michigan, on the west by the Lake-Porter County line, on the south by I–80 and 90 and on the east by the LaPorte-Porter County line) as ''cannot be classified'' for SO_2 (43 FR4993). Inadvertently, however, the revised Porter County status designation was not correctly printed in subsequent Codes of Federal Regulations (40 CFR 81.315). It is being corrected in this rule.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air Programs Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), or require prior consultation with State officials as specified by Executive Order 112875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because EPA is not taking comment on this correction, it is therefore not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

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).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Sulfur dioxide.

Dated: September 30, 1996.

David A. Ullrich,

Acting Regional Administrator.

Accordingly, part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.315 is amended by revising the entry for Porter County in the table entitled ''Indiana SO_2'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*	*		*
Porter County:				
An area bound on the north by Lake Michigan, on the west by the Lake-Porter County line, on the south by I–80 and 90 and on the east by the LaPorte-Porter County line	.....	.....	X	
The remainder of Porter County.....	.....	.....	.....	X
* * * *	*	*		*

* * * * *

[FR Doc. 96–30328 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 131

[FRL–5656–7]

Withdrawal From Federal Regulations of Human Health Water Quality Criteria Applicable to Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: In 1992, EPA promulgated federal regulations establishing water quality criteria for toxic pollutants for several states, including Idaho (40 CFR 131.36). Idaho has now adopted, and EPA has approved, human health water quality criteria. In this action, EPA is amending the federal regulations to withdraw all human health criteria applicable to Idaho with the exception of the human health criteria for arsenic. EPA is withdrawing its human health criteria applicable to Idaho without a notice and comment rulemaking because the State's human health criteria (except for arsenic) are identical to the federal criteria. In a separate action elsewhere in this issue of the Federal Register, EPA is proposing to withdraw the federal human health criteria for arsenic and is taking public comment on that proposed action.

EFFECTIVE DATE: This amendment is effective November 29, 1996.

ADDRESSES: The administrative record for consideration of Idaho's human health criteria is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, during normal business hours of 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Fred Leutner at EPA Headquarters, Office of Water, 401 M Street, SW, Washington, D.C., 20460 (tel: 202–260–1542) or Lisa Macchio in EPA's Region 10 at 206–553–1834.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities:

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging toxic pollutants to waters of the United States in Idaho could be affected by this rulemaking since criteria are used in determining NPDES permit limits. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Industries discharging toxic pollutants to surface waters in Idaho.
Municipalities	Publicly-owned treatment works discharging toxic pollutants to surface waters in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 131.36 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

In 1992, EPA promulgated a final rule (known as the National Toxics Rule) to establish numeric water quality criteria for 12 States and 2 Territories (hereafter ''States'') that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act (''CWA'') (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts criteria that meet the requirements of the CWA, EPA will withdraw its criteria. If the State's criteria are no less stringent than the federal regulations, EPA has determined that additional comment on the criteria is unnecessary and constitutes good cause for issuing this final rule without notice and comment. For the same reason, EPA has determined that good cause exists to waive the requirement

for a 30-day period before the amendment becomes effective and therefore, the amendment will be immediately effective.

On August 24, 1994, Idaho adopted revisions to its surface water quality standards (Title 1, Chapter 2, section 250 of the Idaho Administrative Code), regarding human health criteria. For all toxic pollutants except arsenic, Idaho adopted by reference EPA's human health criteria. The Office of Water for EPA Region 10 approved the State's human health criteria because they are identical to the federal criteria, and requested that the Agency withdraw the federal criteria applicable to Idaho for which the State now has identical numeric criteria. In a separate action in this issue of the Federal Register, EPA is proposing to withdraw the federal criteria for arsenic applicable to Idaho.

This withdrawal of human health criteria imposes no additional regulatory requirements. Therefore, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is not subject to OMB review.

Similarly, this action will not result in the annual expenditure of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector, and is not a Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104–4), nor does it uniquely affect small governments in any way. As such, the requirements of sections 202, 203 and 205 of Title II of the UMRA do not apply to this action.

The Agency has determined that the rule being issued today is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, which generally requires an agency to conduct a regulatory flexibility analysis unless it certifies that the rule will not have a significant economic impact on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedures Act (APA) or any other statute.

Today's rule is not subject to notice and comment requirements under the APA or any other statute. As explained in more detail above, EPA is withdrawing its water quality criteria for all toxic pollutants except arsenic for the State of Idaho because the State has adopted its own criteria that are identical to EPA's. In these circumstances, any additional comment on EPA's action in this rulemaking is unnecessary. Consequently, the notice and public procedures provisions of the APA do not apply. 5 U.S.C. 553(b)

Even if the Agency were required to perform a regulatory flexibility analysis, today's rule would not have a significant economic impact on small entities. Any economic impact on small entities is unchanged by today's action because the Idaho criteria are identical to the EPA criteria being withdrawn.

This final rule does not impose any requirement subject to the Paperwork Reduction Act.

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).

List of Subjects in 40 CFR 131

Environmental protection, Water pollution control, Water Quality Standards.

Dated: November 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I, part 131 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

§ 131.36—[Amended]

2. Section 131.36(d)(13)(ii) is amended in ''01.b'' use classification, under the listing of applicable criteria, by replacing ''all except #14 and 115'' with ''#2'' for Column D1.

3. Section 131.36(d)(13)(ii) is amended in ''02.a,'' ''02.b,'' and ''02.cc'' use classification, under the listing of applicable criteria, by replacing ''all'' with ''#2'' after ''Column D2''.

4. Section 131.36(d)(13)(ii) is amended in ''03.a'' use classification, under the listing of applicable criteria, by replacing ''all'' with ''#2'' after ''Column D2''.

5. Section 131.36(d)(13)(ii) is amended in ''03.b'' use classification, under the listing of applicable criteria, by replacing ''all'' with ''#2'' after ''Column D2''.

[FR Doc. 96–30310 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300443; FRL–5574–7]

RIN 2070–AB78

Metolachlor Pesticide Tolerance; Emergency Exemption For Use on Spinach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the herbicide metolachlor in or on the raw agricultural commodity spinach in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of metolachlor on spinach in Arkansas, Oklahoma, Texas and Virginia. This regulation establishes a maximum permissible level for residues of metolachlor in this food pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This tolerance will expire and be revoked automatically without further action by EPA on November 15, 1998.

DATES: This regulation becomes effective November 29, 1996. This regulation expires and is revoked automatically without further action by EPA on November 15, 1998. Objections and requests for hearings must be received by EPA on January 28, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300443], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP–300443], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In

person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300443]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347, e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide metolachlor, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide in or on spinach at 0.3 part per million (ppm). This tolerance will expire and be revoked automatically without further action by EPA on November 15, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities were discussed in detail in the final rule establishing a tolerance for an emergency exemption for use of propiconazole on sorghum (61 FR 58135, Nov. 13, 1996).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Metolachlor on Spinach and FFDCA Tolerances

On September 13, 1996, the Texas Department of Agriculture availed itself of the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of metolachlor on spinach for control of various weeds. The States of Arkansas, Oklahoma, and Virginia have also requested specific exemptions for use of metolachlor on spinach in those States to control various weeds. Emergency conditions are determined to exist due to the loss of Antor 4E, diethatyl ethyl, a herbicide used on spinach. NOR-AM Chemical Company no longer manufactures Antor and stocks were exhausted from 1993 production. Furthermore, at the present there is no preemergence herbicide registered to control annual weeds in spinach. Roneet E6 is the only herbicide registered for use on spinach at planting; however, it has proven ineffective as a preemergence control for weeds.

As part of its assessment of these applications for crisis declaration and emergency exemptions, EPA assessed the potential risks presented by residues of metolachlor on spinach. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. This tolerance for metolachlor will permit the marketing of spinach treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be

revoked automatically without further action by EPA on November 5, 1998, under FFDCA section 408(l)(5), residues of metolachlor not in excess of the amount specified in the tolerance remaining in or on spinach after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether metolachlor meets the requirements for registration under FIFRA section 3 for use on spinach or whether a permanent tolerance for metolachlor for spinach would be appropriate. This action by EPA does not serve as a basis for registration of metolachlor by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than those listed above to use this product on spinach under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for metolachlor, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Metolachlor is already registered by EPA for numerous food and feed uses, as well as use on outdoor residential lawn, numerous ornamental plants and trees, highway rights-of-way and recreational area use. EPA has also assessed the toxicology data base for metolachlor in its evaluation of applications for registration on spinach. Thus, EPA has sufficient data to assess the hazards of metolachlor and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of metolachlor on spinach at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has established the RfD for metolachlor at 0.10 milligrams(mg)/kilogram(kg)/day. The RfD for metolachlor is based on a 1–year feeding study in dogs with a NOEL of 9.7 mg/kg/day and an uncertainty factor of 100. Decreased body weight gain was the effect observed at the Lowest Effect Level (LEL) of 33 mg/kg/day.

2. *Acute toxicity.* OPP has determined that data do not indicate the potential for adverse effects after a single dietary exposure.

3. *Short-term toxicity.* OPP has determined that an intermediate term risk assessment is appropriate for occupational and residential routes of exposure. OPP recommends that the NOEL of 100 mg/kg/day, taken from the 21–day dermal toxicity study, be used for these MOE calculations. Effects observed at the lowest observed effect level (LOEL) of 1,000 mg/kg/day are dose-related increases in minor histopathological alterations of the skin, total bilirubin (females), absolute and relative liver weights (males), and relative kidney weights (females). However, no acceptable reliable dermal exposure data to assess these potential risks are available at this time. OPP did

not identify an inhalation exposure intermediate-term hazard.

4. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), the Carcinogenicity Peer Review Committee (CPRC) has classified metolachlor as a Group C chemical, possible human carcinogen, based on (a) the increased incidence of adenomas and combined adenomas/carcinomas in female rats, both by pair-wise and trend analysis and the replication of this finding in a second study, (b) negative mutagenicity studies, and (c) comparative metabolism studies indicating that metolachlor has a different metabolic profile than acetochlor and alachlor with regard to the quinone imine metabolite. Based on these findings, the CPRC recommended that the NOEL of 15.7 mg/kg/day, from the 2–year feeding study [MRID#: 00129377] in rat, and the MOE approach be used for quantification of risk.

B. Aggregate Exposure

Tolerances for residues of metolachlor in or on food/feed commodities are currently expressed in terms of the combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound (40 CFR 180.368(a), (b), and (c)).

For the purpose of assessing chronic dietary exposure from metolachlor, EPA assumed tolerance level residues and percent of crop treated refinements to estimate the Anticipated Residue Contribution (ARC) from the proposed and existing food uses of metolachlor. The use of percent of crop treated data for most of the existing food uses in this analysis results in a more refined estimate of exposure than the TMRC.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, metolachlor appears to be moderately persistent and ranges from being mobile to highly mobile in different soils. Data collected from around the United States provides evidence that metolachlor leaches into ground water, occasionally at levels that exceed the Lifetime Health Advisory (HA) Level of 100 parts per billion (ppb). The ''Pesticides In Groundwater Database'' (EPA 734–122–92–001, Sept. 1992), indicates that metolachlor residues were detected in wells in 20 States. Levels exceeded the lifetime HA in three wells located in Wisconsin, New York, and Montana. In eight other States concentrations in some well waters exceeded 10 percent of the HA. Incident reports submitted under 6(a)(2) of FIFRA describe 47 detections of metolachlor in the groundwater of 7 States at concentrations ranging from 0.11 ppb to 116 ppb. Metolachlor is not yet formally regulated under the Safe Drinking Water Act; therefore, no enforcement Maximum Concentration Level (MCL) has been established for it. Metolachlor also has relatively high health advisory levels (1 to 10 day HA level of 2,000 ppb and lifetime HA level of 100 ppb).

Although residue levels of metolachlor exceeding the lifetime HA of 100 ppb have been measured, the 1 to 10 day HA level of 2,000 is not exceeded in any well measured and residues over time in these wells are highly unlikely to exceed the lifetime HA of 100 ppb anywhere. As part of the risk mitigation in the metolachlor Registration Eligibility Document (RED), additional label restrictions designed to minimize ground and surface water contamination are required. Groundwater concerns may be mitigated by adhering to these label restrictions and advisory statements.

Previous experience with persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and OPP's best scientific judgement, and considering the low percent of the RfD occupied by dietary exposure estimates including spinach (0.6 percent RfD for U.S. population), EPA does not anticipate that combined exposure from drinking water and dietary exposure would result in an ARC that exceeds 100 percent of the RfD. Therefore, the EPA concludes that potential metolachlor residues in drinking water are not likely to pose a human health concern.

There are residential uses of metolachlor and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that metolachlor and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment. For purposes of this tolerance only, the Agency is considering only the potential risks of metolachlor in its aggregate exposure.

C. Safety Determinations For U.S. Population

Based on the completeness and reliability of the toxicity and consumption data, EPA has concluded that dietary exposure to metolachlor will utilize 0.6 percent of the RfD for the U.S. population. As mentioned before, EPA does not expect that chronic exposure from drinking water would result in an aggregate exposure which would exceed 100 percent of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to metolachlor residues.

As discussed earlier, quantitation of cancer risk using the MOE approach was recommended by the CPRC using the NOEL of 15.7 mg/kg/day from the 2–year feeding study in rats. However, as noted in the metolachlor RED, because the RfD is set on a NOEL of 9.7 mg/kg/day from the 1 year feeding study in dogs, dietary cancer concerns are adequately addressed by the chronic exposure analysis using the RfD.

D. Determination of Safety for Infants and Children.

In assessing the potential for additional sensitivity of infants and children to residues of metolachlor, EPA considered pre- and post-natal toxicity data. EPA notes that the developmental toxicity NOELs of 300 mg/kg/day (in rats) and greater than or equal to 360 mg/kg/day (HDT in rabbits) demonstrate

that there is no developmental (prenatal) toxicity present for metolachlor in the absence of maternal toxicity. EPA notes that there was developmental toxicity in rats at 1,000 mg/kg/day (but not in rabbits). The developmental NOELs are more than 30– and 37–fold higher in the rats and rabbits, respectively, than the NOEL of 9.7 mg/kg/day from the 1–year feeding study in dogs, which is the basis of the RfD. In the 2–generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 15 mg/kg/day was less than the parental (systemic) toxicity NOEL of greater than 50 mg/kg/day. The reproductive/developmental NOEL was based on decreased pup body weight during late lactation. The NOEL for post-natal pup effects occurred at a level which is below the NOEL for maternal toxicity. This finding suggests that post-natal development in pups is more sensitive and that infants and children may have a greater sensitivity to metolachlor than adult animals. EPA notes that the NOELs are 1.5–fold (reproductive) and greater than 5–fold higher (parental) than the NOEL of 9.7 mg/kg/day from the 1–year feeding study in dogs, which is the basis of the RfD. The reproductive/developmental LEL of 50 mg/kg/day was based on reduced pup body weight at postnatal days 14 and 21 for the first generation (F1 pups) and at post natal days 4, 14, and 21 for the second generation (F2 pups). Because the second generation (F2) pups are in the offspring of adults that have been exposed throughout their lifetime, including *in utero* exposure, there is the possibility that body weight decreases observed in these second generation offspring are an indication of increased susceptibility.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of metolachlor ranges from 1.0 percent for children 7 to 12 years old, up to 2.1 percent for non-nursing infants (<1 year old). However, this calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before, the addition of potential exposure from metolachlor residues in drinking water is not expected to result in an exposure which would exceed the RfD. EPA therefore concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to metolachlor.

As mentioned above, dietary cancer concerns for infants and children are adequately addressed by the chronic exposure analysis using the RfD.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Should an additional uncertainty factor be deemed appropriate, when considered in conjunction with a refine exposure estimate, it is unlikely that the dietary risk will exceed 100 percent of the RfD. Therefore, EPA concludes that this tolerance will not pose an unacceptable risk to infants and children.

V. Other Considerations

The metabolism of metolachlor in plants and animals is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of metolachlor on spinach. Adequate methods for purposes of data collection and enforcement of tolerance for metolachlor residues are available. Methods for determining the combined residues of metolachlor and its metabolites, as the derivatives CGA–37913 and CGA–49751, are described in PAM, Vol. II, as Method I (plants; GC-NPD) and Method II (animals; GC-MS).

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of metolachlor in spinach at 0.3 ppm. This tolerance will expire and be automatically revoked without further action by EPA on November 15, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 28, 2996 file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300443]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing

requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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) of the APA as amended.

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.368, by adding and reserving paragraph (d) and adding a new paragraph (e) to read as follows:

§ 180.368 Metolachlor; tolerances for residues

* * * * *

(d) [Reserved]

(e) A time-limited tolerance is established for the combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Spinach	0.3	November 15, 1998

[FR Doc. 96–30468 Filed 11–27–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300445; FRL–5575–1]

RIN 2070–AB78

Imidacloprid Pesticide Tolerance; Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the insecticide imidacloprid in or on the raw agricultural commodity garden beets roots and tops and turnip roots and greens in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of imidacloprid on garden beet roots and tops and turnip roots and greens in California. This regulation establishes maximum permissible levels for residues of imidacloprid on turnips and beets pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked automatically without further action by EPA on November 29, 1997.

DATES: This regulation becomes effective November 29, 1996. This regulation expires and is revoked automatically without further action by EPA on November 29, 1997. Objections and requests for hearings must be received by EPA on January 28, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300445], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP–300445], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by

the docket number [OPP–300445]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additonal information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–83427, e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on garden beet roots at 0.3 part per million (ppm), in or on garden beet tops at 3.5 ppm, in or on turnip roots at 0.3 ppm and in or on turnip greens at 3.5 ppm. These tolerances will expire and be revoked automatically without further action by EPA on November 29, 1997.

I. Background And Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption''. This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Imidacloprid on Garden Beets and Turnip Greens and FFDCA Tolerances

On August 6, 1966, the California Department of Pesticide Regulations availed of itself the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of imidacloprid on table beets and turnips for control of aphids. California has also requested a specific exemption for this use. Emergency conditions are determined to exist due to the lack of acceptable control with currently registered products and the loss of the insecticide Phosdrin. Under moderate to severe infestation conditions, the aphids are expected to cause serious reductions due to contamination problems at harvest, primarily due to the large number of aphids remaining on the crop. The overall threshold that the market will allow is 2 aphids or less per plant.

As part of its assessment of these applications for crisis declaration and emergency exemptions, EPA assessed the potential risks presented by residues of imidacloprid in or on garden beets (roots and tops) and turnips (roots and greens). In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerances under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for imidacloprid will permit the marketing of garden beets and turnips treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on November 29, 1997, under FFDCA section 408(l)(5), residues of imidacloprid not in excess of the amounts specified in the tolerances remaining in or on garden beet roots and tops and turnip roots and greens after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this

pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether imidacloprid meets the requirements for registration under FIFRA section 3 for use on garden beets and turnips or whether permanent tolerances for imidacloprid for garden beets (roots and tops) and turnips (roots and greens) would be appropriate. This action by EPA does not serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than California to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for imidacloprid, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). Various studies may be used to determine the RfD although a longterm feeding study in dogs, rats or mice is the type of study typically used for RfD determination. The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Imidacloprid is already registered by EPA for turf pest control. At this time EPA is not in possession of a registration application for imidacloprid on beets and turnips. However, based on information submitted to the Agency, EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of imidacloprid on garden beets and turnip roots at 0.3 ppm and garden beet and turnip tops at 3.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has established the RfD for imidacloprid at 0.057 milligrams(mg)/kilogram(kg)/day. The RfD for imidacloprid is based on a 2–year feeding study in rats with a NOEL of 5.7 mg/kg/day and an uncertainty factor of 100. An increase in thyroid lesions in males was the effect observed at the Lowest Effect Level (LEL) at 16.9 mg/kg/day.

2. *Acute toxicity.* Based on the available acute toxicity data, OPP has determined that the NOEL of 24 mg/kg/day from the developmental toxicity study in rabbits should be used to assess risk from acute toxicity. Maternal effects observed at the LEL of 72 mg/kg/day included decreased body weight and increased resorptions and abortions. Fetal effects observed at the LEL of 72 mg/kg/day included an increase in skeletal abnormalities. The population subgroup of concern for this risk assessment is females 13+ years and older. This subgroup is representative for both maternal and fetal effects.

3. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified imidacloprid as a Group E chemical, ''no evidence of carcinogenicity for humans,'' based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment would not be appropriate.

B. Aggregate Exposure

Tolerances have been established (40 CFR 180.472) for the combined residues

of imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing 6-chloropyridinyl moiety expressed in or on certain raw agricultural commodities ranging from 0.02 ppm in eggs to 3.5 ppm in Brassica vegetable crop group (cabbage, chinese cabbage, and Kale) and head and leaf lettuce. There are no livestock feed items associated with these Section 18 requests, so no additional livestock dietary burden will result from this Section 18 registration. Therefore, existing meat/milk/poultry tolerances are adequate.

In conducting this exposure assessment, EPA has made very conservative assumptions — 100% of beets and turnips and all other commodities having imidacloprid tolerances will contain imidacloprid tolerance residues and those residues would be at the level of the tolerance — which result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

1. *Chronic exposure*. Given the emergency nature of this request for the use of imidacloprid and the resulting need for a timely analysis and risk assessment, EPA has utilized the TMRC to estimate chronic dietary exposure from the tolerances for imidacloprid on garden beets and turnip roots at 0.3 ppm and garden beets and turnip tops at 3.5 ppm. The TMRC is obtained by multiplying the tolerance level residue for beets and turnips by the average consumption data, which estimates the amount of beets and turnips eaten by various population subgroups. This calculation is performed as well for every food having existing imidacloprid tolerances. The risk assessment is therefore considered to be overestimated.

The Agency has extensive experience refining chronic dietary risk assessments for a broad range of pesticide chemicals. It is OPP's experience that when the chronic dietary risk assessment is refined using anticipated residue contribution (ARC) estimates derived from anticipated residue levels and percent crop treated data, the percent of the RfD occupied by the ARC is generally in the range of an order of magnitude lower than the percent of the RfD occupied by the unrefined TMRC.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources.

Review of terrestrial field dissipation data by the Agency indicates that imidacloprid is persistent and leaches into groundwater. There is no established Maximum Concentration Level (MCL) for residues of imidacloprid in drinking water.

No drinking water health advisories have been issued for imidacloprid. The ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992) has no information concerning imidacloprid. The Agency does not have available data to perform a quantitative drinking water risk assessment for imidacloprid at this time. Previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and OPP's best scientific judgement, and considering the low percent of the RfD occupied by dietary exposure estimates (15% RfD for U.S. population), EPA concludes that it is not likely that the potential exposure from residues of imidacloprid in drinking water added to the current dietary exposure will result in an exposure which exceeds the RfD.

2. *Acute exposure*. EPA has not estimated non-occupational exposures other than dietary for imidacloprid. Acceptable, reliable data are not currently available with which to assess acute risk. Imidacloprid is registered for turf pest control. While dietary and residential scenarios could possibly occur in a single day, imidacloprid would rarely be present on both the food eaten and the lawn on that single day. Even assuming this were the case, it is yet more unlikely that residues would be present at tolerance level on all food eaten that day for which imidacloprid tolerances exist, as is assumed in the acute dietary risk analysis, and on the lawn that same day. Because the acute dietary exposure estimate assumes tolerance level residues and 100% crop treated for all crops evaluated it is a large over-estimate of exposure and it is considered to be protective of any acute exposure scenario.

3. *Cumulative effects note*. At this time, the Agency has not made a determination that imidacloprid and other substances that may have a common mode of toxicity would have cumulative effects. For purposes of this tolerance only, the Agency is considering only the potential risks of imidacloprid in its aggregate exposure.

C. Determination of Safety for U.S. Population

1. *Chronic risk*. Using the conservative exposure assumptions described above, taking into account the completeness and reliability of the toxicity data, EPA has concluded that aggregate exposure to imidacloprid will utilize 15% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Acute risk*. For the population subgroup of concern, females 13+ and older (accounts for both maternal and fetal exposure), the calculated Margin of Exposure (MOE) value is 480. MOE values over 100 do not exceed the Agency's level of concern for acute dietary exposure. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

In the rat developmental study, the maternal (systemic) NOEL was 30 mg/kg/day, based on decreased weight gain at the LOEL of 100 mg/kg/day. The developmental (fetal) NOEL was 30 mg/kg/day based on increased wavy ribs at the LOEL of 100 mg/kg/day.

In the rabbit developmental study, the maternal (systemic) NOEL was 24 mg/kg/day, based on decreased body weight, increased resorptions and abortions, and death at the LOEL of 72 mg/kg/day. The developmental (fetal) NOEL was 24 mg/kg/day, based on decreased body weight and increased

skeletal anomalies at the LOEL of 72 mg/kg/day.

In the rat reproduction study, the maternal (systemic) NOEL was 55 mg/kg/day (the highest dose tested). The reproductive/developmental NOEL (effect on the pup) was 8 mg/kg/day, based on decreased pup body weight during lactation in both generations at the LOEL of 19 mg/kg/day.

1. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of imidacloprid ranges from 12.2 percent for nursing infants, up to 31.0 percent for children 1 to 6 years old. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

2. *Acute risk.* At present, the acute dietary MOE for females 13+ years old (accounts for both maternal and fetal exposure) is 480. This MOE calculation was based on the developmental NOEL in rabbits of 24 mg/kg/day. Maternal effects observed at the LEL of 72 mg/kg/day included decreased body weight and increased resorptions and abortions. Fetal effects observed at the LEL of 72 mg/kg/day included an increase in skeletal abnormalities. This risk assessment also assumed 100% crop treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty that no harm will result to both females 13+ years and the pre-natal development of infants from aggregate residues of imidacloprid.

3. *Chronic and acute risk determination factors.* FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA concludes that a different margin of safety would be appropriate. Taking into account current toxicological data requirements, the database for imidacloprid relative to pre- (provided by rat and rabbit developmental studies) and post-natal (provided by the rat reproduction study) toxicity is complete. In the rat developmental study, the developmental (fetus) and maternal (mother) NOELs occur at the same dose level, 24 mg/kg/day. The same response is seen in the rabbit developmental study with the developmental (fetus) and maternal (mother) NOELs occurring at the same dose level of 30 mg/kg/day. This suggests that there are no special prenatal sensitivities for unborn children in the absence of maternal toxicity. However, a detailed analysis of the developmental studies indicates that the skeletal findings (wavy ribs and other anomalies) in both the rat and rabbit fetuses are severe malformations which occurred in the presence of slight toxicity (decreases of body weight) in the maternal animals. Additionally, in rabbits, there were resorptions and abortions which can be attributed to acute maternal exposure. This information has been interpreted by the Toxicology Endpoint Selection Committee (TESC) as indicating a potential acute dietary risk for pre-natally exposed infants. However, as noted above, the acute dietary MOE for women 13+ years or older is 480. This large MOE demonstrates that the prenatal exposure to infants is not a toxicological concern at this time.

In the case of the 2–generation rat reproduction study, the maternal NOEL is 55 mg/kg/day and the NOEL for decreased pup body weight during lactation is 8 mg/kg/day with the LOEL at 19 mg/kg/day. This study shows that adverse postnatal development of pups occurs at levels (19 mg/kg/day) which are lower than the NOEL for the parental animals (55 mg/kg/day). Therefore, the pups are more sensitive to the effects of imidacloprid than parental animals. The pup NOEL of 8 mg/kg/day in the reproduction study is 1.4 times greater than the NOEL of 5.7 mg/kg/day from the 2–year rat feeding study which was the basis of the RfD. Therefore the RfD is established at a level which is adequate to assess reproductive pup effects from dietary exposure. In addition, the TRMC estimate (worst case dietary exposure) was used to determine the value for the most highly exposed infant and children subgroup (children 1 to 6 years old). The TRMC value for this age group occupies 31.0% of the RfD.

Both chronic and acute dietary exposure risk assessments assume 100% crop treated and use tolerance level residues for all commodities (TMRC estimate). Refinement of these dietary risk assessments by using percent crop treated and anticipated residue data would greatly reduce dietary exposure. Therefore, both of these risk assessments are also an over-estimate of dietary risk. Consideration of anticipated residues and percent crop treated would likely result in an ARC which would occupy a percent of the RfD that is likely to be significantly lower than the currently calculated TMRC value. Additionally, the acute dietary MOE would be greater than the current MOE. This provides an adequate safety factor for children during the prenatal and postnatal development.

If an additional safety factor were deemed appropriate when considered in conjunction with a refined exposure estimate it is unlikely that the dietary risk will exceed 100 percent of the RfD and likely that the acute MOE would be greater than the currently calculated value should. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

V. Other Considerations

The metabolism of imidacloprid in plants and animals is adequately understood for the purposes of these tolerances. There are no Codex maximum residue levels established for residues of imidacloprid on sugar beets, sugar beet tops, turnip roots or turnip greens (tops). There is a practical analytical method for detecting and measuring levels of imidacloprid in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–5805.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of imidacloprid in beet and turnip roots at 0.3 ppm and beet and turnip tops at 3.5 ppm. These tolerances will expire and be automatically revoked without further action by EPA on November 29, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30

days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 28, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300445]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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) of the APA as amended.

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

List of Subjects In 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 20, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472 by revising the section heading and by adding paragraph (d) to to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(d) Time-limited tolerances are established for residues of the insecticide imidacloprid 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. Each tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Beet roots	0.3	November 29, 1997
Beet tops	3.5	November 29, 1997
Turnip roots	0.3	November 29, 1997
Turnip tops	3.5	November 29, 1997

* * * * *

[FR Doc. 96–30469 Filed 11–27–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300446; FRL–5574–9]

RIN 2070-AC78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the insecticide tebufenozide in or on the raw agricultural commodity peppers in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of tebufenozide on peppers in Georgia and New Mexico. This regulation establishes maximum permissible levels for residues of tebufenozide on peppers pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997.

DATES: This regulation becomes effective November 29, 1996. This regulation expires and is revoked automatically without further action by EPA on November 30, 1997. Objections and requests for hearings must be received by EPA on January 28, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300446], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300446], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300446]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8347, e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2(4-ethylbenzoyl)hydrazide) in or on peppers at 0.5 part per million (ppm). This tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind

EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Tebufenozide on Peppers and FFDCA Tolerances

On September 4, 1996, the Georgia Department of Agriculture availed of itself the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of tebufenozide on peppers to control the beet armyworm (BAW). The state of New Mexico has also requested a specific exemption for use of this chemical to control beet armyworm. Emergency conditions are determined to exist due to the BAW populations demonstrating resistance to registered insecticides. The available data indicate that tebufenozide effectively controls BAW larvae, small and large, and will be used only after the registered alternatives, methomyl and chlorpyrifos, have failed.

As part of its assessment of these applications for emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide on peppers. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for tebufenozide will permit the marketing of peppers treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997, under FFDCA section 408(l)(5), residues of tebufenozide not in excess of the amount specified in the tolerance remaining in or on peppers after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether tebufenozide meets the requirements for registration under FIFRA section 3 for use on peppers or whether a permanent tolerance for tebufenozide for peppers would be appropriate. This action by EPA does not serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than Georgia or New Mexico to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 180.166. For additional information regarding the emergency exemptions for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Tebufenozide is not registered by EPA

for indoor or outdoor residential use. Existing food and feed use tolerances for tebufenozide are listed in 40 CFR 180.482. EPA has also assessed the toxicology data base for tebufenozide in its evaluation of applications for registration on peppers. Thus, EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of tebufenozide on peppers at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity*. Based on the available chronic toxicity data, the Agency has established the RfD for tebufenozide at 0.018 milligrams(mg)/kilogram(kg)/day. The RfD is based on a 1 year feeding study in dogs with a NOEL of 1.8 mg/kg/day and an uncertainty factor of 100. Decreased red blood cells, hematocrit, and hemoglobin and increased heinz bodies, reticulocytes, and platelets were observed at the Lowest Observed Effect Level (LOEL) of 8.7 mg/kg/day.

2. *Acute toxicity*. No appropriate acute dietary endpoint was identified by the Agency. This risk assessment is not required.

3. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), OPP has classified tebufenozide as a Group ''E'' chemical (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in a 2-year rat study and an 18-month mouse study.

B. Aggregate Exposure

Tolerances for residues of tebufenozide are currently expressed as benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2(4-ethylbenzoyl)hydrazide. Tolerances currently exist for residues on apples and walnuts (see 40 CFR 180.482).

For purposes of assessing the potential dietary exposure under this tolerance, EPA assumed tolerance level residues and 100 percent of crop treated to estimate the TMRC from all established food uses for tebufenozide as well as the proposed use on peppers. Peppers and pepper products are not considered livestock feed items; thus, there is no reasonable expectation that measurable residues of tebufenozide will occur in meat, milk, poultry, or eggs under the terms of these emergency exemptions.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Review of environmental fate data by the Environmental Fate and Effects Division suggests that tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. There is no established Maximum Concentration Level for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide.

The Agency does not have available data to perform a quantitative drinking water risk assessment for tebufenozide at this time. However, in order to mitigate the potential for tebufenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the product label. Also, previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Considering the precautionary language on the label and based on previous experience with persistent chemicals, EPA does not anticipate significant exposure from residues of tebufenozide in drinking water.

Tebufenozide is not registered for either indoor or outdoor residential use. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

At this time, the Agency has not made a determination that tebufenozide and other substances that may have a common mode of toxicity would have cumulative effects. For purposes of this tolerance only, the Agency is considering only the potential risks of tebufenozide in its aggregate exposure.

C. Safety Determinations for U.S. Population

Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to tebufenozide will utilize 4.5 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was 1000 mg/kg/day (HDT), which is the limit dose for testing in developmental studies.

In the two-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOEL (0.85 mg/kg/day). The reproductive (pup) LOEL of 171.1 mg/kg/day was based on a slight increase in both generations in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed. In addition, the length of gestation increased and implantation sites decreased significantly in F1 dams Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data discussed above, EPA concludes that an additional uncertainty factor is not warranted and that the RfD at 0.018 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of tebufenozide ranges from 6.0 percent for children 7-12 years old, up to 44.7 percent for non-nursing infants. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

V. Other Considerations

The metabolism of tebufenozide in plants is adequately understood for the purposes of this tolerance. There is no Codex maximum residue level established for residues of tebufenozide of peppers. There is a practical analytical method (liquid chromatography with ultraviolet detection) for detecting and measuring levels of tebufenozide in or on food with a limit of detection that allows monitoring of food with residues at or above the level set by the tebufenozide tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-5805.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of tebufenozide in peppers at 0.5 ppm. This tolerance will expire and be automatically revoked without further action by EPA on November 30, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 28, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300446]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), 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) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: November 20, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In 180.482, by redesignating the existing section as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 180.482 Benzoic acid, tolerances for resdues .

* * * * *

(b) A time-limited tolerance is established for residues of the insecticide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2(4-ethylbenzoyl)hydrazide, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. This tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Peppers	0.5	November 30, 1997

[FR Doc. 96–30475 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–13; RM–8740]

Radio Broadcasting Services; Georgetown and Millsboro, Delaware

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228B for Channel 228B1 at Georgetown, Delaware, reallots the channel to Millsboro, Delaware, and modifies the license for Station WZBH to specify operation on Channel 228B at Millsboro, Delaware. The *Notice* was issued in response to a petition filed by Great Scott Broadcasting. *See* 61 FR 6337, February 20, 1996. The coordinates for Channel 228B at Millsboro are 38–18–53 and 75–13–50. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–13, adopted November 1, 1996, and released November 8, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Delaware, is amended by removing the entry for Georgetown, Channel 228B1, and adding Millsboro, Channel 228B.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30132 Filed 11–27–96; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA Docket No. RAR–4, Notice No. 15]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule increases from $6,300 to $6,500 the monetary threshold for reporting rail equipment accidents/incidents involving railroad property damage that occur on or after January 1, 1997. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with increase in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–632–3386); or Nancy L. Goldman, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION: On June 18 and November 22, 1996, FRA published in the Federal Register final rules amending the railroad accident reporting regulations at 49 CFR part 225. The final rules aim to minimize underreporting and inaccurate reporting of those injuries, illnesses, and accidents meeting reportability requirements.

Collisions, derailments, explosions, fires, acts of God, and other events involving the operation of standing or moving on-track equipment that result in more than $6,300 of reportable damage (the current reporting threshold) must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19 (b) and (c). The reporting threshold was last changed in 1990. 55 FR 52846.

FRA has periodically adjusted the reporting threshold based on changes in the prices of railroad labor and materials. The purpose of these adjustments has been to ensure that

FRA reporting requirements reflect the impact of inflation.

In 1992 Congress gave FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b) (formerly contained at section 15(a) of the Rail Safety Enforcement and Review Act (Pub. L. 102–365)):

> In establishing or changing a monetary threshold for the reporting of a railroad accident or incident, * * * damage cost calculations shall be based only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.

Congress allows an exception to this general rule only if the necessary data are not available from the sources described, and only after public notice and comment.

Pursuant to this 1992 amendment, FRA proposed a new method for calculation of the monetary reporting threshold in the accident reporting Notice of Proposed Rulemaking (NPRM). 59 FR 42880. FRA's proposal received favorable comments and was adopted in the accident reporting final rule published June 18, 1996. 61 FR 30959, 30969. In this notice, FRA merely adjusts the reporting threshold based on the formula adopted in the final rule. Accordingly, additional notice and comment would be unnecessary and contrary to the public interest.

Following the direction of Congress, FRA obtained in October 1996 the Producer Price Index (''PPI'') and National Employment Hours and Earnings figures from the Department of Labor's Bureau of Labor Statistics (''BLS''). These figures cover the 12-month period ending with the month of June of this year. The equation used to adjust the reporting threshold is based on the average hourly earnings reported for Class I railroads and an overall railroad equipment cost index determined by the BLS. The two factors are weighted equally.

For the wage component, FRA used LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings. For the equipment component, FRA used LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment. The monthly figures were totaled and divided by 12 to produce monthly averages to be used in computing the projected annual (12-month) average for the next calendar year. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest $100.

Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{1 + 0.5\frac{(Wn - Wp)}{Wp} + 0.5\frac{(En - Ep)}{100}\right\}$$

Where:

Prior Threshold = $6,300 (for calendar years 1991–1996)

Wn = New average hourly wage rate ($)

Wp = Prior average hourly wage rate ($)

En = New equipment average PPI value ($)

Ep = Prior equipment average PPI value ($)

Formula using the data obtained from BLS:

New Threshold =

$$\$6{,}300 \times \left\{1 + 0.5\frac{(17.55500 - 17.13417}{17.13417} + 0.5\frac{(136.76667 - 131.66667)}{100}\right\}$$

Where:

Prior Threshold = $6,300 (for calendar years 1991–1996)

Wn = New average hourly wage rate ($) = 17.55500

Wp = Prior average hourly wage rate ($) = 17.13417

En = New equipment average PPI value ($) = 136.76667

Ep = Prior equipment average PPI value ($) = 131.66667

Since the result of $6,538 is rounded to the nearest $100, the new threshold is $6,500. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

Appendix B is added to part 225 to show the procedure and formula used by FRA for determining the reporting threshold. Additionally, § 225.19(e) is amended to reflect that the accident reporting threshold for calendar year 1997 is $6,500.

The alcohol and drug regulations (49 CFR part 219) are amended throughout to reflect that the accident reporting threshold for calendar year 1997 is $6,500. Consistent with 225.19(c), this reporting threshold will be adjusted annually. 61 FR 30969.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered ''nonsignificant'' under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will have no new significant direct or indirect economic impact on small units of government, business, or other organizations. To the extent that this rule has any impact on small units, the impact will be positive because the rule

is decreasing, rather increasing, their reporting burden.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This final rule will not have any identifiable environmental impact.

Federalism Implications

This final rule will not have a substantial 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

The Final Rule

In consideration of the foregoing, FRA amends parts 219 and 225, title 49, Code of Federal Regulations to read as follows:

PART 219—[AMENDED]

1. The authority citation for Part 219 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; and 49 CFR 1.49(m).

2. By amending § 219.5 by revising the first sentence in the definition of *Impact accident* and by revising the definitions of *Reporting Threshold* and *Train accident* to read as follows:

§ 219.5 Definitions.

* * * * *

Impact accident means a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996 and $6,500 for calendar year 1997) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. * * *

* * * * *

Reporting threshold means the amount specified in § 225.19(c) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter. The accident reporting threshold for calendar years 1991 through 1996 is $6,300. The accident reporting threshold for calendar year 1997 is $6,500.

* * * * *

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a ''rail equipment accident'' involving damage in excess of the current reporting threshold, $6,300 in calendar years 1991 through 1996 and $6,500 in calendar year 1997), including an accident involving a switching movement.

* * * * *

3. By amending § 219.201 by revising the introductory text of paragraphs (a) (1) and (2), and by revising paragraph (a) (4) to read as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) *Major train accident.* Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996 and $6,500 for calendar year 1997) that involves one or more of the following:

* * * * *

(2) *Impact accident.* An impact accident (*i.e.*, a rail equipment accident defined as an ''impact accident'' in § 219.5 of this part that involves damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996 and $6,500 for calendar year 1997) resulting in—

* * * * *

(4) *Passenger train accident.* Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996 and $6,500 for calendar year 1997) involving a passenger train.

PART 225—[AMENDED]

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

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49(c), (g), and (m).

2. By revising § 225.19(e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(e) The accident/incident reporting threshold for calendar years 1991 through 1996 is $6,300. This threshold dollar amount will remain in effect until December 31, 1996.

For calendar year 1997 the accident/incident reporting threshold is $6,500. The procedure for determining the reporting threshold for calendar year 1997 appears as Appendix B to this Part 225.

3. Part 225 is amended by adding Appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

1. Data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series Reports are used in the calculation. The equation used to adjust the reporting threshold uses the average hourly earnings reported for Class I railroads and Amtrak and an overall railroad equipment cost index determined by the BLS. The two factors are weighted equally.

2. For the wage component, LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, final data covering the 12-month period ending with the month of June are obtained from BLS. The 12 monthly figures are totaled and divided by 12 to produce monthly averages to be used in computing the projected annual (12-month) average for the next calendar year.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest $100.

7. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5\frac{(Wn - Wp)}{Wp} + 0.5\frac{(En - Ep)}{100} \right\}$$

Where:
Prior Threshold=$6,300 (for calendar years 1991–1996)
Wn=New average hourly wage rate ($) = 17.55500
Wp=Prior average hourly wage rate ($) = 17.13417
En=New equipment average PPI value ($)= 136.76667
Ep=Prior equipment average PPI value ($) = 131.66667

9. The new threshold is $6,500 and is effective beginning January 1, 1997.

Issued in Washington, D.C., on November 20, 1996.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–30352 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–3; Notice 7]

RIN 2127–AF63

Federal Motor Vehicle Safety Standards; Air Brake Systems; Air Compressor Cut-In

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: In response to a petition for reconsideration submitted by Flxible Corporation, this document amends Standard No. 121, *Air Brake Systems*, with respect to the air pressure at which a bus's air compressor must automatically activate. A bus manufacturer will be allowed to set the air compressor governor cut-in pressure at 85 psi or greater. The agency believes that allowing the air pressure to fall to 85 psi or greater, instead of 100 psi or greater, before the air compressor is required to cut in, provides a more appropriate activation pressure that accounts for the severe duty cycle experienced by some buses. By reducing the frequency of compressor operation, this modification will reduce potential safety problems caused by the air compressor introducing engine oil into the vehicle's air system.

DATES: *Effective date.* The amendment becomes effective January 28, 1997.

Compliance date. Compliance with the amendment will be required on and after March 1, 1997.

Petitions for reconsideration. Any petitions for reconsideration of this rule must be received by NHTSA no later than January 13, 1997.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Richard Carter, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5274.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems,* specifies performance and equipment requirements for braking systems on vehicles equipped with air brakes, including a requirement specifying the minimum air pressure at which a vehicle's air compressor governor must automatically activate the compressor, thereby increasing air pressure in the air brake system. (See S5.1.1.1) The governor maintains reservoir air pressure between predetermined minimum and maximum pressures.

II. February 1996 Final Rule

In response to a petition for rulemaking submitted by the Truck Trailer Manufacturers Association (TTMA), NHTSA amended S5.1.1.1 to require the automatic activation of the air compressor on a powered vehicle whenever the pressure in the air brake system falls below 100 pounds per square inch (psi) (61 FR 6173, February 16, 1996). Prior to the February 1996 final rule, the air compressor was required to automatically activate whenever the air pressure in the reservoir fell below 85 psi. Manufacturers of air braked vehicles are required to comply with this amendment on and after March 1, 1997.

Enhanced truck tractor performance is the primary goal of the February 1996 amendment, which ensures that new air braked truck tractors are capable both of providing trailers with sufficient pressure for release of the trailer parking brakes and of providing adequate service braking. By raising the cut-in pressure, an additional quantity of stored compressed air will be available for an air brake system. In addition, requiring an overall higher system air pressure will allow a better balance between protection valve settings between the tractors and trailers.

Because NHTSA determined that the change in compressor cut-in pressure will benefit single-unit trucks and buses as well as truck tractors, the agency applied the change to all powered vehicles. A higher cut-in pressure provides a margin of safety for vehicles equipped with long-stroke chambers and antilock brake systems which consume more air than conventional brake systems. NHTSA anticipated no safety problems as the result of the February 1996 amendment. The agency further anticipated that the amendment would not result in an undue burden for manufacturers, since most vehicles already complied with the cut-in requirement.

III. Petition for Reconsideration

On March 4, 1996, Flxible Corporation (Flxible), a manufacturer of air-braked transit buses, petitioned NHTSA to amend the air compressor cut-in requirements in Standard No. 121 with respect to buses. It stated that while the amended requirements were appropriate for truck tractors, the automatic cut-in pressure requirements should not have been raised from 85 psi to 100 psi for city transit buses. The petitioner stated that the air brakes on buses do not experience the same conditions as those on tractors. Therefore, it stated that the rule should not be applied to vehicles other than truck tractors, without a full understanding of the potential problems and consequences associated with that decision.

Flxible stated that transit buses have a unique duty cycle that requires more frequent brake applications than other vehicles. It further stated that the air brake systems on transit buses are connected to unique air consuming devices and systems that almost continuously consume air. These devices and systems include air operated door systems, air operated kneeling systems, air consuming brake interlocks, and air throttles on mechanical engines.

Flxible stated that higher governor cut-in pressures result in higher compressor pumping pressures. Frequent air depletion by the various on-vehicle devices causes the compressor to operate on an almost continuous duty cycle. This severe duty cycle, combined with the new higher pumping pressures, causes the air compressor to introduce greater quantities of engine oil into the vehicle's air system, because the air compressors must run a substantially

longer period of time. This condition occurs even on newer mileage vehicles, and worsens with vehicle and component age. According to the petitioner, oil carry-over can affect elastomeric seals, diaphragms and other items in the vehicle air system. Such contamination may cause components to stick or otherwise function in a manner that may adversely affect brake timing. The result is costly system maintenance and repair at more frequent than normally recommended service periods.

Flxible requested that the governor cut-in pressure setting be set at 85 psi. Flxible stated that although it uses governors with higher cut-in and cut-out pressures to meet specific vehicle in-service conditions and requirements, it would like the option to use lower cut-in pressures.

IV. Agency Determination

After reviewing Flxibles petition, NHTSA has decided to amend Standard No. 121 with respect to the air pressure at which a bus's air compressor must automatically activate. A bus manufacturer is allowed to set the air compressor governor cut-in pressure at 85 psi or greater. The agency believes that reducing the required automatic cut-in pressure from 100 psi or greater to 85 psi or greater provides buses with a more appropriate activation pressure that accounts for the severe duty cycle experienced by some buses. This modification will avoid potential safety problems caused by the air compressor introducing engine oil into the vehicle's air system.

NHTSA believes that today's modification in the cut-in pressure will not adversely affect the use of long-stroke brake chambers. After reviewing the issue of air pressure depletion starting at 85 psi, 100 psi, and higher levels, the agency concludes that changing the requirements to 85 psi will not interfere with the safe introduction of long-stroke chambers.[1] Therefore, the rationale for raising the minimum cut-in pressure for single unit vehicles, i.e., to facilitate the introduction of long-stroke chambers, is not undermined.

NHTSA anticipates that the practical affect of today's amendment will be limited, because most air compressor governor settings are preset by the air compressor manufacturers and not by the vehicle manufacturers. NHTSA estimates that over 95 percent of air compressor governors are set at 100 psi or greater. Flxible stated that it would readjust only those units where it was determined to be necessary. Accordingly, as a practical matter, in only a few special situations will the air compressor cut-in pressure actually be activated at 85 psi.

V. Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule will have a minimal effect on the costs or performance of the existing air brake systems. Today's amendment merely affords greater flexibility to manufacturers of air-braked buses.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA evaluated the effects of this action on small entities as part of the February 1996 final rule. Based upon that evaluation which remains valid, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. Vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles will not be significantly affected by the requirements since the cost of new vehicles will not change. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (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, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 121, *Air Brake Systems,* in part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 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. In § 571.121, S5.1.1.1 is revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.1.1 *Air compressor cut-in pressure.* The air compressor governor cut-in pressure for each bus shall be 85 p.s.i. or greater. The air compressor governor cut-in pressure for each truck shall be 100 p.s.i. or greater.

* * * * *

Issued on: November 19, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–30055 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–59–P

[1] Those data have been placed in the public docket.

Proposed Rules

Federal Register
Vol. 61, No. 231
Friday, November 29, 1996

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 735

RIN 0560–AE60

Amendments to the Regulations for Cotton Warehouses Under the United States Warehouse Act—Electronic Warehouse Receipts, Insurance Requirements, and Other Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend regulations under the United States Warehouse Act (USWA) to allow warehousemen to issue electronic cotton warehouse receipts for more than one bale (lots) of cotton and clarify other sections as applicable. In 1990 and 1992 the USWA was amended to allow cotton warehousemen to issue cotton warehouse receipts in electronic format. Presently, the applicable regulations require warehousemen, who elect to use electronic warehouse receipts, to issue all receipts as single bale.

DATES: Comments must be received by January 28, 1997, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Warehouse and Inventory Division, Farm Service Agency, Stop 0553, P.O. Box 2415, 5962–South Agriculture Building, Washington, D.C., 20013–2415, telephone 202–720–2121, FAX 202–690–3123.

All submissions will be available for public inspection in room 5962–South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Chief, Licensing Authority Branch, Warehouse and Inventory Division, USDA, FSA, P.O. Box 2415, Stop 0553, Washington, D.C., 20013–2415; Telephone 202–720–7433 or FAX 202–690–3123.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

The amendments set forth in this proposed rule do not generate any new or revised information collection or record keeping requirements on the public. The existing information collections were previously cleared by OMB and assigned OMB control number 0560–0120.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule, because it has been determined that this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouse operator's part.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Pursuant to the provisions of the USWA, the Secretary has the authority to license public warehousemen storing cotton (7 U.S.C. 241 *et seq.*). As a part of this licensing authority, the Secretary has the responsibility to regulate the issuance of warehouse receipts through the cotton warehousemen it licenses (7 U.S.C. 260). The USWA was amended in 1990 and 1992. Regulations issued on March 31, 1994, permit the Secretary (through FSA) to allow the cotton warehousemen it licenses to issue cotton warehouse receipts in electronic format.

Presently, all multiple-bale warehouse receipts for cotton are issued as paper warehouse receipts and must contain between 25 and 200 bales. This proposed rule contemplates allowing USWA licensed warehousemen to issue electronic cotton warehouse receipts for more than one bale (lots) of cotton and removes the requirement that all EWR's must be issued as single bale receipts.

Generally, a multiple-bale warehouse receipt consists of 90 bales of cotton but may be issued for other-sized lots, at the warehouseman's discretion. Cotton is accumulated into lots for varying purposes and each region of the cotton belt handles the cotton accumulated into these lots in a different fashion. This proposed rule recognizes these differences and would modify the method by which each bale and lot must be identified and weighed, while still requiring an identification for each bale and lot but allowing for multiple-bale warehouse receipts in electronic format.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and Recordkeeping requirements, Surety bonds, Warehouses.

Proposed Rule

Accordingly, it is proposed that the provisions of 7 CFR part 735 be amended as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for part 735 is revised to read as follows:

Authority: 7 U.S.C. 268.

2. Section 735.2 is amended by revising paragraphs (gg), (hh), and (ii) to read as follows:

§ 735.2 Terms Defined.

* * * * *

(gg) *Provider.* An individual or entity that maintains EWR's in a CFS, meets

the requirements of this part, and has a Provider Agreement with the Service.

(hh) *Provider Agreement.* An agreement entered into between the Secretary and a provider that delineates the provider's responsibilities and defines the relationship between the provider and the Service regarding the provider's maintenance and security of EWR's in the CFS and other requirements of this part.

(ii) *User.* An individual or entity that uses the provider's CFS, but shall not include the Service in its regulatory capacity.

3. Section 735.16 is amended by revising paragraphs (a)(5), (a)(9), (b), and (e) to read as follows:

§ 735.16 Form.

(a) * * *

(5) The tag identifier given to each bale of cotton in accordance with § 735.31;

* * * * *

(9) A statement to the effect that the weight was determined by a weigher licensed under the U.S. Warehouse Act, except that if the weight is not so determined at the request of the depositor, or as permitted in § 735.38, the receipt shall contain a statement to that effect.

(b) Except when an expiration date authorized by the Department is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every non-negotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: *Provided,* That nothing contained in this section shall prohibit a warehouseman from legally selling the cotton when his accrued storage and other charges approach the current market value of the cotton.

* * * * *

(e) If a warehouseman issues a receipt omitting the statement of grade and/or weight on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof, either one or both of the following ''Not graded on request of the depositor'' or ''Not weighed on request of the depositor.''

* * * * *

4. Section 735.19 is revised to read as follows:

§ 735.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is

(a) In a form prescribed by the Administrator,

(b) Upon distinctive paper or card stock specified by the Administrator,

(c) Printed by a printer with whom the United States has a subsisting agreement and bond for such printing, and

(d) On paper and/or card stock tinted with ink in the manner prescribed by the agreement under paragraph (c) of this section.

* * * * *

5. Section 735.21 is amended by revising the first sentence to read as follows:

§ 735.21 Return of receipts before delivery of cotton.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the USWA until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a non-negotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written delivery order, properly signed, specifying by bale or tag number, mark, or identifier each bale to be delivered from any receipt or receipts. * * *

6. Section 735.31 is amended by revising the section heading and the first and last sentence to read as follows:

§ 735.31 Tags to be attached to bales.

Each warehouseman shall, upon acceptance of any bale of cotton for storage, unless excepted under § 735.32, immediately attach thereto an identification tag of good quality which shall identify the bale. * * * These tags will contain a number, mark, or identifier and shall be attached in numerical sequence clearly distinguishable from each other.

7. Section 735.32 is amended by revising paragraph (b) and the first two sentences of paragraph (c) to read as follows:

§ 735.32 Arrangement of stored cotton.

* * * * *

(b) If any licensed warehouseman's warehouse receipt is tendered by any one depositor for storage cotton of same grade and staple and in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in lots without reference to visibility of all tags on all bales within any lot, the warehouseman may store such cotton of same grade and staple belonging to the same depositor in lots of 1 or more bales as long as the lot originally contained 2 or more bales: *Provided, however,* That each bale entering into the lot must bear an individual bale identification, and each lot must be so stored that the number of bales within the lot may be accurately determined.

(c) An individual lot identification shall be affixed by the warehouseman to each lot of cotton which shall show the lot number and the number of bales in the lot. The warehouseman shall also maintain an office record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse. * * *

* * * * *

8. Section 735.33 is amended by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 735.33 System of accounts.

Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Service, which shall show for each bale of cotton the tag number, mark, or identifier mentioned in § 735.31, its weight, its class when required or ascertained, its location, the dates received for, and delivered out of, storage, and the receipts issued and canceled. All such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. * * *

9. Section 735.38 is amended by revising paragraph (a) to read as follows:

§ 735.38 Weighing of cotton; weighing apparatus.

(a) Before being stored in a licensed warehouse, all cotton shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weight shown on a warehouse receipt will be the official warehouse bale or lot weight. Any lot of cotton tendered for storage on which a multiple bale receipt is issued must maintain its individual identity and be preserved during storage and shipment: *Provided,* That if such lot is broken at the warehouse, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

* * * * *

10. Section 735.40 is amended by revising the text beginning with the first sentence ''The transferring * * *'' and ending with '' * * * NOT NEGOTIABLE'' to read as follows:

§ 735.40 Excess storage.

* * * * *

(b) * * *

(3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number and weight. The receiving warehouse shall promptly issue a non-negotiable warehouse receipt for each lot of cotton attaching a copy of the corresponding Bill of Lading to each receipt and forward the receipt promptly to the transferring warehouseman (The receiving warehouseman will store each lot intact, attach a header card showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers. Such non-negotiable warehouse receipts shall have printed or stamped in large bold outline letters diagonally across the face the words ''NOT NEGOTIABLE.'' * * *

* * * * *

11. Section 735.44 is revised to read as follows:

§ 735.44 Fire loss to be reported.

If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately the occurrence of such fire and the extent of damage to the Administrator.

12. Section 735.47 is revised to read as follows:

§ 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. All certificates and supporting documentation that form a basis of any receipt issued by the warehouseman shall be retained in the records of the licensed warehouseman until December 31 of the year following the year in which the receipt based on such certificates or supporting documentation is canceled.

* * * * *

13. Section 735.49 is amended by revising the second sentence to read as follows:

§ 735.49 Samples; drawing and marking; how.

* * * Each sample shall be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn and the date of sampling. * * *

14. Section 735.77 is amended by revising paragraph (c) and by adding ''and'' to the end of paragraph (f) to read as follows:

§ 735.77 Contents of complaint.

* * * * *

(c) The name and location of the licensed warehouse in which the cotton is stored, and the tag number, mark, or identifier assigned to each bale of cotton involved in the appeal, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor,

* * * * *

15. Section 735.101 is amended by removing paragraph (b), redesignating paragraphs (c) through (q) as paragraphs (b) through (p), and revising newly redesignated paragraph (j) to read as follows:

§ 735.101 Electronic warehouse receipts.

* * * * *

(j) Prior to issuing EWR's, each warehouseman shall request and receive from the Service a range of consecutive warehouse receipt numbers which the warehouseman shall use for the EWR's it issues.

* * * * *

16. Section 735.102 is amended by revising paragraphs (b), (d) (4), and (f) to read as follows:

§ 735.102 Provider requirements and standards for applicants.

* * * * *

(b) *User fee charges.* Providers shall pay to the Service user fees set by the Service and announced prior to April of each calendar year.

* * * * *

(d) * * *

(4) The provider or the Service may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to the termination.

* * * * *

(f) *Application form.* Application for a provider agreement shall be made to the Secretary on forms prescribed and furnished by the Service.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,

Administrator, Farm Service Agency.

[FR Doc. 96–30318 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO–368–A25, AO–380–A15; DA–95–01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders and Termination of Proceeding With Respect to Proposals To Amend the Southwestern Idaho-Eastern Oregon Federal Milk Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision adds two counties to the Pacific Northwest milk marketing area and modifies the component pricing provisions of the order. Other proposed amendments addressed at the hearing, including all of those pertaining to the Southwestern Idaho-Eastern Oregon Federal milk order, will not be considered further in this proceeding. The issues involved in those proposals will be addressed in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill. Dairy farmer cooperatives will be polled to determine whether dairy farmers favor issuance of the Pacific Northwest order as amended.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in

connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Interested persons were invited to present evidence on the probable regulatory and informational impact of the hearing proposals considered in this proceeding on small businesses, or to suggest modifications of the proposals for the purpose of tailoring their applicability to small businesses. However, no one participating in the public hearing or filing comments or exceptions on the basis of the hearing record or the recommended decision contributed any information relevant to the effect of the proposals on small businesses. Information relating to the impact of the amendments contained in this decision have, therefore, been obtained from the market administrator outside the hearing record.

During August 1996, the representative month for determining producer approval of this action, 1,297 dairy farmers were producers under the Pacific Northwest order. Of these, 808 would be considered small businesses, having under 326,000 pounds of milk production for the month. Of the dairy farmers in the small business category, 219 produced under 100,000 pounds of milk, 328 produced between 100,001 and 200,000 pounds of milk, and 261 produced between 200,001 and 326,000 pounds of milk during August.

Of the 489 producers producing in excess of 326,000 pounds during August 1996, 178 produced between 326,001 and 500,000 pounds and 186 produced between 500,001 and 1,000,000 pounds. 125 producers produced at least 1,000,001 pounds during August 1996.

In terms of total dollars, the negative impact on producer returns resulting from the multiple component pricing amendments generally would be less on small producers than it would be on large producers. However, the effect of the amendments on each individual producer would depend on the relative protein, other nonfat solids, and butterfat content of the producer's milk production rather than on the volume of its production.

The effect of the multiple component pricing amendments on handlers, both large and small, would depend on how they use the milk they receive from producers. Handlers' cost of milk used in manufactured products would be reduced by approximately 10 cents per hundredweight, depending upon the component content of the milk. The cost of milk used in fluid products would be unchanged. In addition to butterfat, handlers would be required to report protein and ''other solids,'' instead of nonfat solids, tests of producer receipts. Because most of this testing is done using infra-red analysis equipment, there should be little additional cost connected with the testing and reporting of the protein component.

Of the 23 dairy plants pooled under the Pacific Northwest milk order during August 1996, 15 would be considered to be operated by small businesses on the basis of having fewer than 500 employees. Eight of the pool plants were operated by handlers having fewer than 500 employees.

Expansion of the marketing area to include the two remaining Olympic Peninsula counties would have no effect on producers, and would result in the regulation of no additional handlers. Four handlers who currently distribute fluid milk products into the two counties would be benefitted by a reduction in their recordkeeping and reporting burden. Sales outside the marketing area are required to be reported separately for the purpose of determining a handler's pool status. Addition of these two counties to the marketing area will remove the requirement that these handlers keep separate records and file reports about sales in these counties. Two of the handlers affected would be considered to be small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued June 15, 1995; published June 21, 1995 (60 FR 32282).

Extension of Time for Filing Briefs: Issued October 12, 1995; published October 23, 1995 (60 FR 54315).

Extension of Time for Filing Briefs: Issued November 2, 1995; published November 9, 1995 (60 FR 56538).

Recommended Decision: Issued August 19, 1996; published August 23, 1996 (61 FR 43474).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Portland, Oregon on July 11–12, 1995. Notice of such hearing was issued on June 15, 1995 and published June 21,1995 (60 FR 32282).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 19, 1996, issued a partial recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, with the addition of six paragraphs at the end of the decision.

The material issues on the record of the hearing relate to:

1. Pacific Northwest marketing area.
2. Supply plant definition.
   A. Southwestern Idaho-Eastern Oregon.
   B. Pacific Northwest.
3. Government agency plant.
4. Producer milk diversion limits.
   A. Southwestern Idaho-Eastern Oregon.
   B. Pacific Northwest.
5. Call provision.
6. Pacific Northwest multiple component pricing provisions.

This decision deals only with issues 1 and 6, both of which pertain only to the Pacific Northwest milk order. The remaining issues on which testimony and data were gathered at the hearing, including all of those pertaining to the Southwestern Idaho-Eastern Oregon order will not be considered further in this proceeding. Instead, they will be dealt with in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pacific Northwest marketing area.* A proposal to add the only remaining two counties on the Olympic Peninsula that currently are not part of the marketing area to the Pacific Northwest marketing area should be adopted. Darigold Farms, a cooperative association that is also a large handler under the Pacific Northwest order, testified that the necessity of separating out sales to Clallam and Jefferson Counties, Washington, for the purpose of reporting out-of-area sales is difficult and time-consuming, but of little real benefit. The record indicates that there are no handlers having sales within these two counties who would become regulated by the addition of the counties to the marketing area. In addition, inclusion of the two counties would reduce the reporting requirements for currently-regulated handlers, who must report sales into unregulated area separately so that the proportion of their sales within the marketing area can be used for determining pool qualification. Therefore, the proposal to add Clallam and Jefferson counties to the Pacific Northwest marketing area should be adopted.

6. *Modification of multiple component pricing.* A revised multiple component pricing (MCP) plan should be adopted in the Pacific Northwest Federal milk marketing order. The pricing plan would contain elements of both the multiple component pricing plan initially submitted by Darigold Farms in Proposal 2, and that proposed by National All-Jersey, Inc., in Proposal 4. Producers would be paid on the basis of three components in milk: butterfat, protein, and other nonfat nonprotein solids (other solids). Producers' share of the value of the pool's Class I and Class II uses would be reflected in a separate weighted average differential price, or ''producer price differential.''

Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and other nonfat solids used in Classes II and III, skim milk used in Class I, and the hundredweight of total product used in Class I, II and III–A.

At the present time, milk received by handlers pooled under the Pacific Northwest order is priced on the basis of the pounds of total butterfat, nonfat milk solids used in Classes II and III and the hundredweight of skim milk used in Class I, and the hundredweight of total product used in Classes I, II and III–A. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is distributed to producers on the basis of the total pounds of nonfat milk solids and butterfat in each producer's milk, and each producer's per hundredweight share of the pool's Class I, Class II and Class III–A uses.

Darigold Farms, the proponent cooperative of Proposal 2, proposed to change the pricing of milk in the Pacific Northwest Federal milk order from the current two-component pricing plan based on butterfat and solids-not-fat (SNF) to a three-component plan based on butterfat, protein, and ''other solids'' (solids other than butterfat and protein). The Darigold witness testified that the protein and butterfat prices would be computed on the basis of cheese and butter prices, respectively, and the yields of these respective products in the manufacturing process. The ''other solids'' price to handlers would be computed by subtracting the value of the protein and butterfat in a hundredweight of milk from the basic formula price, and dividing by the Pacific Northwest market average ''other solids'' content. Currently, the nonfat solids price is computed by subtracting the value of the butterfat in a hundredweight of milk from the basic formula price and dividing by the average nonfat solids content of the milk to which the basic formula price applies—Grade B milk received at manufacturing plants in the States of Minnesota and Wisconsin.

Class I milk would continue to be paid for on a butterfat-skim basis. No somatic cell adjustment would be included in Pacific Northwest multiple component pricing. Rather than retaining the ''weighted average differential price'' to producers, a hundredweight price that represents the value to producers of participation in the marketwide pool, the Darigold proposal would include class price differential values in the producer ''other solids'' price calculation.

The proponent witness reviewed the evolution of pricing milk under various MCP plans, and refinements made since the first MCP plan was implemented in the Great Basin Federal order (Order 139) in 1988. The witness focused on MCP plans which specifically priced the protein portion of the skim milk, and noted that the plan first introduced in three Ohio and Indiana Federal milk orders in 1993 used protein pricing based on the Minnesota-Wisconsin price survey (M–W) average protein test rather than on the market average protein test. He stated that Darigold supported this pricing refinement (use of the average test of M–W milk instead of the market average test) at the first proceeding in which MCP was considered for the Pacific Northwest order, but neither understood its implications nor had detailed information regarding application of that concept to a plan pricing the SNF portion of skim milk instead of the protein portion.

Prior to mid-1994, the Pacific Northwest milk order (Order 124) priced milk on the basis of volume and butterfat. In May 1994, Order 124 adopted a MCP plan which priced the solids-not-fat (SNF) portion of the skim milk as well as the butterfat component. Proponent's witness stated that this pricing system recognized that much of the milk pooled under the order is dried into milk powder, and that yields on powder correlate with the SNF content of the milk.

The Darigold witness observed that average Grade B milk in M–W plants typically tests lower for SNF content than does average Grade A milk in the Pacific Northwest, and that fewer M–W plants report SNF than report protein content. The witness stated that this difference in test does not apply to protein, as protein content in milk is comparable across regions or orders. He asserted that the higher average SNF test of milk in Order 124 than in the M–W plants resulted in over five million dollars in additional costs incurred by Darigold during the first 12 months of the current MCP plan.

The Darigold witness asserted that the current MCP system has resulted in Order 124 handlers paying the highest regulated price in the U.S. for milk used to make cheese. As a result of this noncompetitive position, he stated, an increase in the northwest's share of the national cheese market is not possible. The witness also claimed that cheese market prices have decreased due to competition. He added that while under current pricing Darigold cannot forecast profitability in making bulk cheese,

consumer-sized units of cheese would be profitable.

The witness stated that Darigold would like to encourage cheese production in the region. He noted that the cooperative has converted a nonfat dry milk plant to cheese-making capability to, in part, meet increasing demand for cheese and lessen the impact of Class III–A pricing (which reflects a lower value of nonfat dry milk, compared to cheese) on producers. The witness testified that a consultant analyzed the economic feasibility of the proponent increasing cheese production, thereby decreasing production of nonfat dry milk, and concluded that a new cheese plant may not be profitable because of Order 124's current MCP plan. The witness stated that conversion of another Darigold plant to mozzarella production has been delayed because of the consultant's analysis.

The Darigold witness asserted that national cheese companies approached about investing in the Pacific Northwest region have no interest because the price of milk is too high and the region is too far from the processing centers generally located east of the Mississippi. He explained that a competitive price for Class III milk (primarily milk used in cheese) is essential to both maintain current levels of cheese production and encourage new investments in cheese plants.

The proponent witness asserted that adoption of Darigold's proposal would bring the cooperative association back to a ''similar disadvantage'' as that held before May 1994. He explained that the proposal is structured to reduce the cost of milk to a level that approaches what was paid before MCP, although it still would be slightly higher.

Proponent's post-hearing brief stated that the price of milk paid by cheese plants on the basis of components under Order 124 must be reduced to something close to the Order 135 (Southwestern Idaho-Eastern Oregon) price if parity is to exist among cheese plants and if Order 124 cheese plants are to be able to compete with the Idaho plants.

The Darigold witness said that the impact of the current MCP system also is felt by plants producing Class II and III–A products. Witness asserted that two of Darigold's true powder plants have become unprofitable since the implementation of MCP, impairing cash flow and reducing the cooperative's ability to fund capital investments without per-unit retains.

Proponent's witness estimated that under Proposal 2, producer income would fall by about eight cents per hundredweight (cwt.) if Class III utilization remains constant, but would be two cents per cwt. higher than producers were paid prior to the current MCP system. He stated that a lower Class III price should result in an increase of Class III utilization (with a corresponding reduction in the volume of Class III–A utilization), which would increase the blend price to producers because milk would be used in cheese—a more valuable form than nonfat dry milk. As a result, he claimed, producer income would increase.

The Darigold witness asserted that the current MCP plan in Order 124 increased producer returns by an average of 10 cents per cwt. from the previous system but failed to give producers proper signals about the components needed in the market. Because the weighted average differential is included in the current pricing system, he claimed, producers continue to produce for volume to enhance returns. The witness argued that elimination of the producer weighted average differential as a separate price component that represents producers' share of the Class I, II and III–A differences in value from the basic formula price would also eliminate a source of confusion when the differential is a negative value. He stated that payments based only on pounds of components would show producers more directly the value of the individual components, giving the producer a direct incentive to produce the most valuable component.

The witness testified that a somatic cell adjustment was not included in proponent's proposal because Order 124's monthly average SCC is between 190,000 and 210,000. Consequently, he stated, somatic cells do not need to be considered as a pricing factor in Order 124.

Opposition to Proposal 2 was expressed by five Order 124 producers, all members of the proponent cooperative. Each producer asserted that the proposal would result in lower prices to producers and each producer expressed support for the pricing system currently in effect in Order 124.

National All-Jersey, Inc. (NAJ), a national dairy farmer organization that assists its members in marketing their milk, is proponent of Proposal 4, a MCP plan which would modify the current plan in effect under Order 124. Also supporting Proposal 4 is the American Jersey Cattle Association. The two organizations have 220 dairy farmer members in Oregon and Washington.

NAJ's witness expressed support for the concept presented in Proposal 2 but stated that Proposal 4 differs in two respects: the method of calculating the protein value and retention of the current feature of a weighted average differential paid on a hundredweight basis.

The NAJ witness stated that the current system is an improvement over the butterfat/skim (pre-May 1994) plan. However, he asserted, market conditions are changing, with more milk in this marketing area predicted to be used in cheese production. He stated that since protein is the most important milk component in cheese manufacture, it is important to recognize protein in the Order 124 pricing plan.

The witness stated that under the current plan, all nonfat solids components are priced at the same level—a pound of protein is assigned the same value as a pound of lactose. According to the witness, the current pricing plan does not give dairy farmers a direct incentive to increase production of protein compared to the other nonfat solids. He asserted that the current plan can be inequitable to both producers and handlers because protein should be assigned a higher value than lactose.

The witness testified that a producer with milk containing a higher percentage of nonfat solids as protein is paid less per pound of protein than one with a lower percentage of nonfat solids that is protein. The NAJ representative stated that based on the relationship of protein to solids-not-fat in a particular milk, a cheese maker could either be overpaying or underpaying for the milk. He contended that a milk pricing plan that includes a separate payment for the protein component would be more equitable to both producers and handlers. He also noted that a MCP plan that includes protein would allow cheese manufacturers to purchase milk at a price that better reflects its cheese yield potential.

NAJ's witness stated that the major objective of any milk pricing plan is to give dairy farmers the economic incentive to produce the most valuable component in milk, which currently is protein. He contended that to achieve this objective, the protein value needs to be as high as can be economically justified while being equitable to both producers and handlers. The witness asserted that within any MCP plan that is adopted, the ratio of the protein price to both the butterfat price and the other solids price must be high enough to encourage dairy farmers to increase the ratio of protein to butterfat and other solids in their milk production.

Proposal 4's protein price would be derived from cheese and whey powder market prices and yield factors. The proponent witness stated that both

protein and butterfat are necessary for making cheese. He explained that in addition to protein's direct impact on yield, a higher level of the casein portion of protein allows more butterfat to be utilized in cheese-making, giving protein a value as a cheese ingredient beyond its actual contribution to yield.

The NAJ witness contended that evidence exists to support a higher value for protein than provided for in Proposal 2. He stated that many cheese manufacturers add nonfat dry milk (NFDM) to producer milk to standardize or increase the ratio of casein or protein to butterfat; in doing so, the protein content of the milk used to make cheese is increased and therefore more of the butterfat contained in producer milk may be utilized. The witness stated that a higher protein value would give dairy farmers a greater economic incentive to produce protein rather than the less important component, ''other solids.''

The NAJ witness explained that Proposal 4's protein price also includes a value determined from the whey price and a yield factor, both to recognize the additional value of protein beyond that calculated from the yield factor and a market cheese price and to account for all of the milk protein. The witness asserted that the majority of cheese plants do process their whey.

The proponent witness asserted that the inclusion of whey in the calculation of the Proposal 4 protein price is consistent with current market practices. As an example, the witness cited the price of butter used to determine the price of butterfat in the Federal order system. He pointed out that the butterfat price, calculated from the price of butter, is paid by handlers that process or manufacture milk products other than butter. The NAJ witness stated that handlers who do not manufacture butter have not objected to paying for butterfat based on the price of a product they do not make, and argued that this is no different than the price of protein being based on the price of Cheddar cheese and dry whey solids for handlers that do not manufacture these products.

According to the NAJ witness, the Proposal 4 ''other solids'' price would be calculated in a manner similar to that in Proposal 2, and the market average content for other solids would be used. Proposal 4 retains the current weighted average differential price on a hundredweight basis rather than including the Class I, II, and III–A differential values in the computation of the producer ''other solids'' price as in Proposal 2. The witness contended that it is important for producers to see the direct value of participation in the Federal order pool and the sources of value for each milk component.

The NAJ representative stated that Proposal 4 also uses the same protein and other solids prices for both producers and handlers, with any differences in component levels of milk used in Class I versus Classes II and III to be reconciled in the weighted average differential value. The witness stated that the need for separate handler and producer protein and other solids prices and the confusion resulting from use of more than one price for a single component would be eliminated.

The NAJ witness said that since there is a direct relationship between manufacturing product yield and the level of protein and other solids contained in milk, Class II and III handlers' obligations to the pool under Proposal 4 would reflect more accurately the economic value of the milk they use. He stated that a MCP plan that provides equal manufacturing margins across all milk component levels would be the most uniform and equitable. He asserted that Proposal 4 comes closest to meeting this objective by providing more equity among handlers while providing an incentive to procure and produce higher-protein milk. The witness contended that adoption of Proposal 4 would direct milk to its most valuable use.

The proponent witness said Proposal 4 would allow all producers to receive payment at the same price per pound for each component contained in their milk production, regardless of concentration. The witness stated that more equity in payment to producers would be provided than under either the current system or Proposal 2 and, consequently, that some redistribution of monies among producers would occur.

A witness for Tillamook County Creamery Association (Tillamook), a cooperative which pools and processes one-third of the milk produced in Oregon, testified in opposition to Proposals 2 and 4. Tillamook's primary objections and concerns, supported by Portland Independent Milk Producers Association (PIMPA) in a post-hearing brief filed with Tillamook's, are that the proposed changes are not economically justified, the proposals would result in lower pay prices to Pacific Northwest dairy farmers, and the proposals should not have been heard given another recent proceeding held in 1992 regarding many of the same issues.

The Tillamook witness stated that the cooperative has recently had a less-than-adequate supply of raw milk to meet production needs as a result of declining milk production within its membership brought on by severe economic stress in the Oregon coastal dairy industry. Tillamook's post-hearing brief contended that current supply and demand conditions in Order 124 cannot support a price reduction and, consequently, no justification exists for the lower pay prices that may result if Proposal 2 is adopted.

The Tillamook representative stated that since the implementation of Class III–A in Federal orders in 1993, Tillamook member incomes have fallen 64 cents per hundredweight, while feed costs continue to rise. The witness stated that adoption of Proposal 2 would cause pool blend prices and producer payout prices to fall another 8 to 9 cents per hundredweight. He stated opposition toward any proposals that would further erode producer income.

The Tillamook witness predicted that a reduction in producer pay prices would result in additional plant profits for manufacturers of cheese. Given the influence of NFDM manufacture and Class III–A prices on pool values, however, he expected little if any of that increase in plant margins to be passed back to producers. The witness stated that manufacturing plants should look toward production efficiencies and value-added marketing rather than reduced payments to producers for their source of income.

The Tillamook witness stated a preference for the current pricing system. However, he conceded that adding protein as a component in pricing milk is a sound concept and stated that if a new form of MCP were adopted, Tillamook would support a system using the composition of M–W average milk to value all components. The witness argued that using a national standard to determine the value of components in milk is more appropriate than having a variety of isolated standards based on smaller production areas. Additionally, he asserted that using M–W component tests to calculate the value of each component would be the best method to assure that all processors are treated fairly and producers are paid properly for milk which produces greater cheese yields.

Tillamook's post-hearing brief noted that the 1992 hearing which initially considered MCP for Order 124 considered specifically the question of whether to use the M–W average test or the market average test to compute the SNF price; interested parties ultimately requested, and USDA adopted in the final decision, the average M–W test for solids nonfat.

The Tillamook representative agreed with other witnesses that the best hope for improving producer prices under the current provisions of Order 124 would

be to increase the utilization of Class III relative to Class III–A. He also agreed that because an economically competitive price of milk must exist to produce cheese, milk used to produce cheese in the region should not be priced higher than in other regions of the Federal order system.

The Oregon-Washington Dairy Processors Association (OWDPA), representing proprietary processors who operate the majority of pool distributing plants regulated under Order 124, opposed Proposals 2 and 4 because both would result in lower-than-current milk prices to producers. A witness for the association asserted that producers associated with Order 124 have been subjected to excessive price declines in recent years and oppose any further declines, particularly those which result from increasing returns to specific sectors of the processing industry.

The OWDPA witness supported modifications to either Proposal 2 or 4 which would use M–W average component composition in place of market average composition. He stated that this modification for either proposal would limit potential producer losses by following the current MCP plan more closely, and would be consistent with MCP plans in other markets.

The witness stated OWDPA's opposition to incorporating Class I, II and III–A price differentials within the calculation of the other solids price, and supported instead continuing payment of a weighted average differential price to producers on a hundredweight basis. He asserted that Proposal 2 is an attempt to use differential funds to enhance returns on ''other solids'' and would represent an unfair advantage to producers of higher solids milk who may already be receiving additional payments to reflect the unique characteristics of their production for the market. The witness observed that the production of high-solids producers may be the least likely source of milk for those uses which normally generate class price differentials. The OWDPA witness asserted that it is inappropriate to penalize producers serving the Class I market by denying them equal access to funds derived from such sources. He argued that returning Class I or Class II differentials to producers on a hundredweight basis is the only equitable method of apportioning pool proceeds.

Northwest Independent Milk Producers Association (NWI), a cooperative association regulated under Order 124, supported Proposal 4. The NWI witness expressed the cooperative's support for continued refinements in MCP programs under Federal orders with the position that the component values of producer milk should reflect more closely the market value of products produced by these components. He stated that since January 1995 the cooperative has paid its members based on the components and values of the MCP plan recommended in late 1994 for five Midwest Federal order markets.

The NWI witness stated that Proposal 2 would improve the current MCP system but would fail to price components used in Class III closely enough to the Class III value to result in appropriate returns to producers. The witness asserted that Proposal 4 would reflect more nearly the components' market value and convey more accurately to producers the right economic signals for component production and management decisions.

The NWI representative noted that producer confusion and misunderstanding has existed regarding the weighted average differential, which sometimes has been positive and sometimes negative. However, he maintained that the current order provisions result in a weighted average differential that appropriately indicates market prices and class usages, and that this aspect of the current pricing plan should be continued.

Olympia Cheese Company (Olympia Cheese) was not represented by testimony during the hearing, but did file a post-hearing brief. Olympia Cheese's brief contended that more time should be allowed to assess the current MCP plan and to allow for changes resulting from the pending Farm Bill. The brief opposed implementing the MCP portion of Proposal 2. However, should the MCP plan be revised, the brief supported using the Pacific Northwest market average test instead of the M–W test to compute component values, and opposed including a whey protein factor to calculate a protein price in any MCP plan. The brief contended that whey is more of a disposal problem than a profitable endeavor and that whole whey operations represent a disposal cost rather than a contribution to earnings. The brief stated that Olympia Cheese has invested capital and now makes whey protein concentrate, but stated that the resulting lactose is a disposal problem that will require another substantial investment.

This decision recommends the adoption of a pricing plan for milk based on three components rather than two, and a weighted average differential, or ''producer price differential'' per hundredweight. Milk pooled under the Pacific Northwest Federal milk order should be priced on the basis of its protein, other nonfat solids, and butterfat components.

The protein price contained in this decision is based on the value of protein in the manufacture of cheese, as determined by cheese market prices, and is not a residual of the basic formula price (BFP) minus butterfat value as is the case in the Southwest Idaho-Eastern Oregon (Order 135) MCP plan. The butterfat price would be based on the butter market, as it is in other multiple component pricing systems. ''Other nonfat solids'' will be priced as a residual of the BFP minus protein value and butterfat value, divided by a marketwide average ''other solids'' test. The butterfat, protein, and other nonfat solids prices would be expressed in dollars per pound carried to the fourth decimal place. In addition, payments to each producer should reflect the value of participation in the marketwide pool on a hundredweight basis.

Recognition of both the protein and other solids components under the Pacific Northwest pricing plan will give producers the proper signal to concentrate on production of nonfat solids, especially protein, because it is the solids in milk rather than the water that give milk its functional and economic value. Additional emphasis on the importance of the value of protein in cheese manufacture is appropriate, as this use of producer milk results in greater value to producers than milk used in nonfat dry milk, and the record indicates that an increasing percentage of the producer milk in this market will be used in cheese.

As in other orders for which multiple component pricing has been adopted, this decision assures that the value of the components of producer milk used in Class III remains equal to the BFP. Maintaining the price relationship of Class III use between orders helps to assure some basic uniformity in the Federal order pricing system nationally. If the sum of the butterfat and protein component values is greater than the BFP, a situation which would result in a negative other nonfat solids price, the protein price will be adjusted such that the other nonfat solids price will be zero.

Three details of the revised pricing plan on which participating parties did not generally agree surfaced at the hearing. These were (1) the computation of an appropriate level of protein price, (2) whether the ''other solids'' price should be computed by dividing the residual value by the M–W or the marketwide ''other solids'' test, and (3) whether the differential values of milk

used in Classes I, II and III–A should continue to be paid to producers as a weighted average differential or be combined with the value from which the ''other solids'' price is computed.

Protein is the most important component in cheese-making and increasing volumes of milk in Order 124 are being used, or are forecast to be used, in cheese production. A payment for protein should be directly included in the milk pricing plan in order to give producers an incentive to increase protein production. Under the current butterfat and solids-not-fat pricing system, all nonfat solids are priced at the same level. As a result, producers are not given a direct incentive to increase protein production over other nonfat solids.

The inclusion of protein in the milk pricing system provides for greater equity for both handlers and producers. Under the current Order 124 pricing system, a producer who delivers milk containing a higher percentage of nonfat solids as protein receives a lower price per pound of protein than one with a lower percentage of nonfat solids that is protein. In this situation, some cheese-makers could be overpaying, and some underpaying, for milk, resulting in unequal milk protein costs to handlers. The three-component milk pricing plan provides a system in which manufacturing handlers are obligated to pay the same price per pound for each of the components in milk. At the same time, all producers would receive the same price per pound for each component contained in their milk.

Protein price. The protein price for milk pooled under the Pacific Northwest Federal milk order should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein. This price calculation, included in Proposal 2, would result in a lower protein price than that in Proposal 4. The 1.32 yield factor is obtained from the modified Van Slyke and Price cheese yield formula. Based on milk containing 3.2 percent protein, the formula predicts that for each pound of protein used for Cheddar Cheese-making, 75 percent of that pound of protein yields 1.32 pounds of cheese (with the remaining 25 percent ending up in whey).

The record indicates that both protein and butterfat are necessary for cheese-making. Protein has value beyond its actual contribution to cheese yield because it determines the amount of the butterfat in milk that will be used in cheese by forming the matrix that causes the butterfat to remain with the cheese. The Van Slyke formula indicates that with a favorable ratio of protein to butterfat, 90 percent of each pound of butterfat used for Cheddar cheese-making remains in the cheese.

The total value of producer milk at market average component levels is basically the same under both Proposals 2 and 4; the difference is the percentage of the skim milk value allocated to protein and to other solids. When a value for whey is specifically included in the protein price calculation, as under Proposal 4 in which the value of protein in whey powder is included to account for all the milk protein beyond the portion contained in cheese, a higher protein price and lower other solids price result.

Proposal 4 provides a higher protein price than Proposal 2, but results in a protein price lower than that under Order 135. Comparing the period May 1994 through May 1995, the average protein prices per pound under Proposals 2 and 4, and under Order 135 would have been $1.6547, $2.0205, and $2.87, respectively.

The hearing record provides little basis for incorporating a whey powder price factor in the computation of the protein price. The record indicates that for one Order 124 handler the cost of whey production amounts to between 80 and 120 percent of the sales value. Although the protein in whey does have value, the cost of recovery is so great that it frequently has little, or a negative, value to handlers. In addition, certainly much less than 100 percent of the protein that is not incorporated in cheese is captured in whey products. The record also indicates that the capability of making a whey product, which is not available to every cheese-maker, leads to another disposal problem—that of lactose.

The NAJ argument that an appropriate protein component price would, like the price of butterfat based on a butter market price, reflect all of the value of the component's use in one product overlooks the fact that the price of butterfat, based on its value in butter, prices that component at probably its lowest use value, and likely underprices it in other products. Pricing protein according to its value in cheese appears to be appropriate, but enhancing that price by the value of a product that the handler may not make (whey) would overstate the value of protein in cheese. In addition, Federal order pricing is intended to reflect minimum values rather than maximum values. Handlers who believe that they obtain more value from protein than they are required to pay for under the order may gain a competitive advantage in procuring supplies of high-protein producer milk by paying more than the minimum order price for protein.

The difference in protein prices under Orders 124 and 135 should result in few, if any, disorderly conditions between the two marketing areas. On average, the amount by which the Order 135 protein price exceeds that in Order 124 will be compensated for by the additional ''other solids'' payment component under Order 124. Very few producers' milk should contain protein and ''other solids'' that vary so greatly from average milk that they would find it advantageous to overcome the various institutional factors that would make it difficult to switch between the two markets. If some degree of such ''switching'' should occur, it is even more unlikely that the balance between protein and ''other solids'' in individual producers' milk would be variable enough to make a change in markets more than a one-time occurrence.

Computation of ''other solids'' price. The price for ''other solids'' should be computed by dividing the remaining value of the BFP, after the butterfat and protein values have been deducted, by the Pacific Northwest ''other solids'' content. If the resulting other solids price is less than zero, the protein price would be reduced so that the ''other solids'' price would equal zero.

Record evidence indicates that the current pricing plan in the Pacific Northwest order does not value the composition of average milk correctly, and will continue to overvalue the ''other solids'' component if either Proposal 2 or 4 is adopted using the average nonfat solids test of M–W milk. The record indicates that while protein levels are comparable across regions or orders, the nonfat solids tests reported in the Pacific Northwest are consistently higher than those reported for M–W milk. The conclusion could be drawn that milk produced in the Pacific Northwest therefore should carry a higher value. However, because most plants within the M–W survey purchase milk for processing cheese, fewer plants within the survey report SNF than protein. Both the M–W survey price and the MCP system in the five north central markets reflect the fact that the M–W average test is used in markets that have a higher percentage of milk used to produce cheese.

Since the implementation of the Pacific Northwest MCP plan in May 1994, Grade B milk in the M–W region has tested lower for SNF by 0.14 pounds per hundredweight than has Grade A milk in the Pacific Northwest, resulting in a price difference between the two regions of .016 cents per pound of SNF.

For a seven-month period during 1992, Darigold's SNF tests ranged from .04 to .19 higher than the M–W SNF tests. Thus, a discrepancy exists between the average SNF test stipulated in the order (the M–W test) and the average SNF test within the region. As a result, plants located in the Pacific Northwest pay more per hundredweight for milk used in manufactured products than do plants located in the M–W region. Additionally, Order 124's price per pound of SNF averages about 1 to 1.5 cents higher than California, placing class prices for milk used in manufactured products under Order 124 higher than both California and the Midwest. If the 5-market MCP decision were incorporated in the Pacific Northwest order, the cost of milk used in manufacturing would be higher under Order 124 than in either California or the Midwest. In such a case, it is appropriate to use market composition of milk for a region so distant from the upper Midwest.

Although use of the market, rather than the M–W, average of ''other solids'' to compute the ''other solids'' price will have the effect of reducing producer returns by approximately 10 cents per hundredweight, increased profitability of cheese manufacture should offset that effect by reducing the use of milk in Class III–A. If, as expected, increasing volumes of milk are used in cheese, rather than in (lower-value) nonfat dry milk, producer prices should increase accordingly.

Producer price differential. Although inclusion of the differential values of producer milk used in classes other than Class III was proposed to be part of the ''other solids'' price calculation, the weighted average differential should be calculated as it is currently. Some confusion between orders may be avoided by referring to it hereafter as the ''producer price differential,'' as it is in the 5 north central milk orders.

Apparently, one of the reasons for proposing that the differential pool values be incorporated in computation of the other solids price is to avoid producer confusion when the differential value is negative. The record shows that a negative differential existed for about 6 of the first 12 months under the current MCP system. While the negative value may be a difficult concept for producers to understand or accept—it indicates that participation in the marketwide pool has a negative value to them—there is value in making producers aware of this aspect of the Pacific Northwest pool.

Another of the reasons given for wanting to eliminate this remaining per hundredweight basis of paying producers for milk was to discourage producers from continuing to produce for volume, rather than solids, to enhance returns. It is difficult to describe the producer price differential as ''enhancing'' the hundredweight value of milk when it is sometimes negative. Inclusion of class price differentials in the ''other solids'' price would not necessarily enhance that price, but rather would add to it a random plus or minus factor of varying magnitude.

It is appropriate to continue a component of producer payments that represents the differential value of participating in the market wide pool. Such a payment factor indicates market prices and the relative value of class usages.

Comments and exceptions. Comments on the recommended decision were filed by Darigold and by National All-Jersey, Inc. The Darigold comments included no exceptions to the findings of the recommended decision, and urged the prompt adoption of the amendments. The National All-Jersey, Inc. (NAJ) comments included an exception to the recommended computation of the protein price. NAJ continued to urge that the protein price reflect the value of protein in whey powder as well as in cheese. Aside from the computation of the protein price, NAJ supported the findings of the recommended decision.

NAJ's comments state that although the recommended decision recognizes value in butterfat used in cheese that is not reflected in the butterfat price, that additional value has not been reflected in an adjustment to the protein price. Instead it has been assigned to the ''other solids'' component (primarily lactose) which has no impact on cheese yield at all.

The fact that the molecular matrix formed by protein in cheese allows additional butterfat, priced on the basis of its (lesser) value in butter, to be used in cheese does not justify attributing that extra value to protein. The individual components should be priced on the basis of their own value, as far as is possible while maintaining the basic formula price as the total of the sum of the component values.

As noted above, the protein price determined under this decision will act as a minimum price. As such, it should not include the value of a product (whey protein) that is not produced by all cheese manufacturers. In addition, cheese is not the only manufactured product processed in this marketing area. Nonfat dry milk remains an important use of milk surplus to the fluid needs of this market. Although lactose, the principal ''other nonfat solid,'' has little or no value in the composition of cheese, it is of equal value to protein in the production of nonfat dry milk and its value in that product should be represented in the order's pricing plan. If handlers determine that the protein in the producer milk they receive is worth more to them in cheese manufacture than the order price specifies, they are free to pay over-order protein prices.

Proposals not addressed in this decision. None of the issues included in the hearing record that pertain to the Southwestern Idaho-Eastern Oregon milk order, and the Pacific Northwest proposals dealing with the regulatory status of plants and producer milk will be addressed further in this proceeding. The partial recommended decision stated that these issues would be dealt with in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill. Comments filed by Darigold Farms, proponent of some of the proposals not addressed in the recommended decision, fully supported the decision to defer consideration of the issues not dealt with until they can be included in Federal order restructuring under the 1996 Farm Bill. Neither of the two other proponents commented on the decision to defer consideration of the proposals (issues 2 through 5).

It is more appropriate to consider the pooling issues raised in proposals 2 through 5 as part of the process of restructuring the Federal order than to spend the time and effort necessary to determine appropriate levels of pool performance standards for orders that may be consolidated with each other and/or with other Federal order markets within the next few years. The information contained in the hearing record, including the briefs filed on the record, will be considered in establishing pooling standards and plant definitions appropriate to whatever order under which the affected milk will be regulated. Accordingly, this proceeding is terminated with regard to all the proposals to amend the Southwestern Idaho-Eastern Oregon order, and with regard to the proposals to amend the Pacific Northwest order that are not addressed in this decision.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the

extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Termination Order

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area (Docket No. AO–380–A15) should be and is hereby terminated.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Pacific Northwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

August 1996 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Pacific Northwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Dated: November 21, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Pacific Northwest Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 19, 1996, and published in the Federal Register on August 23, 1995 (61 FR 43474), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

For the reasons set forth in the preamble, the following provisions in

Title 7, Part 1124, are amended as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. The authority citation for 7 CFR Part 1124 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1124.2 is amended by revising the list of Washington counties to read as follows:

§ 1124.2 Pacific Northwest marketing area.

* * * * *

Washington counties:

Adams, Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman and Yakima.

* * * * *

3. Section 1124.30 is amended by revising paragraphs (a)(1)(i) and (ii), and (c)(1) through (3) to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) received from producers;

(2) The utilization of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

4. Section 1124.31 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat, protein and solids-not-fat other than protein (solids nonfat) contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) * * *

(1) The total pounds of milk received from each producer and the pounds of butterfat, protein and solids-not-fat other than protein (solids nonfat) contained in such milk;

* * * * *

5. Section 1124.50 is amended by revising paragraph (f) introductory text, paragraph (g), and adding a new paragraph (h) to read as follows:

§ 1124.50 Class and component prices.

* * * * *

(f) The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the total of:

* * * * *

(g) The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(h) The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of producer milk pooled under Part 1124 for the month, as determined by the Market Administrator. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

6. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

On or before the 5th day of each month, the market administrator shall announce publicly the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III-A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month; and

(i) The butterfat differential for the preceding month.

7. Section 1124.60 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n), revising the section heading, the undesignated center heading preceding the section heading, paragraph (e), redesignated paragraphs (g) introductory text, (g)(3), the phrase ''assigned to shrinkage'' in paragraph (h) introductory text to ''assigned to inventory'', (h)(3), and (h)(6), and adding a new paragraph (f) to read as follows:

Producer Price Differential

§ 1124.60 Handler's value of milk.

* * * * *

(e) Multiply the protein price for the month by the pounds of protein associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of protein shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) Multiply the other solids price for the month by the pounds of other solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of other solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of other solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(g) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b) and paragraph (g)(6) of this section:

* * * * *

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

* * * * *

(h) * * *

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

* * * * *

(6) Subtract the Class III value of the milk at the previous month's protein, other milk solids, and butterfat prices;

* * * * *

8. Section 1124.61 is amended by revising the section heading, introductory text, and paragraphs (a), (d) and (e) to read as follows:

§ 1124.61 Producer price differential.

A producer price differential per hundredweight of milk for each month shall be computed by the market administrator as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1124.60 (a) through (c) and (g) through (n) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month; and

(2) Add the values computed pursuant to § 1124.60 (d), (e) and (f); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

* * * * *

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(k); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the producer price differential.

9. Section 1124.62 is removed, and Section 1124.63 is redesignated as Section 1124.62 and revised, including the section heading to read as follows:

§ 1124.62 Announcement of the producer price differential and a statistical uniform price.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

10. Section 1124.71 is amended by revising paragraph (a)(1), the reference ''§ 1124.73(a)(2) (i), (ii), and (iii);'' in paragraph (b)(1) to ''§ 1124.73(a)(2) (ii) through (iv);'' and paragraph (b)(3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(a) * * *

(1) The total handler's value of milk for such month as determined pursuant to § 1124.60; and

* * * * *

(b) * * *

(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to § 1124.60(k).

* * * * *

11. Section 1124.73 is amended by revising paragraphs (a)(2) (ii) through (vi), (c) introductory text, (c)(1), the reference ''paragraph (a)(2) (i) through (iii) of this section'' in paragraphs (c)(2) and (d)(2) to ''paragraph (a)(2) (i) through (iv) of this section'', (f)(2), and adding paragraph (a)(2)(vii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

* * * * *

(a) * * *

(2) * * *

(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;

(iii) Add the amount that results from multiplying the other solids price for the month by the total pounds of other solids in the milk received from the producer;

(iv) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the producer price differential for the month as adjusted pursuant to § 1124.74(a);

(v) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(vi) Subtract proper deductions authorized in writing by the producer; and

(vii) Subtract any deduction required pursuant to § 1124.86 or by statute; and

* * * * *

(c) Each handler shall pay to each cooperative association which operates a pool plant, or to the cooperative's duly authorized agent, for butterfat, protein and other solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids received during the first 15 days of the month at not less than the butterfat, protein, and other milk solids prices, respectively, for the preceding month; and

* * * * *

(f) * * *

(2) The total pounds of milk delivered by the producer, the pounds of butterfat, protein and other solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

* * * * *

§ 1124.74 [Amended]

12. Section 1124.74(c) is amended by revising, in two locations, the phrase ''weighted average differential price'' to ''producer price differential''.

§ 1124.75 [Amended]

13. Section 1124.75 is amended by adding the phrase ''or statistical uniform price'' after the words ''estimated uniform price'' in the second sentence of paragraph (a)(1)(i), and by revising the phrase ''estimated uniform price'' in the first sentence of paragraph (b)(4) to ''statistical uniform price''.

§ 1124.85 [Amended]

14. Section 1124.85 is amended by revising the reference ''§ 1124.60 (h) and (j)'' in paragraph (b) to ''§ 1124.60 (i) and (k)''.

[FR Doc. 96–30459 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy; Sale of Unguaranteed Portion of Loan

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Pursuant to Section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a), the Small Business Administration (SBA) guarantees up to 90 percent of certain loans made by banks or other lending institutions. We are soliciting comments on how to proceed with a proposed rule which would permit participating lenders to transfer, under specific conditions, the unguaranteed portions of these loans.

DATES: Comments must be received on or before December 30, 1996.

ADDRESSES: Mail comments to: John Cox, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, D.C. 20416, Room 8200.

FOR FURTHER INFORMATION CONTACT: John Cox, AA/Financial Assistance, (202) 205–6490.

SUPPLEMENTARY INFORMATION:

Background

Section 7(a) of the Act authorizes SBA to guarantee loans made by banks or other lending institutions. Since Section 7(a) limits the amount of the SBA guarantee, each loan has an unguaranteed portion. The specific statutory provision under which the loan is made determines the size of the unguaranteed portion.

By limiting the SBA guarantee, Congress intended lenders to retain a tangible economic interest sufficient to make sure they are diligent in making, servicing and liquidating loans. This tangible economic interest must be reasonably commensurate with the unguaranteed portion of such loans.

In most instances, SBA requires lenders to retain at least a part of the unguaranteed portion of each guaranteed loan. Under prescribed procedures, it will allow the transfer by some lenders of the unguaranteed portions of loans and the pledge by other lenders of the notes evidencing SBA guaranteed loans. In these instances, it allows the transfer or pledge with prior written consent to facilitate financing transactions beneficial to those lenders. (See 13 CFR S 120.420 and paragraph 12 (a) of Blanket Guaranty Agreements, SBA Form 750)

SBA's regulations currently permit only nondepository lenders to transfer the entire unguaranteed portions of SBA guaranteed loans for financing purposes. Section 103(e) of the recently enacted Small Business Program Improvement Act of 1996, P.L. 104–208, requires that SBA now either promulgate a regulation that applies uniformly to both depository and nondepository lenders or prohibit the practice with respect to nondepository lenders after March 31, 1997. Since we prefer to issue a uniform rule, we propose to revise our regulations to give all SBA lenders clear guidance on when and how they can transfer or pledge the unguaranteed portion of SBA loans.

SBA's Present Regulations

Currently our regulations on the sale of the unguaranteed portions of SBA guaranteed loans apply only to nondepository lenders. Nondepository lenders include:

(1) Small Business Lending Companies, which are licensed and regulated by SBA (See 13 CFR S 120.470),

(2) Business and Industrial Development Companies, which are chartered under state statutes,

(3) Insurance companies, and

(4) Other nondepository lenders with which SBA has entered into blanket guaranty agreements.

SBA can deny a lender's request to sell unguaranteed portions if it does not comply with SBA lending regulations and/or any other applicable State or Federal statutory or regulatory requirement.

Although the necessary documents for such financing arrangements will differ from case to case, we try to accommodate any reasonable proposal. However, lenders must satisfy certain conditions before we will consent, in writing, to any proposal.

Under the regulations, only a party agreeable to us is permitted to hold the notes evidencing SBA guaranteed loans. Normally, we require the lender or our agent to retain custody of such notes.

As a pre-condition to our written consent to any financing transaction, SBA requires that all parties execute a written agreement protecting SBA's interest as the guarantor of the major portion of the notes. Any such agreement must:

(1) Indicate how the notes will be held and safeguarded,

(2) Acknowledge our interest in the notes, and

(3) Reflect the agreement of all relevant parties to uphold the Small Business Act, the regulations promulgated thereunder, and our guarantee contract.

We have developed a format for the agreement for parties who want to proceed under the regulations.

Finally, under these regulations, we will only grant our prior written consent if participating lenders retain a tangible economic interest in the loans reasonably commensurate with the unguaranteed portions. In the case of a pledge, the lender must retain all of the economic interest in the actual unguaranteed portions. In the case of a transfer, a participating lender must show that it remains sufficiently at risk economically for the unguaranteed portion. The retained risk need not be met by retaining a reserve which equals the unguaranteed portions as long as the participating lender bears the ultimate risk of loss on the unguaranteed portions. The regulations cite a number of non-exclusive means which a lender may use, singly or in combination, to demonstrate risk retention.

Solicitation of Comments

We are asking for the public to comment on how to implement the Congressional mandate in Section 103(e) of Public Law 104–208. We are not wedded to our present regulations or procedures, but recognize the need for uniformity and predictability to accommodate both the expected demand from our lenders and the need to protect the safety and soundness of our guaranteed loan program. Commenters are requested to address some or all of the following questions:

1. How should lenders demonstrate a retained tangible economic interest in a guaranteed loan? Should lenders be required to retain an unguaranteed portion and/or reserve within the financing transactions? What level of retention and/or reserve is adequate to protect the safety and soundness of SBA's business loan program?

2. Should we permit financing transactions on a periodic scheduled basis or should lenders be permitted to submit transactions whenever they want?

3. Should we permit multiple lenders to ''pool'' transactions in one multi-party transaction? If so, how should this be regulated?

4. Should we use third party resources to help process the contemplated transactions? If so, what types of third parties? Who should bear the costs associated with using third parties?

Although commenters should not restrict their comments to the above issues, responses geared to these issues will be helpful.

Dated: November 22, 1996.

Ginger Ehn Lew,

Deputy Administrator.

[FR Doc. 96–30507 Filed 11–27–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–204–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320, A321, A330, and A340 Series Airplanes Equipped With Westland-Sitec Fire Shutoff Valves Having Part Number EO3000

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to

certain Airbus Industrie Model A320, A321, A330, and A340 series airplanes. This proposal would require repetitive testing of certain fire shutoff valves (FSOV's) on the left and right engines, repetitive checks of certain parts on the FSOV motors, and replacement of discrepant valves with modified valves. It would also require modification of FSOV seals and motors as terminating action for the repetitive testing and check requirements. This proposal is prompted by reports indicating that FSOV's are not closing completely during maintenance testing. The actions specified by the proposed AD are intended to prevent the flow of hydraulic fluid to the engine in the event of fire which, if not corrected, would fuel the fire, and lead to the loss of fluid in associated hydraulic systems, causing those systems to fail.

DATES: Comments must be received by January 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–204–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320, A321, A330, and A340 series airplanes. The DGAC advises that it has received reports indicating that fire shutoff valves (FSOV's) on the left and right engines of these model airplanes have failed to close completely during scheduled maintenance testing. The FSOV's on these airplanes are manufactured by Westland-Sitec, and have part number (P/N) E03000.

Investigation has revealed that a slight extrusion of the Teflon seal on the valve interferes with the valve flapper, and consequently keeps the valve from fully closing. When this occurs, the micro switch that shuts off power to the electric motor on the FSOV may not work, and the motor could continue to operate. Over time, this continuous operation can cause the FSOV motor to fail. Should a FSOV not completely close when a fire occurs, hydraulic fluid would continue to flow to the engine and fuel the fire, and lead to the loss of fluid in associated hydraulic systems, causing those systems to fail.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 29–15, dated May 30, 1995, which recommends that operators of Model A320, A321, A330, and A340 series airplanes equipped with Westland-Sitec FSOV's having P/N E03000 perform a one-time functional test (for Model A320 and A321 series airplanes) or one-time operational test (for Model A330 and A340 series airplanes) on each FSOV; and replace discrepant valves with serviceable valves. This testing is to be followed immediately by a check to determine if the FSOV motor properly stops.

Airbus also has issued Service Bulletin A320–29–1071, dated September 21, 1995 (for Model A320 and A321 series airplanes); Service Bulletin A330–29–3018, dated January 17, 1996 (for Model A330 series airplanes); and Service Bulletin A340–29–4018, dated January 17, 1996 (for Model A340 series airplanes). These service bulletins describe procedures for installing FSOV's that have been modified. These Airbus service bulletins also reference service bulletins issued by Westland-Sitec, the manufacturer of these valves, as sources of additional procedural information.

Westland-Sitec has issued Service Bulletin E030WS–29–1, dated January 12, 1996, which describes procedures for modification of the FSOV by replacing the existing Teflon seal with a new seal that is manufactured from a different material and shaped differently. This modification will enable the valve flapper to completely close when the valve is closed.

Westland-Sitec also has issued Service Bulletin A06AWS–24–1, dated January 12, 1996, which describes procedures for modification of the electric actuator on the FSOV motor. This modification, which entails the installation of a different gear assembly, will increase the operational torque on the output shaft of the FSOV motor to improve closure of the valve. The procedures in this service bulletin are to be performed at the same time as the FSOV seal is replaced.

The DGAC has classified these Airbus service bulletins as mandatory and issued French airworthiness directives (C/N) 95–145–070(B)R1, dated January 3, 1996 (for Model A320 and A321 series airplanes); C/N 95–146–014(B)R1, dated May 9, 1996 (for Model A330 series airplanes); and C/N 95–148–027(B)R1, dated May 9, 1996 (for Model A340 series airplanes); in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive testing of each FSOV, and replacement of any discrepant FSOV with a modified FSOV; and repetitive checks of the FSOV motor immediately after testing to determine if the motor is stopping properly. Should any valve fail a check, the proposed AD also would require that the discrepant valve be replaced with a modified FSOV. The proposed AD would require modification of the FSOV valve by replacement of the Teflon seal with a new seal of different material and different shape; and by the installation of a new gear train on the electrical actuator on the FSOV motor. These modifications would constitute terminating action for the requirements for the repetitive tests and checks. The actions would be required to be accomplished in accordance with the AOT, and the applicable Airbus service bulletins described previously.

Differences Between the Proposed Rule, AOT, and Service Bulletins

Should an FSOV fail a test or check, the proposed AD would require that any discrepant valve be replaced with a modified valve; the installation of a modified valve also would constitute terminating action for the repetitive tests and checks of the FSOV and FSOV motor, respectively. Furthermore, within four years after the effective date of the final rule, the proposed AD would require that modified valves be installed on all affected airplanes.

The AOT, which only calls for a one-time test and check of the FSOV, recommends that a discrepant valve be replaced with a serviceable valve. The applicable service bulletins do not recommend a specific time for replacing serviceable valves with modified valves.

The FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed requirement to replace any discrepant valve with a modified valve is in consonance with these considerations.

Cost Impact: Model A320 and A321 Series Airplanes

The FAA estimates that 102 Airbus Model A320 and A321 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 hours to accomplish the proposed testing and check of all FSOV's and motors, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators of these airplanes is estimated to be $12,240, or $120 per airplane, per testing and check.

It would take approximately 2 hours to accomplish the proposed modification of the FSOV seal, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of these proposed modification on U.S. operators of these airplanes would be $12,240, or $120 per airplane.

It would take approximately 4 hours to accomplish the proposed modification of the FSOV motors, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of these proposed modification on U.S. operators of these airplanes would be $24,480, or $240 per airplane.

It would take approximately 9 hours to accomplish the proposed installation of modified FSOV's and motor, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators of Model A320 and A321 series airplanes is estimated to be $55,080, or $540 per airplane.

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

Cost Impact: Model A330 and A340 Series Airplanes

There are currently no Model A330 or Model A340 series airplanes on the U.S. Register. All of these airplanes included in the applicability of this proposed rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers it necessary to include these airplanes in the applicability of this proposed rule in order to ensure that the unsafe condition is addressed in the event that any of the subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected Model A330 or A340 series airplane be imported and placed on the U.S. Register in the future, it would take approximately 4 hours to accomplish the proposed testing and check of all FSOV's and motors, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD is estimated to be $240 per airplane, per testing and check.

It would take approximately 4 hours to accomplish the proposed modification of FSOV seals, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of these proposed modifications would be $240 per airplane.

It would take approximately 8 hours to accomplish the proposed modification of the FSOV motors, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of these proposed modifications would be $480 per airplane.

It would take approximately 19 hours to accomplish the proposed installation of modified FSOV's and motors, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed action is estimated to be $1,140 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1)

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–204–AD.

Applicability: Model A320, A321, A330 and A340 series airplanes; equipped with Westland-Sitec fire shutoff valves having part number E03000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the flow of hydraulic fluid to the engine in the event of a fire, which would fuel the fire and lead to the loss of fluid in associated hydraulic systems, causing those systems to fail, accomplish the following:

(a) Within six months after the effective date of this AD, perform a functional test (for A320 and A321 series airplanes) or an operational test (for A330 and A340 series airplanes) on each fire shutoff valve (FSOV) for the left and right engines and immediately follow this test with a check to determine whether the FSOV motor is properly operating, in accordance with Airbus All Operators Telex (AOT) 29–15, dated May 30, 1995.

(1) If an FSOV passes the applicable test and check, repeat the procedures required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months.

(2) If an FSOV fails the applicable test or check, prior to further flight, replace the discrepant FSOV with an FSOV modified in accordance with the service bulletins specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii), as applicable. Modification of the seal and the electrical actuator for the motor are to be performed at the same time. The accomplishment of these modifications constitutes terminating action for the repetitive testing and checks of this FSOV required by paragraph (a) of AD.

(i) For Airbus A320 and A321 series airplanes: Airbus Service Bulletin A320–29–1071, dated September 21, 1995.

(ii) For Airbus A330 series airplanes: Airbus Service Bulletin A330–29–3018, dated January 17, 1996.

(iii) For Airbus A340 series airplanes: Airbus Service Bulletin A340–29–4018, dated January 17, 1996.

Note 2: The Airbus service bulletins cited in paragraphs (a)(2)(i)–(iii) of this AD refer to Westland-Sitec Service Bulletin No. E030WS–29–1, dated January 12, 1996 (valve modification), and Westland-Sitec Service Bulletin No. A06AWS–24–1, dated January 12, 1996 (electrical actuator modification), as additional sources of procedural information.

(b) Within 4 years after the effective date of this AD, modify the electrical actuator for the motor and the seal of each FSOV, in accordance with the service bulletins specified in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD, as applicable. The accomplishment of these modifications constitutes terminating action for the repetitive tests and checks required by paragraph (a) of this AD and, thereafter, no further action is required.

(i) For Airbus A320 and A321 series airplanes: Airbus Service Bulletin A320–29–1071, dated September 21, 1995.

(ii) For Airbus A330 series airplanes: Airbus Service Bulletin A330–29–3018, dated January 17, 1996.

(iii) For Airbus A340 series airplanes: Airbus Service Bulletin A340–29–4018, dated January 17, 1996.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 21, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30411 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–239–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200, and –300 series airplanes. This proposal would require the replacement of certain switches located behind the cabin attendant's panel at one of the airplane's doors with new, improved switches. This proposal is prompted by reports indicating that fires have occurred on some airplanes due to the internal failure of some of these switches. The actions specified by the proposed AD are intended to prevent the installation and use of switches that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane.

DATES: Comments must be received by January 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2790; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–239–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that fires and smoke have occurred aboard Model 747–100 series airplanes behind the cabin attendant's panel at door 4 right. These incidents, reported by four operators, occurred during flight or after landing.

Investigation revealed that the fires were the result of internal failures in switches S4 and/or S5, or switches S7 and S8. These failures caused a short circuit between the switch and its ground. Switches of this type also are found on Model 747–200 and –300 series airplanes. The installation and use of a switch that could short circuit when it fails, if not corrected, could consequently result in fire and smoke aboard the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996, which describes procedures for the replacement of switches S4 and/or S5, or switches S7 and S8 that are installed on the cabin attendant's panel at door 4 right with new, improved switches. In the event that an improved switch fails internally, there will be no short circuit between the switch and its ground; therefore, the potential for fire or smoke to occur is reduced.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the replacement of switches S4 and/or S5, or switches S7 and S8 that are installed on the cabin attendant's panel at door 4 right with new, improved switches. The actions would be required to be accomplished in accordance with the Boeing alert service bulletin described previously.

Cost Impact

There are approximately 648 Boeing Model 747–100, –200, and –300 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 167 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost between $270 and $556, depending on the parts kit that is needed. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $75,150 and $122,912, or between $450 and $736 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–239–AD.

Applicability: Model 747–100, –200, and –300 series airplanes; as listed in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the installation and use of switches in the cabin attendant's panel at door 4 right that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace switches S4 and/or S5, or switches S7 and S8 that are installed in the cabin attendant's panel at door 4 right with new switches, in accordance with Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996.

(b) As of the effective date of this AD, no person shall install at door 4 right of any airplane an attendant's panel having a part number identified in the ''Existing Part Number'' column of paragraph II.D. of Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on November 21, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30412 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AGL–22]

Establishment of Class E Airspace; New Lisbon, WI, Mauston-New Lisbon Union Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at New Lisbon, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Mauston-New Lisbon Union Airport. 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 proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

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 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–AGL–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's 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 New Lisbon, WI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 32 SIAP at Mauston-New Lisbon Union Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. 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 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant impact on a subsequent 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

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 WI E5 New Lisbon, WI (New)

Mauston-New Lisbon Union Airport
(Lat. 43°50′17″N, long. 90°08′13″W)

That airspace extending upward from 700 feet above the surface within a 8.8 mile radius of Mauston-New Lisbon Union Airport, excluding that airspace which overlies the Necedah, WI, class E airspace and the Camp Douglas, WI, Class D and E airspace areas, during the specific dates and times Class D airspace is effective.

* * * * *

Issued in Des Plaines, Illinois on November 22, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–30366 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–21]

Modification of Class E Airspace; Monticello, IN, White County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Monticello, IN. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 18 and a GPS SIAP to Runway 36 have been developed for White County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

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 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–AGL–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 NPRM's

Any person may obtain a copy of the Notice of Proposing Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's 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 Monticello, IN; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 18 SIAP and the GPS Runway 36 SIAP at White County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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 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 will only affect air traffic procedures and air navigation, it is certified that this proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 IN E5 Monticello, IN [Revised]

White County Airport, IN
(Lat. 40°42′32″N, long. 86°46′00″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of White County Airport and within 2.7 miles each side of the 185° bearing from the airport extending from the 6.4-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on November 22, 1996.

Maureen Woods,

Manager, Airspace Traffic Division.

[FR Doc. 96–30367 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–20]

Establishment of Class E Airspace; Carrington, ND, Carrington Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Carrington, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for Carrington Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

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 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–AGL–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's 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 Carrington, ND; this proposal would provide

adequate Class E airspace for operators executing the GPS Runway 31 SIAP at Carrington Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. 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 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 will only affect air traffic procedures and air navigation, it is certified that this proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 Carrington, ND [New]

Carrington Municipal Airport, ND
(Lat. 47°27′03″N, long. 99°09′09″W)
Devils Lake VOR/DME
(Lat. 48°06′47″N, 98°54′29″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Carrington Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the north by the 22-mile arc south of the Devil's Lake VOR/DME, on the east by V–170, on the south by V–55, and on the west by Long. 99°30′00″W.

* * * * *

Issued in Des Plaines, Illinois on November 22, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–30368 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ACE–21]

Proposed Amendment to Class E Airspace; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action amends the Class E airspace area at Eppley Airfield; Omaha, NE. The Federal Aviation Administration has developed Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS), installation of an Instrument Approach System (ILS) and amended other Standard Instrument Approach Procedures (SIAP) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for departing aircraft and deletes the extension to the southeast and reduces the extension to the northwest of the airport.

DATES: Comments must be received on or before January 10, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 96–ACE–21, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

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–ACE–21.'' 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 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence

Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. 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 procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at Eppley Airfield. The airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. 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 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 will only affect air traffic procedures and air navigation, it is certified that this proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, 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.

* * * * *

ACE NE E5 Omaha, NE [Revised]

Eppley Airfield, NE
(Lat. 41°18′08″N., long. 95°53′37″W.)
Offutt AFB, NE
(Lat. 41°07′06″N., long. 95°54′45″W.)
Council Bluffs Municipal Airport, IA
(Lat. 41°15′32″N., long. 95°45′35″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Eppley Airfield and within 3 miles each side of the Eppley Airfield ILS localizer course to Runway 14R extending from the 6.9-mile radius to 12 miles northwest of the airport and within a 7-mile radius of Offutt AFB and within 4.3 miles each side of the Offutt ILS localizer course extending from the 7-mile radius to 7.4 miles southeast of the AFB and within a 6.3-mile radius of the Council Bluffs Municipal Airport excluding that portion which lies within the Eppley Airfield and Offutt AFB Class E5 airspace.

* * * * *

Issued in Kansas City, MO, on November 8, 1996.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–30521 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANM–022]

Proposed Amendment of Class E Airspace; Cortez, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Cortez, Colorado, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Cortez-Montezuma County Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 15, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–022, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–022, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number (206) 227–2535.

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 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–ANM–022.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 the light of comments received. All comments submitted will be available for examination at the address listed above 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 NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the

Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's 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 Class E airspace at Cortez, Colorado, to accommodate a new GPS SIPA to the Cortez-Montezuma County Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E 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 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 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.

* * * * *

ANM CO E5 Cortez, CO [Revised]

Cortez-Montezuma County Airport, CO
(Lat. 37°18′11″ N, long. 108°37′41″ W)
Cortez VOR/DME
(Lat. 37°23′23″ N, long. 108°33′42″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Cortez-Montezuma County Airport, and within 3.1 miles each side of the Cortez VOR/DME 184° and 004° radials extending from the 7-mile radius to 10.1 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface beginning at lat. 37°52′00″ N, long. 108°52′00″ W; to lat. 37°48′00″ N, long. 108°29′00″ W; to lat. 37°40′00″ N, long. 108°22′00″ W; to lat. 37°16′00″ N, long. 108°22′00″ W, to lat. 37°12′00″ N, long. 108°31′30″ W; to lat. 37°04′00″ N, long. 108°37′00″ W; to lat. 37°04′00″ N, long. 108°57′00″ W; to lat. 37°16′00″ N, long. 108°50′00″ W; to lat. 37°30′00″ N, long. 109°03′00″ W; to lat. 37°47′00″ N, long. 109°03′00″ W; thence to the point of beginning

* * * * *

Issued in Seattle, Washington, on November 14, 1996.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–30523 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–29]

Proposed Establishment of Class E Airspace, Thomson, GA; and Proposed Amendment of Class E Airspace, Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Thomas, GA, for the Thomson-McDuffie Airport. Currently the Class E airspace area for the airport is included in the Augusta, GA, Class E airspace area. The McDuffie NDB was relocated from an off-airport to an on-airport site. As a result the NDB Standard Instrument Approach Procedure (SIAP) has been revised. The subsequent airspace review revealed that less Class E airspace was now required for the Thomson-McDuffie Airport. As a result, the reduced Class E airspace area for the Thomson-McDuffie Airport no longer intersects the remainder of the Augusta Class E airspace area. Therefore, it is necessary to establish stand alone Class E airspace extending upward from 700 feet above the surface (AGL) at Thomson, GA, for the Thomson-McDuffie Airport and amend the Augusta, GA, Class E airspace area by removing the airspace previously required for the Thomson-McDuffie Airport.

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–29, 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 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–29.'' 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 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 Thomson, GA, for the Thomson-McDuffie Airport. Currently the Class E airspace area for the airport is included in the Augusta, GA, Class E airspace area. The McDuffie NDB was relocated from an off-airport to an on-airport site. As a result the NDB Standard Instrument Approach Procedure (SIAP) has been revised. The subsequent airspace review revealed that less Class E airspace was now required for the Thomson-McDuffie Airport. As a result, the reduced Class E airspace area for the Thomson-McDuffie Airport no longer intersects the remainder of the Augusta Class E airspace area. Therefore, it is necessary to establish stand alone Class E airspace extending upward from 700 feet above the surface (AGL) at Thomson, GA, for the Thomson-McDuffie Airport and amend the Augusta, GA, Class E airspace area by removing the airspace previously required for the Thomson-McDuffie 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. 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 GA E5 Thomson, GA [New]

Thomson-McDuffie Airport, GA
(Lat. 33°31′47″ N, long. 82°31′00″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Thomson-McDuffie Airport.

* * * * *

ASO GA E5 Augusta, GA [Revised]

Augusta, Bush Field, GA
(Lat. 33°22′12″ N, long. 81°57′52″ W)
Bushe NDB
(Lat. 33°17′13″ N, long. 81°56′49″ W)
Daniel Field
(Lat. 33°27′59″ N, long. 82°02′21″ W)
Burke County Airport
(Lat. 33°02′28″ N, long. 82°00′14″ W)
Burke County NDB
(Lat. 33°02′33″ N, long. 82°00′17″ W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Bush Field and within 8 miles west and 4 miles east of Augusta ILS localizer south course extending from the 8-mile radius to 16 miles south of the Bushe NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB.

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Issued in College Park, Georgia, on November 18, 1996.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I.

[Docket No. 96N–0364]

RIN 0905–AD91

Regulation of Medical Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is soliciting comments to initiate a reevaluation of its approach to the regulation of the broad group of heterogeneous products that are marketed as medical foods. FDA's goal is to arrive at a regulatory regime that will ensure that: These products are safe for their intended uses, especially because they are likely to be the sole or a major source of nutrients for sick and otherwise vulnerable people; claims for these products are truthful, not misleading, and supported by sound science; and the labeling of these products is adequate to inform consumers about how to use them in a safe and appropriate manner. The agency believes that there is a need to reevaluate its policy for regulating medical foods because of a number of developments, including enactment of a statutory definition of ''medical food,'' the rapid increase in the variety and number of products that are marketed as medical foods, safety problems

associated with the manufacture and quality control of these products, and the potential for fraud as claims that are not supported by sound science proliferate for these products.

DATES: Written comments by February 27, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of FDA's Compliance Program for Medical Foods (Compliance Program No. 7321.002) to the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION:

I. Background

One of the first medical foods to be developed was the infant formula Lofenalac®, a product that was designed for use in the dietary management of a rare genetic condition known as phenylketonuria (PKU). This product contains only a very limited amount of the essential amino acid phenylalanine because the individuals with this condition have an impaired ability to metabolize this amino acid. If infants with PKU consume foods that contain phenylalanine, harmful end products of phenylalanine metabolism accumulate in the body and can cause severe, irreversible mental retardation. Dietary management to carefully limit phenylalanine intake (for example, by using a formula that provides only a limited, minimal amount of this essential amino acid) can result in normal growth and development and avoid mental retardation.

Before 1972, FDA regulated products like the infant formula Lofenalac® as drugs under section 201(g)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(g)(1)(B)) because of their role in mitigating serious adverse effects of the underlying diseases. In 1972, FDA reassessed its position. At that time, such products were very limited in number and were being produced by a small number of reputable manufacturers with high standards of quality control. Additionally, the nutritional formulation requirements for this type of product were straightforward and well established by the medical community. FDA believed that the usefulness of these products in patient populations was widely accepted by health care professionals, and that close physician supervision ensured safe use in the patient population. The agency was interested in fostering innovation in the development of these products, most of which had been developed for the dietary management of diseases and conditions that are not widespread, to ensure that such products would be available at reasonable cost.

For all these reasons, the agency concluded that a revision of its regulatory approach to these products was appropriate. At the same time, the agency recognized that use of these products for feeding healthy individuals could be hazardous. For example, an infant formula that was purposely formulated to be suitable for an infant with PKU would be nutritionally inadequate for a normal infant. Thus, the agency saw that it was important to differentiate these products from foods for general use. As a result, in 1972, FDA stated that the PKU product described above would no longer be regulated as a drug but rather as a ''food for special dietary use'' [1] (37 FR 18229 at 18230, September 8, 1972). In addition, the agency began to follow a policy of regulating similar types of products as foods for special dietary use.

Since 1972, the legislative and regulatory history of medical foods has reflected the agency's efforts to develop a regulatory framework to ensure the safety and nutritional adequacy of foods that are designed to meet distinctive nutritional requirements resulting from diseases or health conditions. Medical foods are used under the supervision of a physician when such distinctive nutritional requirements cannot be met with a conventional diet. These characteristics have led the agency to exempt medical foods from many of the requirements that apply to conventional foods.

When FDA made nutrition labeling mandatory for certain foods in 1973, the agency exempted certain types of foods for special dietary use from this requirement. In the preamble to the 1973 final rule on nutrition labeling (38 FR 2124 at 2126, January 19, 1973), FDA noted that nutrition labeling developed for foods intended for consumption by the general population was not well suited for some food products, including two types of foods for special dietary use: (1) Any food represented for use as the sole item of the diet; and (2) foods represented for use solely under medical supervision in the dietary management of specific diseases and disorders. Therefore, this final rule provided that these two types of foods for special dietary use would be exempt from the general requirements for nutrition labeling and were to be labeled in compliance with regulations that the agency intended to include in 21 CFR part 125 (later redesignated as 21 CFR part 105).

The Orphan Drug Amendments of 1988 enacted, for the first time, a statutory definition of ''medical food'':

> The term ''medical food'' means a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.
>
> (21 U.S.C. 360ee(b)(3))

Although Congress provided a statutory definition for medical foods, the legislative history of the Orphan Drug Amendments does not discuss the definition and, therefore, does not provide any further information regarding the types of products that the definition was intended to cover.

In the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), Congress incorporated the definition of medical foods contained in the Orphan Drug Amendments of 1988 into section 403(q)(5)(A)(iv) of the act (21 U.S.C. 343(q)(5)(A)(iv)) and exempted medical

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[1] Although there was no statutory definition of a food for special dietary use in 1972, the term ''special dietary uses,'' as applied to food for humans, had been defined by regulation since 1941. In the Federal Register of November 22, 1941 (6 FR 5921), FDA promulgated a regulation stating that the term ''special dietary uses'', as applied to food for man, means particular (as distinguished from general) uses of food, and that it means, among other things, ''uses for supplying particular dietary needs which exist by reason of a physical, physiological, pathological or other condition, including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight.'' This part of the regulation remains unchanged in current § 105.3(a)(1) (21 CFR 105.3(a)(1)).

The statutory definition of ''special dietary use'' in section 411(c)(3) of the act (21 U.S.C. 350(c)(3)) was added in 1976 (Pub. L. 94–278). It defines this term as a particular use for which a food purports or is represented to be used, including but not limited to the following:

(A) Supplying a special dietary need that exists by reason of a physical, physiological, pathological, or other condition, including but not limited to the condition of disease, convalescence, pregnancy, lactation, infancy, allergic hypersensitivity to food, underweight, overweight, or the need to control intake of sodium.

(B) Supplying a vitamin, mineral, or other ingredient for use by man to supplement his diet by increasing the total dietary intake.

(C) Supplying a special dietary need by reason of being a food for use as the sole item of the diet.

foods from the nutrition labeling, health claim, and nutrient content claim requirements applicable to most other foods. In the Federal Register of November 27, 1991 (56 FR 60366 at 60377), FDA published a proposal to implement the mandatory nutrition labeling provisions of the 1990 amendments. The proposal discussed the statutory exemption for medical foods and advised that the agency considered the statutory definition of medical foods to ''narrowly constrain the types of products that can be considered to fall within this exemption.'' In the Federal Register of January 6, 1993, FDA published several final rules implementing the 1990 amendments. The final rule on mandatory nutrition labeling (58 FR 2079 at 2151, January 6, 1993) exempted medical foods from the nutrition labeling requirements and incorporated the statutory definition of a medical food into the agency's regulations at § 101.9(j)(8) (21 CFR 101.9(j)(8)). In this regulation, FDA enumerated criteria that were intended to clarify the characteristics of medical foods. The regulation provides that a food may claim the exemption from nutrition labeling requirements only if it meets the following criteria in § 101.9(j)(8):

(i) It is a specially formulated and processed product (as opposed to a naturally occurring foodstuff used in its natural state) for the partial or exclusive feeding of a patient by means of oral intake or enteral feeding by tube;

(ii) It is intended for the dietary management of a patient who, because of therapeutic or chronic medical needs, has limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary foodstuffs or certain nutrients, or who has other special medically determined nutrient requirements, the dietary management of which cannot be achieved by the modification of the normal diet alone;

(iii) It provides nutritional support specifically modified for the management of the unique [2] nutrient needs that result from the specific disease or condition, as determined by medical evaluation;

(iv) It is intended to be used under medical supervision; and

(v) It is intended only for a patient receiving active and ongoing medical supervision wherein the patient requires medical care on a recurring basis for, among other things, instructions on the use of the medical food.

(58 FR 2079 at 2185)

In the preamble to the final rule on mandatory nutrition labeling, FDA noted that it had received a number of comments asking for further clarification of the types of products that the agency considers to be medical foods. The agency acknowledged that such clarification would be helpful and announced that it intended to address the issue in the future (58 FR 2079 at 2151). In the same document, the agency also noted the need for labeling regulations for medical foods and reiterated its intention to propose such regulations.

In 1990, the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (LSRO/FASEB) published ''Guidelines for the Scientific Review of Enteral Food Products for Special Medical Purposes'' (Ref. 1). This report defined medical foods as products that are distinct from foods for special dietary use in that they ''demonstrate greater suitability for nutritional management of a specific disease than standard enteral formulas'' and are intended for patients with ''special medically determined nutrient requirements, the dietary management of whom cannot be achieved by the modification of the normal diet alone, by other foods for special dietary uses, or by a combination thereof.'' The report proposed criteria that would establish a strict standard that a food would have to meet to be considered a medical food. LSRO/FASEB's proposed definition of a medical food did not include all foods that might be useful for persons with a disease or medical condition.

II. Reasons for Re-Evaluating Regulation of Medical Foods

A. Introduction

The agency is re-evaluating its policy for regulating medical foods in light of several developments, including the enactment of a statutory definition of ''medical food,'' the impact of the 1990 amendments, the rapid increase in the variety and number of products that are marketed as medical foods and in the uses for which these products are marketed, safety problems associated with the manufacture and quality control of these products, and the resulting potential for injury to consumers and fraud as claims that are not supported by sound science proliferate for these products.

B. The Definition of ''Medical Food'' and the Impact of the 1990 Amendments: the Medical Foods Paradox

The statutory definitions of ''medical food'' (21 U.S.C. 360ee(b)(3)) and food for special dietary use (see section 411(c)(3) of the act), and the differing treatment of these two categories of products under the 1990 amendments to the act (i.e., medical foods are exempted under section 403(q)(5)(A)(iv) and (r)(5)(A) of the act, while there is no special treatment of foods for special dietary use), establish that Congress intended that medical foods and foods for special dietary use be viewed and regulated as separate and distinct categories of products. Foods for special dietary use are subject to the same nutrition labeling requirements and requirements for health claims and nutrient content claims established for most other foods by the 1990 amendments. Thus, foods for special dietary use, like ordinary foods, must be labeled with certain nutrition information in a prescribed format to ensure that such information is presented in an informative and understandable fashion. Moreover, any nutrient content claims or health claims on the label or in the labeling of a food for special dietary use must have been authorized by FDA to ensure that the claim is scientifically valid and is presented in such a way that it is truthful and not misleading.

In contrast, under the 1990 amendments, medical foods are specifically exempted from the requirements for nutrition labeling, nutrient content claims, and health claims. Thus, a medical food that is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements have been established may be sold without any nutrition information on its label or labeling, and it may bear claims that have not been evaluated under the 1990 amendments to ensure that they are scientifically valid. Moreover, there is no assurance that the formulation of a medical food has been evaluated prior to sale to ensure that it is suitable for the intended patient population. The exemption from the requirements of the 1990 amendments, therefore, creates a troubling paradox: Medical foods intended for use by sick people are subject to much less scrutiny than virtually all other foods, which are intended for the healthy general population. This lack of scrutiny creates a situation that could have adverse public health consequences if these

[2] The agency notes that experience has shown that the word that it should have used here is ''distinctive'' rather than ''unique.'' Thus, in any rulemaking that results from the advance notice of proposed rulemaking, the agency will likely propose to amend § 101.9(j)(8) accordingly.

products bear claims that are not scientifically valid, or if their labeling does not disclose nutrition or other information that is necessary for the safe and effective use of the food.

C. Universe of Products

The number and variety of products marketed as medical foods, the number and types of claims made for such products, the types of ingredients included in these products, and the number of manufacturers of these products have increased significantly since the mid-1970's. In 1974, a limited survey of pharmaceutical and food manufacturers revealed that fewer than three dozen products were being sold as medical foods (Ref. 2). As of 1989, however, well over 200 products were being sold as medical foods (Ref. 3). Table 1 lists several types of products being marketed as medical foods with examples of claims being made by vendors of these products.

However, many products marketed as medical foods may not qualify as such under the statutory definition of medical foods. Many of these products, for example, complete liquid nutrition products, are not formulated or promoted for the dietary management of a particular disease or condition but rather are formulated and marketed for use by the general population as supplements to a normal diet or as meal replacements.

Enteral nutrition is nutrition provided through the gastrointestinal tract, taken by mouth or provided through a tube or catheter that delivers nutrients beyond the oral cavity (i.e., directly to the stomach or small intestine). This document uses the term ''enteral nutrition products'' to refer to products that have been marketed as medical foods; ''statutory medical foods'' to refer to enteral nutrition products that meet the statutory definition of a medical food in section 5(b)(3) of the Orphan Drug Amendments (21 U.S.C. 360ee(b)(3)); and ''nonstatutory enteral nutrition products'' to refer to enteral nutrition products that have been marketed as medical foods but that do not meet the statutory definition of a medical food.

Enteral nutrition products labeled and marketed as medical foods are generally liquid or powdered products formulated to meet specific needs. They include nutritionally complete formulations, nutritionally incomplete formulations (such as modular products that contain only one nutrient or a small number of nutrients and that are intended for use with other formulations), formulations for metabolic disorders (including inborn errors of metabolism) in patients over 12 months of age, and oral rehydration products. While many such products are intended to provide a complete source of nutrition and are consumed orally or administered by feeding tube for this use, the labeling of such products frequently bears claims related to an intended use of the product in the management of a disease or condition, e.g., in alleviating specific symptoms and clinical manifestations of a particular disease.

TABLE 1.—EXAMPLES OF CURRENTLY AVAILABLE TYPES OF ENTERAL NUTRITION PRODUCTS FOR USE IN VARIOUS DISEASE STATES AND FOR PATIENTS WITH INBORN ERRORS OF METABOLISM [1]

Disease state	Patient population	Product characteristics	Examples of product claims
Kidney (renal) disease (e.g., chronic or acute kidney failure).	Hospitalized patients (including critical care patients) and home care patients.	Type and quality of protein.	''* * * complete balanced nutrition for renal patients * * * a moderate-protein, low-electrolyte, low-fluid, high-calorie formula * * * designed to provide balanced-nutrition for dialyzed patients with chronic or acute renal failure * * *'' ''Under careful dietary management * * * can maintain uremic patients in good nutritional status, promote anabolism and lower and stabilize blood urea nitrogen levels * * *''
Liver disease (e.g., coma or encephalopathy associated with hepatitis or cirrhosis).	Hospitalized patients (including critical care patients) and home care patients.	Type and quality of protein.	''Provides adequate protein without inducing or exacerbating hepatic encephalopathy'' An aggressive nutritional regimen * * * may be useful in the nutritional management of alcoholic liver-disease patients in reversing malnutrition, liver dysfunction, and encephalopathy.''
Hypermetabolic states (e.g., severe burns, trauma or infection).	Hospitalized patients (including critical care patients).	Type and quality of protein; added amino acids; elevated levels of specific vitamins and/or minerals.	''A nutritionally complete formula that provides a concentrated source of calories for patients with restricted fluid allowance or increased energy needs * * * useful in the dietary management of volume-restricted patients, oncology patients, hypermetabolic conditions, trauma, sepsis, and post major surgery.'' ''Specialized elemental nutrition with glutamine for metabolically stressed patients with impaired GI function * * * stimulates intestinal epithelial cell proliferation in injured rats * * * diminished mucosal atrophy associated with injury by stimulating intestinal cell replacement.''
Lung disease (e.g., chronic obstructive pulmonary disease, acute respiratory distress syndrome, cystic fibrosis).	Hospitalized patients (including critical care patients) and home care patients.	High fat, low carbohydrate content.	''A nutritionally complete, ready-to-use formula * * * uniquely formulated to provide a diet high in nitrogen and restricted in carbohydrates to aid in the control of metabolic alterations in * * * various stress states including respiratory insufficiency * * * CO_2 production is minimized while providing appropriate nutrient levels.'' ''Proven effective in the dietary management of patients with respiratory disease * * * reduced CO_2 production in chronic obstructive pulmonary disease and cystic fibrosis patients.''

TABLE 1.—EXAMPLES OF CURRENTLY AVAILABLE TYPES OF ENTERAL NUTRITION PRODUCTS FOR USE IN VARIOUS DISEASE STATES AND FOR PATIENTS WITH INBORN ERRORS OF METABOLISM [1]—Continued

Disease state	Patient population	Product characteristics	Examples of product claims
Compromised immune function. Human immunodeficiency virus (HIV) infection, acquired immune deficiency syndrome (AIDS).	Hospitalized patients (including critical care patients) and home care patients.	Enriched with specific amino acids; fortified with increased levels of vitamins.	''Specialized complete nutrition to provide effective nutritional management for people with HIV infection or AIDS * * * to support immune function.'' ''Increases CD_4/CD_8 ratio, one aspect of immune system * * * CD_4/CD_8 increased by day 5, indicating an improved T-helper cell function.'' ''7 days of use helped support return of immune function to preoperative levels; 22 percent reduction in mean length of hospital stay; 70 percent reduction in infections and wound complications.''
Diabetes mellitus	Hospitalized patients (including critical care patients) and home care patients.	Type and quantity of carbohydrate; high fiber.	''High fiber, low carbohydrate * * * for patients with abnormal glucose tolerance * * * to enhance blood glucose control * * * in persons with type I or type II diabetes mellitus and stress-induced hyperglycemia.''
Malabsorption, as found in: Inflammatory bowel disease (ulcerative colitis, Crohn's disease); radiation enteritis; short bowel syndrome.	Hospitalized patients (including critical care patients) and home care patients.	Pre-digested macronutrients; altered type or quantity of fat.	''A nutritionally complete enteral nutritional with * * * 85 percent of fat derived from (medium chain triglyceride) (MCT) oil—a lipid clinically proven to result in less severity and incidence of diarrhea and abdominal discomfort in individuals with fat malabsorption * * * resulting from conditions such as HIV infection, inflammatory bowel disease, cystic fibrosis, or short bowel syndrome.'' ''Comparision of a semi-elemental diet with Prednisolone in the primary treatment of active ileal Crohn's disease * * * this new flavored semi-elemental diet * * * may be as effective as steroids in inducing remission in ideal Crohn's disease.''
Oral rehydration solutions	Hospitalized patients (including critical care patients) and home care patients.	Solutions of water, electrolytes and a carbohydrate source.	''To quickly restore fluids and minerals lost in diarrhea and vomiting in infants and children * * * for maintenance of water and electrolytes following corrective parenteral therapy for severe diarrhea.'' ''Enteral rehydration solution * * * to prevent dehydration and to correct mild to moderate dehydration associated with fluid and electrolyte loss.'' ''Pediatric electrolyte oral maintenance solution * * * to restore body water and minerals lost in children's diarrhea and vomiting * * * prevents dehydration.''
Phenylketonuria (PKU)	Patients with phenylketonuria.	Restrict dietary phenylalanine.	''A phenylalanine-free food to aid in the nutritional management of hyperphenylalaninemia including PKU.'' ''Phenylalanine-free to allow greater intake of complete protein.'' ''Phenylalanine-free for pregnant women, women in the childbearing years and individuals over 8 years of age.''
Maple syrup urine disease	Patients with maple syrup urine disease.	Restrict dietary branched-chain amino acids (isoleucine, leucine and valine).	''To be used only for the dietary management of infants and children with maple syrup urine disease or other disorders of branched-chain amino acid metabolism under the direct and continuing supervision of a physician.'' ''A branched-chain amino acid-free medical food * * * for nutrition support of children and adults with branch-chain ketoaciduria (maple syrup urine disease).'' ''Isoleucine-, leucine- and valine-free for individuals over 8 years of age and women in the childbearing years.''
Hereditary tyrosinemia: Type I Type II.	Patients with hereditary tyrosinemia.	For Type I: Restrict dietary tyrosine, phenylalanine and methionine;. For Type II: Restrict dietary tyrosine and phenylalanine.	''A phenylalanine-, tyrosine- and methionine-free medical food * * * for nutrition support of infants and toddlers with tyrosinemia type I.'' ''A special formula powder for use in the dietary management of hereditary tyrosinemia II * * * a phenylalanine- and tyrosine-free medical food for nutrition support of children and adults with tyrosinemia type II.'' ''A special formula powder for use in the dietary management of hereditary tyrosinemia II * * * very low in tyrosine and phenylalanine * * * ''.
Homocystinuria	Patients with homocystinuria.	Restrict dietary methionine.	''A special diet powder without added methionine for dietary management of individuals with homocystinuria.'' ''A methionine-free medical food * * * for nutritional support of children and adults with vitamin B_6-nonresponsive homocystinuria or hypermethioninemia,''

TABLE 1.—EXAMPLES OF CURRENTLY AVAILABLE TYPES OF ENTERAL NUTRITION PRODUCTS FOR USE IN VARIOUS DISEASE STATES AND FOR PATIENTS WITH INBORN ERRORS OF METABOLISM [1]—Continued

Disease state	Patient population	Product characteristics	Examples of product claims
Urea cycle disorders (e.g., argininemia, ornithine transcarbamylase deficiency, methylmalonic aciduria).	Patients with urea cycle disorders.	Restrict dietary protein as tolerated without causing hyperammonemia.	''Methionine-free for individuals over 8 years of age and women in the childbearing years.'' ''A non-essential amino acid-free medical food * * * for nutrition support of children and adults with a defect in a urea cycle enzyme * * * ''

[1] This is a summary description of products available for dietary management of the listed diseases and inborn errors of metabolism. Some of these diseases and conditions have many variations, each requiring distinctive dietary restrictions or supplements to the diet. A number of products are available for several of the listed diseases and conditions, and the actual composition of these products may vary slightly from the product characteristics given in this summary.

D. Safety Problems

As discussed above, there has been a dramatic increase over the past 20 years in the number and types of products that purport to be medical foods. The number of manufacturers producing these products has also increased. As the number of manufacturers has grown, the level of industry experience in the current good manufacturing practice (CGMP) and quality control procedures necessary to produce products that contain nutrients within a narrow range of declared label values has become quite variable. Medical foods are complex formulated products, generally requiring sophisticated and exacting technology comparable to that used in the manufacture of infant formulas and drugs. Moreover, the populations that consume these products, often as the sole or a major source of nutrition, are extremely vulnerable, e.g., pediatric patients in periods of growth and development, the elderly, patients who have serious illnesses, and patients in intensive care units. Although excessive or, conversely, insufficient amounts of particular nutrients may not be a health hazard when consumed by healthy persons, serious adverse consequences (even death) may result when these vulnerable populations consume these products for long, or even short, periods of time.

Significantly, in recent years, FDA has become aware of some serious problems with foods that purport to be medical foods. In 1986, four infants died as a result of being fed an oral rehydration solution that contained lethal concentrations of potassium. FDA identified the oral rehydration solution as the cause of these deaths (Ref. 4), inspected the site where the product was manufactured, and analyzed the product's nutrient content. FDA determined that elevated amounts of potassium occurred in the product because CGMP had not been followed. Notably, weighing scales were used improperly, and persons responsible for the formulation of product lacked adequate training.

Results of a compliance program that FDA initiated for medical foods in 1988, and followup on adverse reactions reported to the agency, have identified examples of deviations from CGMP that have caused the actual nutrient content of the product to deviate significantly from the declared label value. Some deviations have been significant enough to create acute, life-threatening health hazards and have led to product recalls. For example, in 1989, problems with a nutritionally complete product containing excessive amounts of potassium and sodium were brought to FDA's attention as a result of a complaint from the Veterans Administration Medical Center in Nashville, TN. Administration of this product to a patient resulted in hyperkalemia, or elevated blood potassium levels, which can have life-threatening consequences, including fatal cardiac arrhythmias. This patient required intensive medical treatment to reduce blood potassium levels and to prevent the serious side effects of hyperkalemia. FDA inspection of the facility that had manufactured this product revealed serious flaws in CGMP. These flaws resulted in extreme variability in product composition between lots or individual packets of product, which became evident when the product was analyzed by FDA for nutrient composition. This product was recalled (Ref. 5).

In 1993, in response to a complaint to FDA from a medical center in Seattle, WA, FDA analysis of a complete nutritional product being administered enterally to patients in an intensive care unit revealed that the product contained levels of potassium that were approximately twice the amount declared on the label. The agency concluded that this product represented an acute, potentially life-threatening hazard to persons with impaired kidney function, particularly those who were not being closely monitored for serum potassium levels. As a result, a number of products were recalled (Ref. 6).

FDA is also aware of problems involving potential microbiological contamination of products that purport to be medical foods. For example, in 1993, a modular product containing protein and a modular product containing carbohydrate were recalled because they had been manufactured under conditions in which they may have become contaminated with *Salmonella* (Ref. 7).

E. Claims and the Potential for Economic Fraud

FDA has not, to date, undertaken a comprehensive review of the claims being made for products that purport to be medical foods but rather has evaluated claims for a small number of these products on a case-by-case basis, applying the following general principles:

1. A product marketed for use as a medical food in the dietary management of a disease or condition should have characteristics that are based on scientifically validated distinctive nutritional requirements of the disease or condition.

2. There should be a scientific basis for the formulation of the product and the claims made for the product.

3. There should be sound, scientifically defensible evidence that the product does what it claims to do.

The agency is concerned that some of the claims made for products that purport to be medical foods are not based on sound science, and that consumers that use products that bear such claims, and health professionals that recommend the use of such products, are being misled regarding the value of these products. In addition to the health risks created by unsafe or ineffective medical foods, consumers and third-party payers, such as insurance companies and government

health care agencies, suffer significant economic losses when products marketed as medical foods do not do what they claim to do.

A number of publications by and for health care professionals express concern about unsupported claims for foods that purport to be medical foods. For example, a recent edition of a book published by the United States Pharmacopeial Convention, Inc., *USP DI, Volume I, Drug Information for the Health Care Professional* (Ref. 8), lists enteral nutrition products that are formulated to meet nutrient requirements for individuals with specific diseases but states: ''In general, scientific evidence for efficacy of these products is weak and requires further study.'' The 1990 LSRO/FASEB report ''Guidelines for the Scientific Review of Enteral Food Products for Special Medical Purposes'' (Ref. 1) noted that products containing substances such as essential amino acids, peptides, and medium-chain triglycerides were available, and that such products were represented as being useful for the dietary management of diseases and disorders. However, the report also stated that clinical trials of these preparations were limited, and that ''none has fully confirmed or refuted the putative advantages of these products over ordinary nutritionally adequate preparations.''

III. Clarification of the Medical Food Definition

In the preamble to one of the proposed rules implementing the 1990 amendments, FDA advised that it considered the statutory medical food definition to narrowly constrain the types of products that can be considered to be medical foods (56 FR 60366 at 60377). As noted previously in this document, however, the agency recognizes that the universe of products that purport to be medical foods has expanded beyond the statutory definition of a medical food to include foods that are more appropriately foods for special dietary use. In part, this expansion has occurred because many have difficulty distinguishing between medical foods and foods for special dietary use. While the agency recognizes that some ambiguity exists in the distinction between these two types of foods, the statutory language provides several bases on which to distinguish medical foods from foods for special dietary use.

A. ''Distinctive Nutritional Requirements''

A fundamental element of the medical food definition that distinguishes this type of product from a food for special dietary use is the statutory requirement that a medical food be intended to meet distinctive nutritional requirements of a disease or condition. Under 21 U.S.C. 360ee(b)(3), distinctive nutritional requirements must be based on recognized scientific principles and established by medical evaluation. The law does not define what constitutes a ''distinctive nutritional requirement,'' however, and there is more than one possible interpretation. FDA welcomes public comment on what definition of ''distinctive nutritional requirement'' will best protect and promote the public health. The agency is suggesting two possible interpretations of this phase.

1. Physiological Interpretation of ''Distinctive Nutritional Requirement''

''Distinctive nutritional requirement'' may be interpreted to refer to the body's requirement for specific amounts of nutrients to maintain homeostasis (the state of equilibrium in the body with respect to various functions and to the chemical compositions of the fluids and tissues) and sustain life; that is, the amount of each nutrient that must be available for use in the metabolic and physiological processes necessary to sustain life.

The nutritional requirements of healthy people for specific nutrients reflect their quantitative and qualitative requirements for absorbed nutrients (i.e., the physiological requirement for the nutrient), with adjustments for common inefficiencies associated with absorption, metabolism, and retention. However, the dietary management of patients with specific diseases requires, in some instances, the ability to meet nutritional requirements that differ substantially from the needs of healthy persons. For example, in establishing the recommended dietary allowances for the general, healthy population, the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences recognized that different or distinctive physiologic requirements may exist for certain persons with ''special nutritional needs arising from metabolic disorders, chronic diseases, injuries, premature birth, other medical conditions, and drug therapies'' (Ref. 9). Thus, the distinctive nutritional needs associated with a disease reflect the total amount needed by a healthy person to support life or maintain homeostasis, adjusted for the distinctive changes in the nutritional needs of the patient as a result of the effects of the disease process on absorption, metabolism, and excretion. These distinctive nutritional requirements may be greater than, less than, or in a narrower range of tolerance than for an otherwise healthy individual.

Under this physiological interpretation of ''distinctive nutritional requirements, ''medical foods'' are foods that are formulated to aid in the dietary management of a specific disease or health-related condition that causes distinctive nutritional requirements that are different from the nutritional requirements of healthy people. Foods for special dietary use, on the other hand, are foods that are specially formulated to meet a special dietary need, such as a food allergy or difficulty in swallowing, but that provide nutrients intended to meet ordinary nutritional requirements. The special dietary needs addressed by these foods do not reflect a nutritional problem per se; that is, the physiological requirements for nutrients necessary to maintain life or homeostasis addressed by foods for special dietary use are the same as those of normal, healthy persons. These foods are formulated in such a way that only the ingredients or physical form of the diet is different. For example, a person who has difficulty swallowing solid food may have a special dietary need for a food that is in liquid form, but this special dietary need does not change his or her physiologic nutrient requirements. Similarly, a person who is allergic to specific food proteins (e.g., gluten) may need foods specially formulated not to contain these proteins. However, the specially formulated food still would provide the same amount of protein (i.e., amino acids) as is needed by the general population because the quantitative and qualitative amount of protein required by the body is similar in both healthy and protein-sensitive patients. Thus, foods for special dietary use are foods that are intended to meet ordinary nutritional requirements through special dietary means.

2. Alternative Interpretation of ''Distinctive Nutritional Requirement''

''Distinctive nutritional requirement'' may also be interpreted to encompass physical or physiological limitations in a person's ability to ingest or digest conventional foods, as well as distinctive physiological nutrient requirements. The FASEB report on medical foods stated that medical foods are for ''patients with limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary foodstuffs or certain nutrients contained therein, or (who) have other special medically determined nutrient requirements'' (Ref. 1). This definition would include uses that a purely

physiological definition of ''distinctive nutritional requirements'' would exclude, such as foods intended for persons not able to ingest foods in certain physical forms (e.g., solid food), foods intended for persons who need a concentrated form of nutrition because of reduced appetite as a result of disease or convalescence), or foods intended for persons who may have other physical limitations on the amount or composition of food that they can consume. Although these types of conditions do not necessarily result in nutrient needs different from those of healthy persons, they represent a situation where it may be necessary that the food be formulated and manufactured within very narrow tolerances to ensure that the food provides most or all of the essential nutrients, as the persons for whom the food is intended may not be able to eat a variety of foods to ensure that they meet their nutrient requirements.

Therefore, it may be appropriate to define ''distinctive nutritional requirements'' to include those requirements that result from a disease or condition that cause a physical or physiological limitation in the ability of a person to ingest or digest conventional nutrient sources and result in that person needing specially formulated foods to meet part or all of their daily nutrient needs. Defining this term in this way may be appropriate because these circumstances create nutritional needs that are more narrowly defined than those of healthy persons, because the patient is relying on only a limited number of foods or a single food for sustenance. The agency asks for comments on whether persons with an impaired ability to ingest or digest specific foods because of a disease or condition, or who have physical or physiological limitations that cause them to rely on an enteral nutrition product for a significant part or all of their nutrient needs, have ''distinctive nutritional requirements'' within the meaning of the medical food definition.

B. ''Under the Supervision of a Physician''

The second element of the medical food definition that distinguishes a medical food from a food for special dietary use is the statutory requirement that a medical food be ''formulated to be consumed or administered enterally under the supervision of a physician.'' As stated in the preamble to the proposed rule implementing the nutrition labeling requirements of the 1990 amendments (56 FR 60366 at 60377), ''under the supervision of a physician'' means that the intended use of a medical food is for the dietary management of a patient receiving active and ongoing medical supervision (e.g., in a health care facility or as an outpatient). The physician determines that the medical food is necessary to the patient's overall medical care, and the patient consults the physician on a recurring basis.

Medical foods are intended for the dietary management of patients who have a short-term or long-term medical need for a particular nutrient or combination of nutrients to meet distinctive nutritional requirements. The use of a medical food requires ongoing physician oversight to ensure that the food effectively meets the distinctive nutritional requirements of the patient's disease or condition, and that the use of an enteral medical food is the appropriate means (i.e., as opposed to a patient requiring a parenteral nutrition product) to meet the patient's distinctive nutritional requirements. Therefore, medical foods are foods that are an integral component of the clinical management of a patient. Medical foods are not foods simply recommended by a physician as part of an overall diet designed to reduce the risk of a disease or medical condition, to lose or maintain weight, or to ensure the consumption of a healthy diet. Foods recommended by a physician for these purposes may be foods for special dietary use, but they are not medical foods.

C. ''Specific Dietary Management''

The third fundamental element of the definition of a medical food that distinguishes a medical food from a food for special dietary use is the statutory requirement that a medical food be intended for the specific dietary management of a disease or condition. The term ''specific dietary management'' in the statutory definition of medical foods evidences that Congress intended these foods to be an integral part of the clinical treatment of patients. Consistent with this interpretation of this term, the LSRO/FASEB Panel concluded that the objectives of incorporating the use of medical foods into patient management were, in part, to ''ameliorate clinical manifestations of the disease,'' ''favorably influence the disease process,'' and ''positively influence morbidity and mortality (patient outcomes)'' (Ref. 1). There is no language corresponding to ''specific dietary management'' in the statutory definition applicable to foods for special dietary use. Thus, although they may be useful in supplying the special dietary needs of patients who have a disease or other condition that prevents them from eating normally, foods for special dietary use, unlike medical foods, are not specifically tailored for use as the nutritional component of the patient's treatment.

D. Summary

The statutory definitions of medical foods and foods for special dietary use overlap to the extent that both categories encompass foods that are intended for use by sick people. The differences in the statutory definitions evidence, however, that Congress intended foods for special dietary use under section 411(c)(3)(A) of the act to be a broader category of foods for use by people with special dietary needs or desires, while it intended medical foods to be a narrower category of foods for use by people with particular diseases or conditions that have distinctive nutritional requirements. Since a medical food must address the ''distinctive nutritional requirements'' of a disease or condition, a medical food is suitable only for use by patients with that disease or condition. Of course, it is possible for more than one disease or condition to create the same distinctive nutritional requirements. A product that is intended to address the distinctive nutritional requirements of a particular disease is a medical food, even though some of those requirements may also be created by other diseases. A product that is designed to address a problem that is common to several diseases, but not the full range of requirements of any specific disease, would be a food for special dietary use. For example, the distinctive nutritional requirements of burn patients include a greater energy requirement due to hypermetabolism and a requirement for dietary glutamine because endogenous synthesis of this amino acid does not meet the metabolic requirement. Thus, a product formulated to meet the higher energy requirement due to the hypermetabolic state, but which does not meet the requirement for glutamine, would be a food for special dietary use and not a medical food because it does not meet the full range of distinctive nutritional requirements in patients with burn injuries.

IV. Need for Substantiation of Nutritional Efficacy and Claims Made in Product Labeling

Because of their intended use in supplying the distinctive nutritional needs of patients who are ill or otherwise medically vulnerable, it is essential that medical foods be appropriately formulated for the particular disease or condition for

which they are labeled. Moreover, because the statutory definition of a medical food provides that these foods are part of the clinical management of a disease or condition, the definition necessarily incorporates a requirement that the product actually meet the distinctive nutritional requirements for the disease or condition. It is not enough that a manufacturer merely declare or subjectively intend that the product be used for the dietary management of patients with certain diseases or conditions. If the product, as formulated and consumed, does not actually meet those distinctive requirements, it would violate the act. Under any other view, the medical foods category would merely create a safe harbor for fraudulent claims targeted at those who are most vulnerable.

Other elements of the statutory definition support this view. In defining the term ''medical food'' in the Orphan Drug Amendments, Congress included the requirement that distinctive nutritional requirements of a disease or condition exist, and that they be based on recognized scientific principles and established by medical evaluation. Thus, Congress established a strict standard for when a food qualifies as a medical food. The establishment of this strict standard for distinctive nutritional requirements necessarily implies an expectation that this standard will in fact be met.

Acceptance of the manufacturer's intent that the product meets the special needs of the disease, without objective information to support the manufacturer's intent, would establish a subjective standard that would provide no assurance that the statutory standard has been met. Moreover, such a standard would ignore the fundamental differences between a medical food and other types of food. As stated above, a medical food is intended for use as the source of nutrients that are necessary in the medical management of a particular disease or condition. Thus, it is crucial to the health of the patient. No other type of food, including food for special dietary use, has such a direct relationship to the health of an individual. It is therefore necessary that the physician be able to rely on the medical food to effectively meet the distinctive nutritional requirements of the patient.

Finally, the statutory scheme for regulation of claims relating to health and disease confirms the appropriateness of a strong standard for substantiation of the nutritional efficacy of medical foods. The act establishes a range of circumstances under which claims relating to health and disease may be made. At one end of the spectrum are conventional foods, which under section 403(r) of the act may bear a health claim only if FDA determines:

> based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles) that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

At the other end of the spectrum are drugs, whose effectiveness in diagnosing, curing, mitigating, treating, or preventing disease must be established by substantial evidence, defined as:

> evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

(Section 505(d)(7) of the act (21 U.S.C. 355(d)(7)).)

Clearly, medical foods fall somewhere between these two points, and the statutory scheme therefore requires some level of substantiation for a medical food's claimed usefulness in the dietary management of disease.

When Congress enacted authorization for health claims on conventional foods, it provided that such claims would be permitted only if FDA determined that the substance-disease relationship that is the subject of the claim is supported by significant scientific agreement among experts. The House Report for the 1990 Amendments states: ''The standard is intended to be a strong one. The bill requires that the Secretary have a high level of confidence that the claim is valid'' (Ref. 10). The establishment of a ''strong'' scientific standard was necessary to ensure that claims were supported by adequate scientific evidence so that they would not be misleading, and so that consumers could have confidence in the scientific validity of the claimed substance-disease relationship. Thus, even a health claim for a food intended to be used by healthy individuals must meet a high standard.

The reasons for requiring a strong standard of substantiation apply with even more force to medical foods. The statutory definition of a medical food states that such a food must be intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. As discussed earlier, this aspect of the definition makes it clear that Congress intended that claims made for medical foods be supported by scientific evidence, and it also constitutes a scientific standard that must be met for a food to be a medical food. The nature of these products (i.e., their intended use in the nutritional management of people affected by a disease or other condition) and the exemptions (i.e., from health claim requirements applicable to conventional foods) provided for them by virtue of their status as medical foods necessitate at least as much substantiation to support claims made for medical foods as for health claims on conventional foods. It would make no sense to establish a standard for claims on medical foods that was lower than the standard for health claims that are made for foods sold to healthy people.

The agency is concerned that many claims made for products marketed as medical foods are not supported by adequate scientific evidence, and that these unsupported claims result in the inappropriate use of some products by patients and physicians when effective alternative nutritional strategies for managing the disease are available. One medical expert on enteral nutrition formulas voiced this concern by stating that since the:

> introduction of nutritional support * * * as a specific therapeutic entity in the 1960's, a number of claims have been made, and widely believed, regarding its ability to improve the natural history of many diseases. However, these claims have been disseminated in the absence of supportive data from prospective randomized controlled trials * * *; in fact, when such studies have been performed, they have by and large not been able to demonstrate that [nutritional support] does improve morbidity and/or mortality.

(Ref. 11)

A physician relies on the claims made for medical foods on their labels and in their labeling as a significant factor in deciding whether to use a particular medical food in the clinical management of a patient. Thus, it is essential that the claims made for such a product present an accurate interpretation of the scientific evidence concerning the usefulness of that product or specific formulation. It is critical for the safe and appropriate use of the medical food that the claims made for it are accurate and unbiased, and that they are based on a critical

evaluation of the science available to the manufacturer. The need for physicians and patients to have confidence that any claim that a product is a medical food formulated for the specific dietary management of a disease or condition requires that a strong standard of substantiation be in place. A strong standard of substantiation would be one that requires that all pertinent data be considered in the formulation of the product and in the development of any claims about its use.

Further, the misbranding provisions of the act do not permit a food, including a medical food, to bear misleading labeling claims (section 403(a) of the act). Claims may be misleading not only because of affirmative representations made in the labeling, but also because the labeling fails to reveal facts material in the light of such representations with respect to consequences which may result from the use of the food under the conditions of use prescribed in the labeling or under usual or customary conditions of use (section 201(n) of the act). Thus, a medical food that bears claims that are not based on all the information available, and that do not permit the consumer or physician to make an informed choice, may be misbranded.

In summary, the intended uses of medical foods, the statutory definition of a medical food, and the statutory scheme for regulating health and disease claims all point to the need for a strong standard of scientific evidence for the composition and effectiveness of medical foods to provide assurance to health care providers and patients of the nutritional utility of these products. The standard should be no less demanding than for health claims for foods intended for the healthy general population. Moreover, because medical foods are intended for use in the clinical management of seriously ill and injured patients, it may be appropriate and necessary to apply a more stringent standard to the scientific evidence used to support claims made for medical foods. The agency's preliminary view is that the scientific standard contained in the statutory medical food definition may require some of the same types of data for medical foods as are needed to support drug claims (e.g., data from clinical investigations). The agency asks for comments regarding how stringent a scientific standard is necessary to ensure the safe and appropriate use of a medical food for a particular disease or condition.

V. Agency Plans

The agency is soliciting comments to initiate a reevaluation of its approach to the regulation of the broad group of heterogenous products marketed as medical foods and whether this approach serves the best interests of the consumers of such products. If the current regulatory approach is not adequate, the agency is interested in how it can improve the regulatory regime for medical foods to best serve those interests. FDA will review and consider all comments received. While this reevaluation is ongoing, however, the agency advises that it intends to continue to take regulatory action when necessary to protect consumers from unsafe or fraudulent products marketed as medical foods.

VI. Economic Issues

Under Executive Order 12866, FDA will be required to consider the costs and benefits of any proposed regulations pertaining to medical foods when regulations are proposed. In addition, under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act, FDA will be required to consider the impacts on small entities of any such regulations.

The primary benefit of any proposed change in the requirements applicable to medical foods will be a reduction in the health risks posed by medical foods that meet existing requirements. In addition, changes in the requirements applicable to medical foods that specify the level of scientific support required to make claims concerning the product will mean that consumers will have assurance that the claims are valid, and that the claims that are made provide reliable information. Other benefits will derive from the elimination of fraudulent and unsupported claims which will save consumers and third-party payers money and will improve patient health because people will use products that are appropriate for their conditions instead of relying on those bearing unsupported claims that do not have a positive impact on their conditions.

FDA asks for comments and information on the current health risks posed by medical foods meeting existing CGMP, labeling, and other applicable regulations. FDA also asks for comments on the degree to which these health risks may be reduced by additional regulation of medical foods, such as quality control requirements and additional CGMP and labeling regulations.

The primary cost of any proposed change will be the difference between the current cost of producing and marketing medical foods and the anticipated cost of producing and marketing medical foods under the proposed change. For example, relevant costs may include the cost of changing labels, generating particular types of information for labels, changing production methods or facilities to accommodate new CGMP requirements, the generation of additional information to establish product safety and effectiveness, and the cost of any uncertainty or delays associated with a potential premarket notification process.

FDA asks for comments on the costs that would be generated if medical foods were subject to additional regulatory requirements, such as quality control requirements, specific CGMP requirements, and labeling regulations. FDA also asks for comments on the impacts on small entities that would result if medical foods were subject to additional regulatory requirements of the type discussed in this document.

VII. Summary

Patients rely on medical foods to meet the distinctive nutritional needs resulting from their disease or condition, and, therefore, medical foods are often a significant part of the clinical management of these patients. Despite the importance of medical foods, however, existing regulations do not provide clear guidance on what products should be considered to be medical foods or on requirements to ensure that these foods do what they purport to do and are safe for their intended use. There is no regulatory framework that establishes specific quality assurance requirements, ensures the safety of medical foods under their intended conditions of use, ensures that they provide the nutrients that they claim to provide within safe ranges, or ensures that the benefits claimed for their purported use are supported by adequate scientific evidence. Therefore, the agency asks for comments on the following questions:

1. Is FDA's current approach to the regulation of medical foods adequate to ensure that food products claimed to be medical foods are safe and that the claims that they bear are valid? Is there a need for FDA to change its approach to the regulation of medical foods to better serve the needs of the patient populations that consume such products, and if so, what should the regulatory regime for medical foods be?

2. What factors should FDA consider applying as criteria to determine what products meet the statutory definition of a medical food? Should the agency apply a physiological interpretation of ''distinctive nutritional requirements'' in determining whether a product is a medical food, or should medical foods also include products that are used for

patients with ingestion or digestion problems but with otherwise ''normal'' nutrient requirements? Would the latter interpretation be consistent with the act?

3. What requirements are necessary to ensure the safe and appropriate use of: (a) Products that meet the statutory definition of a medical food? (b) products that have been marketed as medical foods but that do not meet the statutory definition of a medical food?

Examples might include requirements that address product composition, current good manufacturing practice and quality control procedures, labeling requirements, and standards governing claims about the product and for foods that may be used as a sole item of the diet.

4. To ensure the safety and effectiveness of a medical food, should the agency require that the manufacturer notify FDA before marketing the product, and that it submit evidence that establishes that the product will be safe for its intended use and that any claims made for the product are supported by sound science? What information should be included in such a submission?

5. What standard should be used to determine the safety of a medical food?

6. What quantity and quality of scientific evidence should be required to establish that a disease or condition has distinctive nutritional requirements based on recognized scientific principles?

7. What quantity and quality of scientific evidence should be required to support the validity of claims made for medical foods?

8. What information should be included on the label of a medical food or otherwise disclosed to health care professionals and consumers? Should the amount and detail of the information to be disclosed depend on the types of claims made for the medical food or on other characteristics of the product? What methods would be most effective in communicating information on the intended uses, benefits, and other characteristics of a medical food to enable physicians and consumers to make informed decisions regarding its use (e.g., labels, package inserts, detailed summaries of the science upon which a firm is basing the claims made for its product)?

9. Should the agency develop regulations specifying quality control standards and procedures and current good manufacturing practice requirements for medical foods? What types of requirements are necessary (e.g., expiration dating, analysis of nutrient content, microbiological safety measurements, etc.)?

10. How should FDA monitor the safety and effectiveness of medical foods already on the market? What elements are necessary components of an effective postmarket surveillance system for these products? Should a postmarket surveillance system for medical foods include requirements and procedures for the collection and reporting to FDA of safety- and efficacy-related product defects, adverse reaction reports, and complaints by health care professionals and consumers? Should manufacturers be required to collect information describing the outcomes associated with the use of medical food products in designated patient categories that would be available to FDA, health care providers, and consumers?

VIII. Comments

Interested persons may, on or before February 27, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Talbot, J. M., ''Guidelines for the Scientific Review of Enteral Food Products for Special Medical Purposes,'' prepared for the Food and Drug Administration under FDA Contract No. 223–88–2124 by the Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD, 1990.

2. Fisher, K. D., J. M. Talbot, and C. J. Carr, ''A Review of Foods for Medical Purposes: Specially Formulated Products for Nutritional Management of Medical Conditions,'' prepared for the Food and Drug Administration under Contract No. FDA 223–75–2090 by the Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD, 1977.

3. Hattan, D. G., and D. R. Mackey, ''A Review of Medical Foods: Enterally Administered Formulations Used in the Treatment of Diseases and Disorders,'' *Food Drug Cosmetic Law Journal,* 44:479–502, 1989.

4. Health Hazard Evaluation No. 1470, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC, April 25, 1986.

5. FDA Enforcement Report, August 23, 1989, Rockville, MD.

6. FDA Enforcement Report, May 19, 1993, Rockville, MD.

7. FDA Enforcement Report, July 28, 1993, Rockville, MD.

8. The United States Pharmacopeial Convention, Inc., *USP DI, Drug Information for the Health Care Professional, Volume I,* Rand McNally, Taunton, MS, 1996.

9. Subcommittee on the Tenth Edition of the RDA's, Food and Nutrition Board, Commission on Life Sciences, National Research Council, ''Recommended Dietary Allowances, 10th ed.,'' National Academy Press, Washington, DC, 1989.

10. H. Rept. 101–538, 101st Cong., 2d sess., 19, ''Nutrition Labeling and Education Act of 1990,'' June 13, 1990.

11. Koretz, R. L., *A Critical Look at the Trials,* Symposium #2, Immunonutrition in the ICU, In: Proceedings of the 19th Clinical Congress, American Society for Parenteral and Enteral Nutrition, Miami, FL, pp. 97–103, 1995.

This document is issued under sections 4, 5, and 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); sections 201, 301, 402, 403, 404, 405, 409, 411, 412, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 344, 345, 348, 350, 350a, 351, 352, 353, 355, 371); and 21 U.S.C. 360ee(b)(3) (section 5(b)(3) of the Orphan Drug Amendments of 1988, as amended by Pub. L. 100–290).

Dated: October 31, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–30441 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[ND4–1–6459b, UT8–1–6460b, CO20–1–6461b, MT14–1–6462b; FRL–5282–2]

Clean Air Act, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the States of North Dakota, Utah, Colorado and Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: EPA approved the State Implementation Plan revisions for the States of North Dakota, Utah, Colorado and Montana (January 11, 1994 in 59 FR 1485, January 11, 1994 in 59 FR 1485, January 28, 1994 in 59 FR 4003, March

4, 1994 in 59 FR 10284, respectively) for the purpose of establishing Small Business Stationary Source Technical and Environmental Compliance Assistance Programs. This document proposes to amend those approvals to incorporate by reference the States' Programs, and deletes the following sections from part 52, chapter I, title 40 of the Code of Federal Regulations: § 52.1833 of subpart JJ—North Dakota, § 52.2348 of subpart TT—Utah, § 52.347 of subpart G—Colorado, and § 52.1389 of subpart BB—Montana.

In the Final Rules Section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because the Agency views this as a noncontroversial corrective action and anticipates no adverse comments. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the 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. The EPA will not institute a second comment period on this action.

DATES: Comments must be submitted by December 30, 1996.

ADDRESSES: Comments must be submitted to Meredith Bond, Mail Code 8P2–A, EPA, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Meredith Bond, Mail Code 8P2–A, EPA Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 312–6438.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 13, 1996.

Editorial Note: This document was received at the Office of the Federal Register on November 22, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–30326 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 131

[FRL–5656–6]

Withdrawal From Federal Regulations of Arsenic Criteria Applicable to Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comments.

SUMMARY: In 1992, EPA promulgated federal regulations establishing water quality criteria for toxic pollutants for several states, including Idaho (40 CFR 131.36). Idaho has now adopted, and EPA has approved, human health water quality criteria. In this action, EPA is proposing to withdraw the human health criteria for arsenic applicable to Idaho. EPA is providing an opportunity for public comment on withdrawal of the federal criteria because the State's arsenic criteria differ from the federal criteria. In a related action published in the final rule section of this issue of the Federal Register, EPA is amending the federal regulations to withdraw the human health criteria for those pollutants where Idaho has adopted criteria that are identical to the federal criteria.

DATES: EPA will accept public comments on its proposed withdrawal of the human health criteria for arsenic applicable to Idaho until December 30, 1996. Comments postmarked after this date may not be considered.

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Lisa Macchio, U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101.

The administrative record for the consideration of Idaho's human health criteria for arsenic is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, between 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Fred Leutner at EPA Headquarters, Office of Water (4305), 401 M Street, SW, Washington, D.C., 20460, (telephone: 202–260–1542) or Lisa Macchio in EPA's Region 10 at 260–553–1834.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Citizens concerned with water quality in Idaho, and with pollution from arsenic in particular, may be interested in this proposed rulemaking. Since criteria are used in determining NPDES permit limits, entities discharging arsenic to waters of the United States in Idaho could be affected by this proposed rulemaking. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Industries discharging arsenic to surface waters in Idaho.
Municipalities	Publicly-owned treatment works discharging arsenic to surface waters in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 131.36 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

In 1992, EPA promulgated a final rule (known as the National Toxics Rule) to establish numeric water quality criteria for 12 States and 2 Territories (hereafter ''States'') that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act. (57 FR 60848). The criteria, codified at 40 CFR l3l.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the Clean Water Act effective February 5, 1993.

When a State adopts criteria that meet the requirements of the Clean Water Act, EPA withdraws its criteria. If the State's criteria are no less stringent than the federal regulations, EPA will withdraw its criteria without notice and comment rulemaking since additional comment on the criteria is unnecessary. If a State's criteria are less stringent than the federal regulations, EPA will withdraw its criteria only after notice and opportunity for public comment on that decision. (see 57 FR 60860).

On August 24, 1994, Idaho adopted revisions to its surface water quality standards (Title 1, Chapter 2, section 250 of the Idaho Administrative Code), regarding human health criteria for toxic pollutants. For most pollutants, Idaho adopted by reference EPA's human health criteria. In a separate final action published in this issue of the Federal Register, EPA is withdrawing without public comment those human health criteria applicable to Idaho for which the State has adopted identical criteria.

Idaho adopted human health criteria for arsenic that differ from the federal

regulations. The Office of Water for EPA's Region 10 has approved Idaho's arsenic criteria and has recommended that the Agency withdraw the federal criteria for arsenic applicable to Idaho. Idaho's criteria for arsenic differ from the federal criteria because the State used a bioconcentration factor (BCF) to derive its criteria that is different from the BCF used by EPA. Idaho selected a BCF that the State believes more accurately reflects the species present in State's surface waters. EPA had indicated in the preamble to the National Toxic Rule that states may select fish species in developing BCF values that would better reflect species found in State waters. (see 57 FR 60888). Having reviewed Idaho's submission, Region 10 concluded that the State's choice of a BCF to calculate the arsenic criteria was appropriate and the State's arsenic criteria met the requirements of the Clean Water Act.

EPA is providing an opportunity for the public to comment on the Agency's proposed withdrawal of the federal human health criteria for arsenic applicable to Idaho because Idaho's criteria for arsenic are less stringent than the federal criteria.

This proposed withdrawal of human health criteria would impose no additional regulatory requirements or costs. Therefore, it has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is not subject to OMB review.

Based on this information, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this action will not have significant impact on a substantial number of small entities.

Similarly, this action will not result in the annual expenditure of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector, and is not a Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104–4), nor does it uniquely affect small governments in any way. As such, the requirements of sections 202, 203 and 205 of Title II of the UMRA do not apply to this action.

This proposed rule does not impose any requirement subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water Quality Standards.

Dated: November 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I, part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

§ 131.36 [Amended]

2. Section 131.36(d)(13)(i) is amended by removing the following use classifications: ''16.01.2100.01.b. Domestic Water Supplies'', ''16.01.2100.03.a. Primary Contact Recreation'', and ''16.01.2100.03.b. Secondary Contact Recreation''.

3. Section 131.36(d)(13)(ii) is amended by removing the following use classifications and corresponding applicable criteria: ''01.b'', ''03.a'', ''03.b''.

4. Section 131.36(d)(13)(ii) is amended in ''02.a,'' ''02.b,'' and ''02.cc'' use classification, under the listing of applicable criteria, by removing ''Column D2''.

5. Section 131.36(d)(13)(iii) is removed in its entirety.

[FR Doc. 96–30311 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 17 and 87

[WT Docket No. 96–211, FCC 96–407]

Use of 112–118 MHz for Differential Global Positioning System (GPS) Correction Data and the Use of Hand-Held Transmitters on Frequencies in the Aeronautical Enroute Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making (NPRM)* proposes to amend the Commission's rules regarding the use of 112–118 MHz for differential Global Positioning System (GPS) correction data, the use of hand-held transmitters on frequencies in the Aeronautical Enroute Service, and to update part 17 of our rules to incorporate by reference two recently revised FAA Advisory Circulars. These proposals were adopted in response to petitions for rule making filed by the Federal Aviation Administration and the Aeronautical Radio, Inc. The effect of these proposals would increase aircraft and airport safety and facilitate the efficient use of aeronautical radio spectrum.

DATES: Comments are due on or before January 15, 1997. Reply comments are due on or before January 30, 1997.

ADDRESSES: You must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. You may also file informal comments by electronic mail. You should address informal comments to mayday@fcc.gov. You must put the docket number of this proceeding on the subject line (''WT Docket No. 96–211''). You must also include your full name and Postal Service mailing address in the text of the message.

FOR FURTHER INFORMATION CONTACT: James Shaffer of the Commission's Wireless Telecommunications Bureau at (202) 418–0680 or via e-mail at mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, FCC 96–407, adopted October 9, 1996, and released November 21, 1996. The full text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of NPRM

1. This *NPRM* proposes to amend part 87 of our rules to permit aeronautical ground stations to use frequencies in the 112–118 MHz band to transmit differential Global Positioning System (GPS) information to aircraft equipped to use advanced landing systems in response to a petition for rule making filed by the Federal Aviation Administration (FAA). This *NPRM* also proposes to allow the use of hand-held radios for direct communications between ground service personnel and flight crews on frequencies allocated to the Aeronautical Enroute Service in response to a petition for rule making filed by Aeronautical Radio, Inc. (ARINC). Finally, this *NPRM* proposes to update part 17 of our rules to incorporate by reference two recently revised FAA Advisory Circulars. The proposed actions will increase the safety and efficiency of aircraft navigation and movement of aircraft in and around airports. Further, adoption of these proposals would promote the use of new radio technologies beneficial to

aircraft without allocating additional spectrum.

2. This is a non-restricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

3. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 15, 1997, and reply comments on or before January 30, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You must send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. You may also file informal comments by electronic mail. You should address informal comments to mayday@fcc.gov. You must put the docket number of the proceeding on the subject line (''WT Docket No. 96–211''). You must also include your full name and Postal Service mailing address in the text of the message. Formal and informal comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, DC 20554.

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

List of Subjects

47 CFR Part 17

Antenna, Radio.

47 CFR Part 87

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–30375 Filed 11–27–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS–130, Notice 4]

RIN 2137—AC30

Notice of Public Hearing; Response Plans for Onshore Oil Pipelines

AGENCY: Research and Special Programs Administration, Office of Pipeline Safety, DOT.

ACTION: Announcement of public hearing.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) invites industry, government agencies, and the public to a hearing on response plans for onshore oil pipelines. The purpose of the hearing is to solicit comments on whether and how the current regulations on response plans for onshore oil pipelines could be improved. OPS may issue a final rule based on the comments received in writing and at the hearing.

DATES: The public hearing will be held on January 29, 1997, from 8:30 a.m. to 4:00 p.m. Persons who are unable to attend may submit written comments in duplicate by December 31, 1996. Interested persons should submit as part of their written comments all material that is relevant to a statement of fact or argument. Comments received after the deadline will be considered so far as practicable. The docket will be kept open for 60 days after the hearing to allow interested persons to review and comment on the transcript.

Persons who wish to make a statement or present information at the public hearing must submit a written request to be included on the agenda. Please include as part of the request the amount of time needed. Requestors will be notified if OPS is required to limit their discussion to allow for all views to be heard.

ADDRESSES: The hearing will be held at the New Orleans Hilton Riverside, on Poydras at the Mississippi River in New Orleans, Louisiana. The hotel phone number is (504) 561–0500. Persons who want to participate should call (202) 366–8860 or e-mail their name, affiliation, and phone number to opateam@rspa.dot.gov before close of business December 31, 1996.

Send written comments in duplicate to the Dockets Unit, Room 8421, U.S. Department of Transportation/RSPA, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Identify the docket and notice numbers stated in the heading of this notice. All comments and docket materials will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. A transcript will be available from the Dockets Unit about four weeks after the hearing.

FOR FURTHER INFORMATION CONTACT: Jim Taylor, Response Plans Officer, at (202) 366–8860 or e-mail to opateam@rspa.dot.gov, for inquiries about this document, or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

In recent years, several catastrophic oil spills have damaged the marine environment of the United States and caused damage to fish and wildlife. Because of these incidents, Congress passed the Oil Pollution Act of 1990 (OPA 90) to establish a new national planning and response system. OPA 90 requires pipeline operators to develop and test Facility Response Plans (FRP) for each pipeline facility that handles petroleum or refined products.

Under OPA 90, DOT is responsible for establishing procedures, methods and requirements for equipment to prevent and contain discharges of oil from vessels and transportation-related facilities. RSPA's Office of Hazardous Materials Safety has established procedures and planning requirements for discharges from packaging and transportation vehicles in 49 CFR 130. RSPA's OPS has responsibility to establish procedures and planning requirements to prevent discharges from and to contain oil and hazardous substances in onshore pipelines. The United States Coast Guard has similar planning standards for vessels and marine transfer facilities.

On January 5, 1993, OPS published its interim final rule establishing regulations in 49 CFR 194 to require response plans for onshore oil pipelines (58 FR 244). The plans must be consistent with the National Contingency Plan (40 CFR 300), and with each applicable Area Contingency Plan. In its plan review process, OPS emphasizes the operator's understanding of incident command systems, unified command, and the provision of sufficient resources to respond to a worst case discharge. To date, OPS has reviewed and approved more than 800 facility response plans.

OPS also conducts tabletop and area exercises with pipeline operators as a

part of the Preparedness for Response Exercise Program (PREP) in cooperation with the Coast Guard, the Environmental Protection Agency (EPA), and the Department of the Interior's Minerals Management Service (MMS). OPS applies the lessons learned from exercises and from reviews of facility response plans to evaluate how its OPA 90 program is improving the pipeline industry's ability to respond to oil spills. OPS and industry also review experience from actual spills, such as those in Houston, Texas (1994), Gramercy, Louisiana (1996), and Simpsonville, South Carolina (1996) to evaluate the effectiveness of the OPA 90 program.

OPS has found improvements in actual responses resulting from the increased emphasis on planning and preparedness. The Coast Guard's Incident Specific Preparedness Review (ISPR) report on the 1994 San Jacinto spill made several recommendations that OPS has implemented in its program, such as providing an OPS liaison officer to work with the federal on-scene coordinator in the unified command at major pipeline spills. OPS has provided a liaison officer at three major spills since 1994.

On September 6, 1996, the National Transportation Safety Board issued its Pipeline Special Investigation Report on the pipeline spill in the San Jacinto River in 1994 (PB96–917004). The NTSB recommended that OPS ''require operators of liquid pipelines to address, in their Oil Pollution Act of 1990 spill response plans, identifying and responding to events that can pose a substantial threat of a worst-case product release'' (NTSB Recommendation P–96–21). OPS is seeking comments on what action should be taken to address this issue, in addition to reminding pipeline operators of the need to plan for a substantial threat of a worst case discharge.

When OPS issued the interim final rule, it invited comments to ensure that the rule was feasible and workable and indicated that, if appropriate, OPS would make changes to the rule. OPS identified several topics on which it sought comment. OPS further indicated that it would consider public hearings to obtain further comments. The topics listed below are issues that have arisen during oil spill exercises and in the course of OPS's review and approval of facility response plans.

State agencies and pipeline operators have been working with OPS for the past four years on the OPA 90 program, and OPS is interested in receiving additional information and comments regarding how the current regulations could be improved prior to issuing a final rule. OPS requests public comment on the following topics:

- Whether the definition of significant and substantial harm as defined in 49 CFR 194.103 should be changed.
- Whether a requirement for operators to have secondary communications systems for emergency response activities should be included in the final rule (Appendix A, Section 2).
- Whether operators should be able to take a 50% credit for the secondary containment around breakout tanks in calculating their worst case discharge volumes per 49 CFR 194.105(b)(3).
- Whether the plan review cycle should be modified from the current three-year cycle (49 CFR 194.121(a)) to a five-year cycle, to be consistent with Coast Guard and EPA requirements.
- Whether a regulatory definition of ''oil'' for purposes of response planning should be adopted. If so, how should ''oil'' be defined—the list published by the Coast Guard (G–MRO) on February 24, 1995, the definition found in 49 CFR 194.5, or a different definition?
- Whether facility response plan requirements for pipelines transporting hazardous substances are needed.
- Whether OPS's internal document ''Guidelines for Developing and Evaluating an Oil Spill Response Exercise'' should be more widely distributed.
- Whether greater emphasis should be placed on requiring operators to plan for ''a substantial threat of a discharge,'' i.e., including procedures for shutting down the line prior to an actual release of oil, as suggested in the National Transportation Safety Board's recommendation (P–96–21).
- Whether pipeline operators have questions about jurisdictional issues for offshore pipelines.

The transcript of the hearing will be available in the docket approximately four weeks after the hearing. Interested persons not able to attend the hearing may submit comments after reviewing the transcript. After reviewing and considering the comments, OPS will determine how to proceed. OPS may issue a final rule if the comments do not show areas of controversy. If comments show areas of controversy, or suggest amendments that need further comment, OPS may issue a notice of proposed rulemaking seeking further comment.

Issued in Washington, DC on November 21, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–30316 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 61, No. 231
Friday, November 29, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 22, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables

OMB Control Number: 0581–0166

Summary: The Agricultural Marketing Act of 1946, gives the Secretary of Agriculture the authority to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.

Need and Use of the Information: In order to carry out the standards program, market surveys are needed to gather the necessary information to create or revise grade standards that are consistent with current cultural and marketing practices.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government

Number of Respondents: 930

Frequency of Responses: Reporting: On occasion

Total Burden Hours: 930

Cooperative State Research, Education, and Extension Service

Title: Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964 (as amended)

OMB Control Number: 0524–0026

Summary: The information pertains to organizational management and financial matter of the potential grantee, as well as a certification that complies with the Civil Rights Act of 1964, as amended.

Need and Use of the Information: The collection of this information enables the Department to determine that applicants recommended for awards are responsible recipients of federal funds.

Description of Respondents: Not-for-profit institutions; Individuals or households; Business or other for-profit; State, Local or Tribal Government

Number of Respondents: 155

Frequency of Responses: Reporting: One-time Only

Total Burden Hours: 1,318

Farm Service Agency

Title: Regulations for Cooperative Marketing Associations, 7 CFR Part 1425

OMB Control Number: 0560–0040

Summary: The Secretary of Agriculture and Commodity Credit Corporation have authority to make Price Support available to cooperatives on behalf of their members through both commodity statutes and the Commodity Credit Corporation Charter Act. Cooperative eligibility requirements form the basis for information collections.

Need and Use of the Information: Information necessary to identify problem areas and policy revision is needed to maintain the integrity of price support programs. More specifically, the consequence of not obtaining information could lead to an ineffective price support program extended through to a Cooperative Marketing Association's members.

Description of Respondents: Farms; Individuals or households; Business or other for-profit

Number of Respondents: 43

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually; as requested

Total Burden Hours: 26,458

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports

OMB Control Number: 0581–0006

Summary: Market News Reports are authorized by Law to collect and disseminate marketing information on a area basis. Data is used by the fruit and vegetable trade as guides in making marketing decisions.

Need and Use of the Information: Market News Reports encourage efficient Marketing and orderly distribution of the nation's food and assures consumers of a steady supply of food at competitive prices.

Description of Respondents: Business or other for-profit; Farms

Number of Respondents: 18,633

Frequency of Responses: Reporting: Weekly; Monthly; Daily

Total Burden Hours: 122,588

Agricultural Marketing Service

Title: Livestock and Meat Market News

OMB Control Number: 0581–0154

Summary: The information solicited from respondents includes price supply,

and movement of livestock, meat carcasses, meat cuts, and meat byproducts.

Need and Use of the Information: The information is used to make market outlook projections, market conditions and in determining available supplies.

Description of Respondents: State, Local or Tribal Government; Individuals or household; Business or other for-profit; Farms

Number of Respondents: 450

Frequency of Responses: Reporting: Daily

Total Burden Hours: 7,020

Food and Consumer Service

Title: Adolescent WIC Participants Study

OMB Control Number: 0584–(New)

Summary: This is a study to conduct a needs assessment of adolescent WIC participants. The study will collect information about needs pertaining to nutritional knowledge and behavior access, knowledge of other health care services, program participation, and timing of enrollment. More specifically, this study will determine if the WIC program addresses the needs specific to pregnant adolescents and adolescent mothers in order to help them overcome barriers to good health and reduce risks associated with pregnancy for teens.

Need and Use of the Information: This study will determine the needs of adolescent participants enrolled in WIC and whether WIC adequately serves those needs.

Description of Respondents: Individuals or household; Not for-profit institutions; State, Local or Tribal Government

Number of Respondents: 4,500

Frequency of Responses: Reporting: One-time Only

Total Burden Hours: 4,550

Food and Consumer Service

Title: Report of School Program Operations

OMB Control Number: 0584–0002

Summary: This report collects participation data from state education agencies for four child nutrition programs administered by the Food and Consumer Service.

Need and Use of the Information: The data is used to monitor the proper use of Food and Consumer Service program funds.

Description of Respondents: State, Local or Tribal Government

Number of Respondents: 62

Frequency of Responses: Reporting: Monthly

Total Burden Hours: 110,112

Food and Consumer Service

Title: CACFP Study

OMB Control Number: 0584–0459

Summary: The information collected includes household income of child and adult care Food Program participants.

Need and Use of the Information: Reliable household income information is needed to develop reasonable estimate of impacts of welfare reform initiatives.

Description of Respondents: Individuals or households

Number of Respondents: 715

Frequency of Responses: Reporting: One-time

Total Burden Hours: 59

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–30413 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–01–M

Rural Housing Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service and Farm Service Agency.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces the Rural Housing Service (RHS) and Farm Service Agency's (FSA) intention to request an extension on an information collection currently approved for the agencies' application receiving and processing procedures. The regulations governing these activities are published under the authority of the Consolidated Farm and Rural Development Act (CONACT), as amended.

DATES: Comments on this notice must be received on or before January 28, 1997.

FOR FURTHER INFORMATION CONTACT: Steven R. Bazzell, Senior Loan Officer, Farm Credit Programs Loan Making Division, Farm Service Agency, USDA/FSA/FPLMD/Stop 0522, P.O. Box 2415, Washington, DC 20013–2415. Telephone (202) 690–4022, e-mail sbazzell@wdc.fsa.usda.gov or facsimile (202) 690–1117.

Title: 7 CFR 1910–A, Receiving and Processing Applications.

OMB Number: 0575–0134.

Expiration Date of Approval: March 31, 1997.

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

Abstract: The information collected under Office of Management and Budget (OMB) Number 0575–0134, as identified above, is needed to enable FSA to process direct farm loan requests from the public. The FSA provides low cost loans to family size farmers who are temporarily unable to secure credit from commercial sources that fall into three major loan program purposes: Real estate, annual production, and disaster recovery. This regulation outlines the application policies, procedures, along with information required to establish an applicant's eligibility to obtain FSA direct farm loans. The type of information collected from applicants primarily consists of business organization, production and financial data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .87 hours per response.

Respondents: Individuals or households, farms, businesses or other for profit small businesses or organizations.

Estimated Number of Respondents: 24,000

Estimated Number of Responses per Respondent: 3.85

Estimated Total Annual Burden on Respondents: 80,568

Copies of the information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720–9734.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions; (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. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 22, 1996.

Grant Buntrock,

Administrator, Farm Service Agency.

Dated: November 22, 1996.

Eileen Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 96–30432 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–XV–P

Rural Utilities Service

Notice of Intent To Prepare an Environmental Impact Statement for the Town of Albany, Cagle Water Expansion Project and Notice of Public Scoping Meeting

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent and notice of meeting.

SUMMARY: The Rural Utilities Service (RUS), USDA announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and Agency regulations 7 CFR 1940–G. The primary scope of the EIS is to evaluate the environmental impacts of and alternatives to the City of Albany's proposal to increase treatment capacity of their water treatment plant from 2.0 million gallons per day (MGD) to 5.0 MGD; install 30,000 linear feet (5.68 miles) of a 16-inch water transmission main; and construct a 1.5 million gallon water storage tank. Alternatives to be considered will include alternatives to the treatment plant expansion.

The Town of Albany has requested financial assistance from three Federal Agencies: RUS, Economic Development Administration (EDA), and Housing and Urban Development (HUD). In accordance with 40 CFR 1501.5, Lead Agencies, the RUS will be the lead Agency for the EIS and EDA and HUD will be cooperating Agencies.

With this notice, RUS invites any affected Federal, State, and local Agencies and other interested persons to comment on the scope, alternatives, and significant issues to be analyzed in depth in the EIS.

The public scoping meeting will be held on December 19, 1996 at the Clinton County High School Gym, Highway North 127, Albany, KY 42602 at 6:30 pm.

After the scoping process and the initial environmental analysis are completed RUS will issue a Draft EIS. A Notice of Availability of the Draft EIS will be published in the Federal Register and area newspapers, and public comments will again be solicited. Those persons who choose not to comment on the scope of the document at this time but desire a copy of the Draft EIS should send their names and addresses to Mark S. Plank at the address listed below. RUS anticipates releasing a final EIS in less than nine months.

DATES: Written comments on the scope of the EIS will be accepted 15 days after the public scoping meeting is held.

ADDRESSES: Comments should be sent to Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, Mail Stop 1571, Washington, DC 20250, telephone (202) 720–1649 or fax (202) 720–0820 or Thomas G. Fern, State Director, USDA, Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300 or fax (606) 224–7340.

FOR FURTHER INFORMATION CONTACT: Jim Letcher, Vernon Brown, or Ken Sloane, USDA, Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300 or Mark S. Plank, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Pursuant to Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993, Clinton County, Kentucky is located in an area designated as an Empowerment Zone/Enterprise Community (EZ/EC) (see Federal Register Vol. 60, No. 24, February 6, 1995). The purpose of the EZ/EC initiative is to empower rural communities and their residents to create opportunities for economic development as part of a Federal-State-local and private sector partnership. The proposed action is an integral component of the EZ/EC initiative by providing the financial assistance for infrastructure development that is critical for promoting favorable economic conditions for job creation. One of the EZ/EC initiatives is the construction of a chicken processing plant (Plant) in Clinton County by Cagle Industries, Atlanta, GA. The Plant is expected to bring 800–1,000 jobs in an area of chronic poverty and high unemployment. In order to accommodate the water needs of the Plant, the City of Albany submitted a pre-application on September 5, 1996, to the Rural Utilities Service (and other Federal agencies) to upgrade the existing Albany Water Treatment Plant (WTP). The City of Albany proposes to increase treatment capacity of the WTP from 2.0 million gallons per day (MGD) to 5.0 MGD; install 30,000 linear feet (5.68 miles) of a 16-inch water transmission main; and construct a 1.5 million water storage tank at the Plant site.

Dated: November 25, 1996.

Adam Golodner,

Acting Administrator, Rural Utilities Service.

[FR Doc. 96–30511 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Telecommunications Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and location of the meetings of the Telecommunications Access Advisory Committee.

DATES: The Telecommunications Access Advisory Committee will meet on December 16, 17, and 18, 1996 beginning at 9:00 a.m. each day.

ADDRESSES: The meetings will be held at the Steptoe & Johnson building, 1330 Connecticut Avenue, NW., Washington, DC on the concourse level.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, D.C. 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov. This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request. It is also available on the Internet at http://www.access-board.gov/notices/taacmtg.htm.

SUPPLEMENTARY INFORMATION: On May 24, 1996, the Access Board published a notice appointing members to its Telecommunications Access Advisory Committee (Committee). 61 FR 26155 (May 24, 1996). The Committee will make recommendations to the Access Board on accessibility guidelines for telecommunications equipment and customer premises equipment. These recommendations will be used by the Access Board to develop accessibility guidelines in conjunction with the Federal Communications Commission (FCC) under section 255 (e) of the Telecommunications Act of 1996. The Committee is composed of

representatives of manufacturers of telecommunications equipment and customer premises equipment; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines.

At its first meeting on June 12–14, 1996, the Committee took the following actions:

- The statutory definitions of telecommunications, telecommunications equipment and customer premises equipment are to be construed broadly.
- Providing access is not a ''change in form'' of information within the meaning of the statute's definition of telecommunications and, therefore, not excluded.
- A listserv was created through the Trace Center: taac-l@trace.wisc.edu. To subscribe, send e-mail to listproc@trace.wisc.edu with the message subscribe taac-l <first-name last-name>.
- Accepted the application of the American Speech-Language and Hearing Association and Motorola to join the Committee.
- At its second meeting on August 14–16, 1996, the Committee agreed on the following points:
- In customer premises equipment (CPE), it is not always possible to separate the effects of software from hardware and one manufacturer may choose to perform the same function with one or the other. Therefore, the guidelines must cover both.
- It is not always possible to determine whether a particular function resides with the CPE, the telecommunications carrier, or the source material. Therefore, the guidelines will be developed with the assumption that the function resides in the CPE and urge the FCC to apply the same guidelines to entities and services under its jurisdiction.
- The Committee also agreed that the existing definitions of CPE and telecommunications equipment are sufficient.
- While the definition of ''readily achievable'' in the Telecommunications Act is the same as in the Americans with Disabilities Act (ADA), the term is applied differently. In the ADA, the term applies to barrier removal in existing facilities whereas the Telecommunications Act applies the term to the manufacture of new equipment. An ad hoc task group was formed to develop criteria to assess ''readily achievable'' in this new context.
- Subcommittees on Compliance Assessment and Guidelines Content were created. Discussions will be conducted primarily by e-mail. To participate in a subcommittee, send e-mail to cannon@access-board.gov.

At its third meeting on September 25–27, 1996, the Committee took the following actions:

- Accepted the application of Microsoft to join the Committee.
- The subcommittee on Compliance Assessment reviewed and revised a draft list of criteria for an effective conformity assessment model, then developed consensus around fifteen of these criteria, with another five criteria needing further clarification or discussion. The subcommittee divided into two work groups: Consumer Information/Verification and Coordination Point/Practitioners' Qualifications.
- The subcommittee on Guidelines Content divided into two work groups: Process Guidelines, and Performance and Design Guidelines. Each work group developed a set of principles and criteria for further discussion. Draft products are posted on a Trace-sponsored Web site. Discussion will be by e-mail (via the main TAAC–L listserv) and by teleconference call. The URL for the Web site is http://trace.wisc.edu/taac/workdoc.htm.
- At its fourth meeting on November 6–8, 1996, the Committee took the following actions:
- Accepted the application of Netscape to join the Committee.
- Agreed to exchange information with European experts working on similar issues to help promote consistency.
- The Compliance Assessment subcommittee worked through its draft document and flagged and prioritized issues. Additional issues were also raised and will be addressed in the coming weeks. Issues include: (1) should the guidelines require manufacturers to follow specific steps but give suggested strategies; (2) can the use of ''Access Engineers'' be required or only suggested; (3) how to make the process clear and understandable; (4) content of a Declaration of Conformity; (5) how to deal with the transition from now until ''Access Engineers'' are available. The Process work group of the Guidelines Content subcommittee met with the Compliance Assessment subcommittee to discuss overlapping issues including documentation, product testing and specialized CPE.
- The Guidelines Content subcommittee draft contains performance guidelines, including goals and strategies, followed by a rationale. The document also includes definitions and suggested techniques for providing access in specific cases. The document also suggests a current list of strategies and techniques for access.

The Committee will meet on the dates and at the location announced in this notice. The meetings are open to the public. There will be a public comment period each day for persons interested in presenting their views to the Committee. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real time transcription will be available. The Committee will meet for the final time on January 14–15, 1997 at a location to be announced.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–30444 Filed 11–27–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–801]

Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Romania; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, The Torrington Company, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Romania. The review covers shipments of the subject merchandise to the United States during the period May 1, 1993, through April 30, 1994.

We have preliminarily determined that sales have not been made below the foreign market value (FMV). Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published in the Federal Register (54 FR 19109) the antidumping duty order on ball bearings and parts thereof from Romania. On June 22, 1994 (59 FR 32180), we published the notice of initiation of this antidumping duty administrative review. The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of this Review

Imports covered by this review are shipments of AFBs from Romania. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion on the scope of the order being reviewed, including recent scope decisions, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers one company, Tehnoimportexport S.A. (TIE), and the period May 1, 1993, through April 30, 1994. Only TIE made shipments of the subject merchandise to the United States during the period of review. S.C. Rulmenti Grei S.A. Ploiesti (Ploiesti) and S.C. Rulmentul S.A. Brasov (Brasov) produced the merchandise sold by TIE to the United States, but stated that they did not ship AFBs directly to the United States.

Verification

As provided in section 776(b) of the Act, we verified information provided by TIE by using standard verification procedures, including onsite inspection of a manufacturer's facility, the examination of relevant sales and financial records and selection of original documents containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Separate Rates

It is the Department's standard policy to assign all exporters of merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts.

TIE is the only company covered by this review with shipments of the subject merchandise to the United States during the period of review. Therefore, TIE is the only firm for which we made a determination as to its entitlement to a separate rate. Although some evidence on the record may support a finding of *de jure* absence of government control, other evidence demonstrates that TIE does not have autonomy from the government in making decisions regarding the selection of its management. This fact suggests that export prices are subject to the approval of a government authority, and that TIE is not free from government control when it negotiates and signs contracts. Accordingly, we determined that there is *de facto* government control with respect to TIE's exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. For further discussion of the Department's preliminary determination that TIE is not entitled to a separate rate, *see Decision Memorandum to the Director, Office of Antidumping Compliance: Assignment of a separate rate for Tehnoimportexport, S.A., in the 1993–94 administrative review of the antidumping duty order on Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Romania* (January 31, 1996).

United States Price

Record evidence indicates that TIE was the only Romanian exporter of the subject merchandise to the United States during the period of review. For sales made by TIE, the Department used purchase price, in accordance with section 772(b) of the Act, in calculating U.S. price. We calculated purchase price based on the packed F.O.B. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling, air freight and bank charges. To value foreign inland freight and brokerage and handling, we used surrogate information from Turkey for reasons explained in the ''Foreign Market Value'' section of this notice. We deducted the actual expenses for air freight and bank charges because these expenses were incurred in U.S. dollars.

Foreign Market Value

For merchandise exported from an NME country, section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if available information does not permit the calculation of FMV using home market prices, third country prices, or constructed value (CV) under section 773(a) of the Act.

In every case conducted by the Department involving Romania, Romania has been treated as an NME country. None of the parties to this proceeding has contested such treatment in this review, and thus, in accordance with section 771(18)(C) of

the Act, we continue to treat Romania as an NME country.

Accordingly, in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations, we calculated FMV on the basis of the value of TIE's factors of production and other required expenses, which included hours of labor required, quantities of raw materials employed, selling, general and administrative expenses, overhead, profit and packing, as reported by TIE and verified by the Department. We valued the factors of production using prices or costs in one or more surrogate market economy countries. Specifically, we first determined that Morocco, Ecuador, Colombia, Algeria, Poland and Turkey are each at a level of economic development comparable to Romania in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. Of these potential surrogate countries, we found that both Poland and Turkey are significant producers of bearings, but that Poland has a larger bearings industry than Turkey. Therefore, we selected Poland as the primary surrogate country for these preliminary results. Where we were unable to locate publicly available published information to establish surrogate values from Poland, we used Turkey as a secondary surrogate country. For further discussion of our selection of these surrogate countries, *see Memorandum to the File: Selection of Surrogate Country in the 1993–94 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Romania* (December 5, 1995).

For purposes of calculating FMV, we valued the Romanian factors of production as follows, in accordance with section 773(c)(1) of the Act:

- To value domestically-sourced direct materials used in the production of AFBs, we used the European currency unit (ECU) per metric ton value of imports into Poland from the countries of the European Community for the period May 1993 through April 1994, obtained from the *EUROSTAT, Monthly EC External Trade (EUROSTAT).* We made adjustments to include freight costs incurred between the domestic raw materials suppliers and the AFB factories. Some materials used to produce AFBs were imported into Romania from market-economy countries, and, to value those materials, we used the actual import price. We also made an adjustment for steel scrap which was sold. Scrap was valued using information obtained from *EUROSTAT* for Poland.
- For direct labor, we used the average monthly wages for the metal products manufacturing industry reported in the September 1994 issue of the *Statistical Bulletin*, published by the Central Statistical Office in Warsaw. To determine the number of hours worked each month, we used information published by the International Labour Office in the *Yearbook of Labour Statistics, 1994.*
- For factory overhead, we used information from a publicly available summarized version for factory overhead reported for the 1993–94 administrative review of the antidumping duty order on welded carbon steel pipe and tube from Turkey (pipe and tube from Turkey), because we had no publicly available published information from Poland for this expense. Factory overhead was reported as a percentage of total cost of manufacture.
- For selling, general, and administrative expenses, we used the statutory minimum of 10 percent found in section 773(e)(1)(B) pursuant to our authority in section 773(e)(1), because we had no publicly available published surrogate country information for these expenses.
- For profit, we used information from a publicly available summarized version for profit reported for pipe and tube from Turkey, because we had no publicly available published information from Poland for this expense.
- To value domestically-sourced packing materials, we used the ECU per metric ton value of imports into Poland from the countries of the European Community as published in the *EUROSTAT.* We adjusted these values to include freight costs incurred between the domestic packing materials suppliers and the AFB factories. Some materials used to pack AFBs were imported into Romania from market-economy countries, and, to value those materials, we used the actual import price.
- To value foreign inland freight, we used information from a publicly available summarized version for foreign inland freight reported for pipe and tube from Turkey, because we had no publicly available published information from Poland for this expense.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank for the surrogate countries, or, where certified Federal Reserve Bank rates were not available, average monthly exchange rates published by the International Monetary Fund in *International Financial Statistics.*

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/Exporter	Tehnoimportexport, S.A.
Time Period	5/1/93–4/30/94
Margin (percent)	0.00

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. *See* section 353.38 of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of AFBs from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for TIE, and for all other Romanian exporters, will be the rate established in the final results of this review; and (2) for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and section 353.22 of the Department's regulations.

Dated: November 20, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30478 Filed 11–27–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–845]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Brake Drums From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Dennis McClure, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–3530, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act.

Amendment to the Brake Drums Preliminary Determination

We are amending the preliminary determination of sales at less than fair value for brake drums [1] from the People's Republic of China (the PRC) to reflect the correction of ministerial errors made in the margin calculations in that determination. We are publishing this amendment to the preliminary determination, consistent with Departmental policy as reflected in the proposed regulations. *19 CFR Parts 351, 353, and 355, Antidumping Duties; Countervailing Duties; Proposed Rule*, 61 FR 7308, 7373, (February 27, 1996), at 19 CFR § 351.224.

Case History and Amendment of the Brake Drums Preliminary Determination

On October 3, 1996, the Department of Commerce (the Department) preliminarily determined, in separate investigations pursuant to section 733 of the Act, that brake drums and brake rotors from the PRC are being, or are likely to be, sold in the United States at less than fair value (61 FR 53190 (October 10, 1996)). On October 18, 1996, certain respondents [2] alleged that the Department made ministerial errors in the brake drums and brake rotors preliminary determinations.

The Department's proposed regulations provide that the Department will correct any significant ministerial error by amending the preliminary determination. A significant ministerial error is an error the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate (whichever is applicable) of zero (or de minimis) and a weighted-average dumping margin or countervailable subsidy rate of greater than de minimis, or vice versa. Proposed 19 CFR 351.224(g), 61 FR at 7374.

The respondents made three clerical error allegations, which are addressed individually below. *See* also November 4, 1996, Memorandum to Barbara Stafford. The petitioners did not make any clerical error allegations.

Valuation of Steel Sheet

The respondents assert that the Department inadvertently selected a surrogate price for steel plate to value steel sheet used by the following three factories: (1) Longkou Botai Machinery Co., Ltd.; (2) Changzhi Automotive Parts Factory; and (3) Xingchangyuan.

We agree with the respondents that our selection of the price used to value steel sheet constitutes a ministerial error. In our supplemental questionnaires, we requested each respondent to describe further its factor inputs, including what they initially reported as steel plate. In the respondent's supplemental responses, three factories reported the use of steel with dimensions corresponding to steel sheet. Therefore, we are using the surrogate value for steel sheet shown on page 20 of the October 3, 1996, *General Issues and Factors Valuation Memorandum for the Preliminary Determinations*, to value the material originally reported by these three factories as steel plate.

Tax Treatment of Scrap Value

The respondents argue that the Department erred in using domestic prices for steel scrap and iron scrap that included taxes when tax-exclusive import prices were available. The respondents further assert that if the Department did intend to use domestic scrap prices, the Department should have deducted the tax amount from domestic prices just as it did for pig iron.

We agree with the respondents that the domestic prices of iron scrap and steel scrap should be exclusive of taxes. Therefore, based on information on the record, we have recalculated the surrogate values for iron scrap and steel scrap to be exclusive of taxes.

Denial of Separate Rate

In the companion brake rotors investigation, Dalian Norinco asserts that the Washington Post articles, upon which the Department relied in its decision to deny a separate rate to Dalian Norinco, do not refer to Dalian Norinco. It argues that these articles refer to the national corporation, NORINCO, which is located in Dalian, not Dalian Norinco. Therefore, Dalian argues that the Department based its decision on a factual misreading of Dalian Norinco's response, which constitutes a ministerial error.

We disagree with the respondent that not granting Dalian Norinco a separate rate in the preliminary determination was a ministerial error. In our October 3, 1996, concurrence memorandum, we stated that we had concerns regarding *de facto* government control of Dalian Norinco. We did not base our decision solely on articles appearing in the

[1] No amendments have been made to the margins in the companion investigation of Brake Rotors from the PRC.

[2] China National Automotive Industry Import & Export Corporation, Shandong Laizhou CAPCO Industry Corporation, and CAPCO International USA, Yantai Import & Export Corporation (Yantai), Qingdao Metal & Machinery Import & Export Corporation (Qingdao), Beijing Xinchangyuan Automobile Fittings Corporation, Ltd.(Xinchangyuan), China National Machinery Import & Export Corporation (CMC), China National Machinery and Equipment Import & Export(Xinjiang) Corporation, Ltd., Hebei Metals and Machinery Import & Export Corporation, Longjing Walking Tractor Works Foreign Trade Import & Export Corporation, Shanxi Machinery and Equipment Import & Export Corporation, China North Industries Dalian Corporation (Dalian Norinco) and China North Industries Guangzhou Corporation.

Washington Post. Our decision not to grant a separate rate to Dalian Norinco was also based on other information on the record which did not establish that Dalian Norinco was separate from the national corporation, NORINCO.

We do not find this issue to be ministerial in nature. However, we will examine this issue further for the final determination.

Conclusion

Our analysis of the clerical allegations included an analysis of the calculations for all the selected respondents and the respondents not selected.

For brake drum respondents Yantai, Xinchangyuan, and Qingdao, we are correcting the clerical errors mentioned above at this time, because we have found them to be significant. Based upon the revised margins for Yantai, Xinchangyuan, and Qingdao, we will also amend the weighted-average dumping margin used for the respondents not selected.[3] We will not amend the preliminary margin for the selected respondent CMC, because the change in the margin calculated for CMC would be less than five absolute percentage points; furthermore, CMC's margin will not change from not *de minimis* to *de minimis*, since it is already *de minimis. See* proposed regulation 351.224(g)(2). The China-Wide Rate used in the brake drums investigation remains unchanged.

In the companion investigation of Brake Rotors from the PRC, we are not making any corrections at this time, because the correction of the two ministerial errors described above would result in a change of less than five absolute percentage points for all the selected respondents except Southwest Technical Import & Export Corporation, and Yangtze Machinery Corporation (Southwest). However, the change in margin for Southwest would be less than 25 percent of the weighted-average dumping margin calculated in the original brake rotors preliminary determination for that firm, and thus does not meet our criteria for a significant ministerial error.

[3]Given that we did not have the administrative resources to analyze the responses of all participating exporters, we determined that our investigations would be limited to the analysis of the sales of the seven largest PRC brake rotor exporters and the five largest brake drum exporters to the United States. For the responding firms that were not selected, we have assigned a weighted-average dumping margin based on the calculated margins which were not *de minimis.*

Continuation of Suspension of Liquidation, and Termination of Suspension of Liquidation, in Part

The weighted-average dumping margins have changed for the following companies in the brake drums investigation. For the exporter Beijing Xinchangyuan Automobile Fittings Corporation, Ltd., the amended preliminary weighted-average margin is de minimis. Accordingly, we are directing Customs to terminate the suspension of liquidation for shipments of brake drums entered or withdrawn from warehouse, for consumption on or after October 10, 1996, and to release any bond or other security, and refund any cash deposit, posted for entries of subject merchandise produced and exported by Beijing Xinchangyuan Automobile Fittings Corporation, Ltd. For the remaining exporters, in accordance with section 733(d) of the Act, the Department will direct the Customs Service to continue to require a cash deposit or posting of a bond equal to the estimated dumping margins by which the normal value exceeds the U.S. price, as shown below.

Manufacturer/producer/exporter	Weighted-average margin percentage
Yantai Import & Export Corporation	6.88
Qingdao Metal & Machinery Import & Export Corporation	2.36
Beijing Xinchangyuan Automobile Fittings Corporation, Ltd	1.33 (de minimis)
Respondents Not Selected:	
China National Automotive Industry Import & Export Corporation, Shandong Laizhou CAPCO Industry Corporation, and CAPCO International USA	4.62
Shandong Jiuyang Enterprise Corporation	4.62
Hebei Metals and Machinery Import & Export Corporation	4.62
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	4.62
Shanxi Machinery and Equipment Import & Export Corporation	4.62

This amended preliminary determination is published pursuant to section 733(f) of the Act.

Dated: November 21, 1996.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30479 Filed 11–27–96; 8:45 am]

BILLING CODE 3510–DS–P

University of Vermont, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–096. Applicant: University of Vermont, Burlington, VT 05405. Instrument: IR Mass Spectrometer, Model Delta^{plus}. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 51276, October 1, 1996. Reasons: The foreign instrument provides: (1) high sensitivity to 1500 molecules CO_2 per mass 44 ion, (2) ion source linearity of 0.02%/nA ion current (mass 44) and (3) a GC/C/MS interface and microcombustion oxidation furnace for production of CO_2, N_2 and H_2O. Advice received from: National Institutes of Health, October 21, 1996.

Docket Number: 96–100. Applicant: Johns Hopkins University, Baltimore, MD 21218. Instrument: Fast Correlation Spectrometer, Model ALV 5000/E. Manufacturer: ALV Laser, Germany. Intended Use: See notice at 61 FR 54156, October 17, 1996. Reasons: The foreign instrument provides a dual detection system to minimize spurious afterpulsing at short intervals and optimal fiberoptic coupling. Advice received from: National Institute of Standards and Technology, November 13, 1996.

The National Institutes of Health and the National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of

equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–30470 Filed 11–27–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary results of the third administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Dana Mermelstein, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the calendar year 1995 administrative review of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom within this time limit. *See Memorandum to the File* dated November 19, 1996.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from December 2, 1996 to no later than April 1, 1997.

Dated: November 20, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30477 Filed 11–27–96; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 25, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6719. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for textile products in Group I is being increased for special shift, reducing the limit for Group II to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 3004, published on January 30, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 2, 1996, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement concerning textile products from Taiwan:

Category	Adjusted twelve-month limit [1]
Group I 200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group.	608,459,521 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [10], 359–H/659–H [11], 359–O [12], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [13], 659–O [14], 831–844 and 846–859, as a group.	732,702,059 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[10] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–30456 Filed 11–27–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 3:00 p.m., Monday, December 2, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–30616 Filed 11–26–96; 12:38 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Proposed Collection; Comment Request Entitled Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Change Order Accounting. The OMB clearance currently expires on February 28, 1997.

DATES: Comment Due Date: January 28, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0024, Change Order Accounting, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the

matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *8,750*; responses per respondent, *18*; total annual responses, *157,500*; preparation hours per response, *.084*; and total response burden hours, *13,230*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *8,750*; hours per recordkeeper, *1.5*; total recordkeeping burden hours, *13,125*; and total burden hours, *26,355*.

Dated: November 22, 1996.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 96–30338 Filed 11–27–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 28, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 22, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Vocational and Adult Education

Type of Review: REINSTATEMENT
Title: The Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 101–392)—State Plan
Frequency: Biennially
Affected Public: State, local or Tribal Gov't, SEAs or LEAs
Reporting and Recordkeeping Burden:
Responses: 53
Burden Hours: 13,038
Abstract: P.L. 101–392 requires State Boards for Vocational Education to submit a 3-year State plan the first year of the Act and a 2-year plan in succeeding years, with annual revisions as the Board deems necessary to receive federal funds. Program staff review the plans for compliance and quality.

Office of Under Secretary

Type of Review: NEW
Title: Safe and Drug-Free Schools and Communities Act: State Data for Program Performance Indicators
Frequency: Annually
Affected Public: State, local or Tribal Gov't; SEAs or LEAs
Reporting Burden and Recordkeeping:
Responses: 112
Burden Hours: 3,920
Abstract: Section 4117 of the Safe and Drug-Free Schools and Communities Act (SDFSCA) requires state chief executive officers, and state educational agencies (SEAs), to submit to the Secretary on a triennial basis a report on the implementation and outcomes of state, local and Governor's SDFSCA programs. ED must report to the President and Congress on a biennial basis regarding the national impact of SDFSCA-assisted programs. The two instruments, one for SEAs and one for Governor's programs, will be used by states to submit the required data to ED.

Office of Educational Research and Improvement

Type of Review: REINSTATEMENT
Title: Combined Application for the Field-Initiated Studies Educational Research Grant Program
Frequency: Annually
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs for LEAs
Reporting Burden and Recordkeeping: Responses: 750; Burden Hours: 11,250
Abstract: This information collection allows institutions of higher education; state and local education agencies; public and private organizations, institutions, and agencies; and individuals to apply for grants under the Field-Initiated Studies Program supported by five National Research Institutes. Funds will support educational research that will improve American education.

Office of Educational Research and Improvement

Type of Review: REINSTATEMENT
Title: Beginning Postsecondary Students Longitudinal Study First Follow-Up 1996–1998 (BPS: 96/98)
Frequency: On Occasion

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Reporting Burden and Recordkeeping: Responses: 7,474; Burden Hours: 3,737

Abstract: The purpose of the Beginning Postsecondary Students Longitudinal Study First Follow-Up is to continue the series of longitudinal data collection efforts started in 1996 with the National Postsecondary Student Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the work force, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education. Individuals who first entered postsecondary education in the 1995–96 academic year will be surveyed by telephone.

[FR Doc. 96–30433 Filed 11–27–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 22, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: NEW

Title: The Library Cooperatives Survey (LCS)

Frequency: Pretest and One Universe survey

Affected Public: Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs

Reporting Burden and Recordkeeping: Responses: 1,201; Burden Hours: 2,202

Abstract: This survey will be used to request information from library cooperatives. The LCS survey data will be used along with the Public Libraries Survey (PLS) and the State Libraries Agency Survey (STLA) to obtain a more complete picture of library services in the nation. LCS descriptive data will be aggregated and published at the national and state levels. Descriptive data will also be accessible in electronic files by each library cooperative organization and by state.

Office of Educational Research and Improvement

Type of Review: REVISION

Title: Assessment of the Role of School and Public Libraries in Support of the National Education Goals

Frequency: One Time

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

Reporting Burden and Recordkeeping: Responses: 3,100; Burden Hours: 2,583

Abstract: The library and education communities need to know more about the role of libraries in supporting education in order to plan for and direct resources. The respondents are librarians in public libraries and public and private schools. The purpose of this assessment is to examine the role of schools and public libraries in support of the National Education Goals and identify the potential role for these institutions, especially as it pertains to disadvantaged students.

[FR Doc. 96–30434 Filed 11–27–96; 8:45 am]

BILLING CODE 4000–01–P

National Advisory Council on Indian Education; Closed Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of the meeting.

DATE AND TIME: December 16, 1996, 8:30 a.m. to conclusion, approximately 5:30 p.m.

ADDRESSES: Room 4050, 1250 Maryland Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Kipp, Management Analyst, Department of Education, 1250 Maryland Avenue, SW, Washington, DC 20202–6110. Telephone: (202) 260–1927.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education (Council) is established under Section 9151 of the Elementary and Secondary Education Act of 1965, as amended. The Council advises the Secretary of Education on the funding and administration of programs with respect to which the Secretary has jurisdiction and that include Indian children or adults as participants or that

may include Indian children or adults as participants or that may benefit Indian children or adults and makes recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs.

This meeting of the Council is closed to the public to interview candidates for the position of Director of Indian Education and make recommendations to the Secretary for filling this vacancy. The Council will be discussing matters relating solely to the internal personnel rules and practices of an agency. Such discussion will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of the Government in the Sunshine Act (Pub. L. 94–409); 5 U.S.C. 552b(c) (2) and (6).

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting. Records are kept of all Council proceedings, and are available for public inspection at the Office of Elementary and Secondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW, Washington, DC 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: November 22, 1996.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 96–30457 Filed 11–27–96; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Opportunity for Comment

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of request for comments.

SUMMARY: The National Assessment Governing Board announces the opportunity for public comment on a proposed long-range schedule for the National Assessment of Educational Progress (NAEP). The National Assessment, authorized by Congress, is our only continuing measure of student achievement providing both national and state-level results in academic subjects at grades 4, 8, and 12.

The subjects to be assessed are stated in the National Assessment legislation. These subjects are: ''reading, writing, and other subjects listed in the third National Education Goal'' (i.e., mathematics, science, history, geography, civics, the arts, foreign language, and economics). However, the frequency of testing in each subject is not specified.

The National Assessment Governing Board sets policy for NAEP; this includes determining the schedule of assessments. On November 16, 1996, the Governing Board approved a proposed schedule for the purpose of obtaining public comment.

The Governing Board's intent is to provide the public with a predictable, reliable schedule of subjects to be assessed by the National Assessment. The Governing Board has conducted feasibility studies and, in conjunction with the National Center for Education Statistics (NCES), prepared cost estimates for the proposed schedule. The Governing Board and NCES have concluded that the proposed schedule is achievable under conservative assumptions about costs, future appropriations, and continued legislative authority for the National Assessment. However, if resources permit, additions to the schedule may be made, with advance public notice. *The Governing Board will consider comments received by February 3, 1997 in developing a final schedule. The Governing Board intends to take action at its meeting on March 6–8, 1997.*

Background

The National Assessment tested annually, about three subjects per year, during its first decade (1970–1980). However, during the 1980s and into the 1990's, a period of growing demand for National Assessment data, the testing schedule became reduced by half. NAEP testing occurred only every other year and was limited to two or three subjects each time.

In November 1994, the Governing Board established a work group on planning to evaluate the current operating design of the National Assessment. The work group's goal was to identify options to improve the design of the National Assessment, so that more subjects could be assessed more frequently.

In August 1996, after 21 months of review and study, the Governing Board redesigned the National Assessment. Its redesign statement includes the following:

> The National Assessment shall assess all subjects listed in the third National Education Goal * * * according to a publicly released schedule adopted by the National Assessment Governing Board, covering eight to ten years, with reading, writing, mathematics and science tested more frequently than the other subjects.
>
> The National Assessment shall be conducted annually, two or three subjects per year, in order to cover all required subjects at least twice a decade.

The NAEP redesign statement requires the Governing Board to adopt a long-range schedule for two primary reasons. First, to provide states and others with adequate time to plan for participation in the national and state assessments. Second, to enable NCES to include the schedule as a part of the requirements for new NAEP operations grants, the next of which is to be awarded during fiscal year 1998.

The redesign statement expresses six major principles intended to increase efficiency, permit the testing of more subjects more frequently, and control costs. These principles are to: (1) Focus the purpose of NAEP on measuring and reporting student achievement, (2) specify the main audience for reports, (3) limit activities that NAEP is not well-designed to carry out, (4) vary testing and reporting, (5) provide stability in the NAEP tests and predictability in the NAEP schedule, and (6) simplify the design of NAEP. (The full text of the NAEP redesign statement is available on the Governing Board's web site—http://www.nagb.org—or by request to the address below.)

Two of these principles bear directly on the schedule and have a large impact on costs. The first is ''vary testing and reporting.'' The redesign statement calls for three kinds of testing and reporting: standard, comprehensive, and focused. Working definitions for standard, comprehensive, and focused reports are described in Attachment A. Beginning in the year 2000, the schedule provides for standard and comprehensive assessments in the various subjects. The schedule assumes that focused assessments will be approved on an ''as-needed'' basis and as resources permit. The second principle has to do with the ''stability of tests.'' Under this principle, National Assessment tests in a subject would remain stable for at least ten years.

The Proposed Schedule: Overview

The schedule for the years 1996–1998 is set. The proposed schedule begins in the year 1999 and provides for annual testing. The national and state assessments in reading, writing, mathematics, and science would be conducted once every four years and assessments at the national level in the other subjects once every eight years. This ensures at least two assessments in

a ten-year period in each subject, at a minimum. Reading and writing would be paired for testing, as would mathematics and science. Each pair of subjects would be tested in alternating even-numbered years. The state-level assessments in reading, writing, mathematics, and science would be in grades 4 and 8.

The long-term trend assessments would be conducted once every four years beginning in 1999. Long-term trend assessments report results in reading, writing, mathematics and science. These assessments provide trend data from as early as 1970. The tests used for long-term trends are based on conceptions of the curricula prevalent during the 1970s. They are markedly different from the more recently developed ''main'' NAEP tests in mathematics, science, reading and writing displayed in the schedule in 1996 and beyond. The schedule provides for three more administrations of the long-term trend assessments while the transition is being made to ''main NAEP'' for long-term trend reporting.

By the year 1998, ''new'' tests (i.e., developed since 1990) will be in use for the ''main NAEP'' in reading, writing, mathematics, science, U.S. history, geography, civics, and the arts. A foreign language assessment will be developed for use in 2003 and world history and economics assessments will be developed for use in 2005. In planning for comprehensive assessments in mathematics in 2004, and in reading, the arts, science, U.S. history, and writing in 2006–2010, respectively, the Governing Board will decide whether to change the content of the tests.

Instructions for Submitting Comments on the Proposed Schedule

Comments on the proposed schedule should be submitted so they are received by February 3, 1997. Comments submitted by mail should be addressed to Ray Fields, Assistant Director for Policy and Research, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC 20002–4233. Comments submitted by e-mail over the Internet should be addressed to Ray __ Fields@ED.GOV with subject title ''NAEP Schedule Comments.''

FOR FURTHER INFORMATION CONTACT: Ray Fields, Assistant Director for Policy and Research, Suite 825, 800 North Capitol Street, N.W., Washington, DC 20002–4233. Telephone: (202) 357–0395.

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress is the primary means by which the public is able to know how students in grades 4, 8 and 12 are achieving nationally and state-by-state. The National Assessment Governing Board is established to formulate policy guidelines for the National Assessment. The National Assessment and its Governing Board are authorized under sections 411 and 412, respectively, of the Improving America's Schools Act of 1994. (Pub. L. 103–382).

At its November 14–16, 1996 meeting, the Governing Board gave approval to disseminate the proposed schedule for public comment. The public comment period closes on February 3, 1997. The Governing Board intends to take action on a final policy at its meeting scheduled for March 6–8, 1997, in Charleston, South Carolina.

Records are kept of all Board proceedings, and are available for public inspection at the National Assessment Governing Board, 800 North Capitol Street, N.W., Suite 825, Washington, DC, from 8:30 am to 5:00 pm, Monday through Friday.

PROPOSED SCHEDULE FOR THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

Year	National	State
1996	Math	Math (4, 8).
	Science	Science (8).
	Long-term trend* (reading, writing, math, science)	
1997	Arts (8)	
1998	Reading	Reading (4, 8).
	Writing	Writing (8).
	Civics	
1999	Long-term trend* (reading, writing, math, science)	
2000	Math	Math (4, 8).
	Science	Science (4, 8).
2001	U.S. History	
	Geography	
2002	Reading	Reading (4, 8).
	Writing	Writing (4, 8).
2003	Civics	
	FOREIGN LANGUAGE (12)	
	Long-term trend* (reading, writing, math, science)	
2004	**MATH**	**MATH (4, 8).**
	Science	Science (4, 8).
2005	**WORLD HISTORY (12)**	
	ECONOMICS (12)	
2006	**READING**	**READING (4, 8).**
	Writing	Writing (4, 8).
2007	**ARTS**	
	Long-term trend* (reading, writing, math, science)	
2008	Math	Math (4, 8).
	SCIENCE	**SCIENCE (4, 8).**
2009	**U.S. HISTORY**	
	Geography	
2010	Reading	Reading (4, 8).
	WRITING	**WRITING (4, 8).**

Note: Grades 4, 8 and 12 will be tested unless otherwise indicated. Comprehensive assessments are indicated in **BOLD ALL CAPS;** standard assessments are indicated in upper and lower case.

*Long-term trend assessments are conducted in reading, writing mathematics and science. These assessments provide trend data as far back as 1970 and use tests developed by the National Assessment at that time.

Attachment A—Working Definitions

Types of National Assessment Reports

The Redesign Policy Statement, adopted by the National Assessment Governing Board on August 2, 1996, provides for three types of National Assessment reports:

- Standard Reports
- Comprehensive Reports
- Focused or Special Reports.

The content of these reports is described below. To provide the data needed for each report, the design of each assessment should be of high technical quality and cost-effective while not going beyond reporting requirements.

Standard Report Card

This shall be the primary vehicle for reporting the National Assessment of Educational Progress and shall present the principal results for grades 4, 8, and 12. Whenever state NAEP is conducted, the standard report card will include both national and state results. Data shall be reported in terms of both achievement levels and a scale score or percent-correct metric.

The standard report card will be prepared for a general public audience and written in understandable, jargon-free style with attractive charts, tables, and graphics. The report will be relatively modest in length—about 50 to 100 pages. In addition to key results, it will include a substantial sample of test questions and student responses—with item-level data—to illustrate performance standards and actual student work for each grade tested.

For each subject the standard report card will be based on the assessment framework and specifications approved by the Governing Board. However, the size of student samples may be more limited than in comprehensive assessments, described below. Also, special studies carried out in comprehensive assessments may be omitted.

The report card will be publicly released within six months after the end of student testing. This normally would be by the end of September of the assessment year.

Data shall be reported on a representative-sample basis for the nation, states, and demographic subgroups. Overall scores and achievement-level results must be strictly comparable to previous assessments based on the same NAEP framework so that trends in achievement may accurately be reported. However, the content-area subscales reported in previous comprehensive assessments may or may not be included, depending on the subject assessed.

Data in the standard report card shall be reported by the following categories, as required by law: sex, race/ethnicity, public and private schools, and factors bearing on socio-economic status. Such factors may include the education level of parents, type of community, and participation in Title I and subsidized lunch programs.

Any report with state-by-state results shall include information on demographic characteristics and resource inputs that may provide context for understanding results. In addition to data collected by NAEP, the contextual information may include data from other sources, such as per capita income, the poverty rate for school-aged children, current expenditures per pupil, pupil/teacher ratio, and average teacher salary.

States will appear in tables listed alphabetically. However, an overall rank order shall be prepared using average scores and indicating where differences are not statistically significant.

The report shall include information on a limited number of student background characteristics directly related to academic achievement, which may be obtained from student questionnaires or from data needed to draw samples of schools and students, such as census and Title I data. It will also include information on the proportion of students tested with disabilities and limited English proficiency. However, the standard report card will not include surveys of instructional practices or school policies, though these shall be included in comprehensive NAEP assessments.

Comprehensive Reports

These reports shall be based on large-scale assessments which implement fully the test frameworks and specifications adopted by the Governing Board. Normally, a comprehensive assessment shall be the first one done for a new test framework. Its results shall be issued in a series of reports, designed for general and specialized audiences, including national and state policymakers, educators, and researchers.

The first report—with key results for a general audience—shall be comparable to the standard report described above, though it may be somewhat more extensive and may be issued within nine months after testing rather than six months. Included in this series, though not necessarily in each report, shall be content area subscales and data on a wide range of school policies, instructional practices, and student work-habits and behavior, gathered from background questionnaires for students, teachers, and schools.

Comprehensive assessments and reporting shall be done for national samples in grades 4, 8, and 12 and for state-level samples in some subjects and grades.

Focused Reports

These reports shall be more limited and focused than the standard NAEP report. They may be targeted to a particular grade or group of students rather than being based on representative samples of the population. Generally, the cost would be less than that of a standard assessment, although focused reports may also be used to assess in a particular subject, such as the performing arts, where testing costs are high.

The focused reports may extend the range of the National Assessment and permit the testing of new populations, e.g., out-of-school youth. They will also provide NAEP with the opportunity to develop new methods of assessment and reporting without the constraints of the standard report. Some may be financed by a particular organization, e.g., the Department of Labor for a test of work readiness skills, rather than from the regular NAEP appropriation.

In most cases the special reports will involve only national samples, although states that wish to participate may do so at their own expense.

Dated: November 25, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–30452 Filed 11–27–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant Disposal Phase, Draft Supplemental Environmental Impact Statement; Notice of Availability and Public Hearings

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE or Department) announces the availability for public review and comment of the draft supplemental environmental impact statement (SEIS-II) for the proposed disposal of transuranic (TRU) radioactive waste at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, NM, and the schedule for public hearings on that document.

DATES: DOE invites all interested parties to submit comments on the draft SEIS-II during a comment period ending on January 28, 1997. Written comments must be postmarked by January 28, 1997 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

DOE will also hold several public hearings to receive public comments and suggestions on the draft SEIS-II. Public hearings will be held on the dates and at the locations given below.

Albuquerque, NM	January 6, 1997	Albuquerque Convention Center, 401 2nd Street N.W., Albuquerque, NM 87103, (505) 768–4575.
	January 7, 1997.	
Santa Fe, NM	January 8, 1997	Sweeney Convention Center, 201 West Marcy, Santa Fe, NM 87501, (505) 986–6901.
	January 9, 1997.	
	January 10, 1997.	
Richland, WA	January 15, 1997	Red Lion Inn Richland, 802 George Washington Way, Richland, WA 99352, (509) 946–7611.
Carlsbad, NM	January 13, 1997	Pecos River Village, 711 N. Muscatel, Carlsbad, NM 88220, (505) 887–6516.
Denver, CO	January, 13 1997	Arvada Center for Arts and Humanities, 6901 Wadsworth Boulevard, Denver, CO 80003, (303) 431–3080.
Boise, ID	January 15, 1997	Red Lion Inn Riverside, 2900 Chinden Boulevard, Boise, ID 83714, (208) 946–7611.
Oak Ridge, TN	January 21, 1997	American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, TN 37830, (423) 576–3200.
N. Augusta, SC	January 23, 1997	North Augusta Community Center, 495 Brookside Drive, North Augusta, SC 29841, (803) 441–4290.

Public hearings are planned for morning (only in Albuquerque and on January 9th and 10th in Santa Fe), afternoon, and evening sessions. The length of sessions held at each location may be adjusted as preregistration demand warrants. The planned hours for hearings are: 9:00 AM to 12 noon for the morning sessions, 2:00 PM to 5:00 PM for the afternoon sessions, and 7:00 PM to 10:00 PM for the evening sessions. Call the WIPP Information line at 1–800–336–9477 at least a week before the hearing to register in advance to speak at a particular public hearing. Persons who have not registered in advance may register to comment when they arrive at the hearing to the extent time is available. For additional information about the format for the hearings and speaker registration see the Public Hearing subheading under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on the draft SEIS II should be directed to: Harold Johnson, NEPA Compliance Officer, Attn: SEIS Comments, P.O. Box 9800, Albuquerque, NM 87119.

Comments submitted by electronic mail should be sent to WIPPSEIS@battelle.org. Faxed comments should be directed to Harold Johnson at 1–505–224–8030. Oral comments will be accepted only at the public hearings.

Copies of the draft SEIS II are also available for reference at the public reading rooms set forth below. The reading rooms also contain reference documents.

New Mexico State Library 325 Don Gaspar Santa Fe, NM 87503

Carlsbad Public Library 101 S. Halagueno St. Carlsbad, NM 88220

Zimmerman Library Government Publications Department University of New Mexico Albuquerque, NM 87131

Pannell Library New Mexico Junior College 5317 Lovington Highway Hobbs, NM 88240

WIPP Public Reading Room National Atomic Museum U.S. Department of Energy Albuquerque Operations Office P.O. Box 5400 Albuquerque, NM 87115

Martin Speare Memorial Library New Mexico Institute of Mining and Technology Campus Station Soccorro, NM 87801

Raton Public Library Public Reading Room 244 Cook Ave. Raton, NM 87740

New Mexico State University Library P.O. Box 30001 Las Cruces, NM 88003

Los Alamos National Laboratory Community Reading Room P.O. Box 1663, MS A–117 Los Alamos, NM 87545

DOE Public Reading Room—Oakland 1301 Clay St., Room 700N Oakland, CA 94612

DOE Public Reading Room—Nevada 2621 Losee Rd. North Las Vegas, NV 89030

Flagstaff—Coconino County Public Library 300 West Aspen Flagstaff, AZ 86001

The Navajo Nation Environmental Protection Agency
c/o Levon Benally Jr.
P.O. Box 339
Window Rock, AZ

DOE Public Reading Room—Richland Washington State University Tri-Cities
100 Sprout Rd., Room 130 West
Richland, WA 99352

Oregon State Library
250 Winter St.
Salem, OR 97310

Idaho National Engineering Laboratory (INEL) Reading Room
1776 Science Center Dr.
Idaho Falls, ID 83402

Idaho National Engineering Laboratory—Boise Office
816 West Bannock Suite 306
Boise, ID 83702

Idaho National Engineering Laboratory—Pocatello Office
1651 AT Ricken Dr.
Pocatello, ID 83201

Idaho National Engineering Laboratory—Twin Falls Office
233 2nd St. North, Suite B
Twin Falls, ID 83301

University of Idaho Library
Government Document Department (University of Idaho Campus)
Rayburn Street
Moscow, ID 83843

Shoshone-Bannock Library
Human Resources Center
Bannock and Pima
Fort Hall, ID 83203

Moscow Environmental Restoration Information Office
530 South Ashbury, Suite 2
Moscow, ID 83843

Pocatello Public Library
113 South Garfield
Pocatello, ID 83201

Idaho State University Library
741 South 7th Ave., Box 8089
Pocatello, ID 83209

Twin Falls Public Library
434 2nd St. East
Twin Falls, ID 83301

Wyoming State Library
Supreme Court Building
2301 Capitol Ave.
Cheyenne, WY 82002

DOE Rocky Flats Public Reading Room
Front Range Community College Library
3645 West 112th Ave.
Westminster, CO 80030

U.S. Environmental Protection Agency Superfund Records Center
999 18th St., 5th Floor
Denver, CO 80220

Information Center
Colorado Department of Public Health and Environment

4300 Cherry Creek Dr. South, Building A
Denver, CO 80222–1530
Citizens Advisory Board
9035 N. Wadsworth Pkwy., Suite 2250
Westminster, CO 80021
Standley Lake Library
8485 Kipling St.
Arvada, CO 80005
Texas State Library
Information Services Division
1201 Brazos St.
Austin, TX 78701
Oklahoma Dept. of Libraries
200 N.E. 18th St.
Oklahoma City, OK 73105
Arkansas State Library
One Capitol Mall
Little Rock, AR 72201
Kansas State Library
State Capitol Building
Topeka, KS 66612
Missouri State Library
600 West Main
Jefferson City, MO 65102
Indiana State Library
140 North Senate Ave.
Indianapolis, IN 46204
DOE Public Reading Room—Chicago
9800 South Cass Ave.
Building 201
Argonne, IL 60439
DOE CERCLA Public Reading Room
Miamisburg Senior Adult Center
305 Central Ave.
Miamisburg, OH 45342
Office of Scientific and Technical Information
Technical Information Center
P.O. Box 62
Oak Ridge, TN 37831
DOE Public Reading Room—Oak Ridge
55 Jefferson Cir.
Oak Ridge, TN 37830
DOE Public Reading Room—Savannah River
USC—Aiken Library
171 University Pkwy.
Aiken, SC 29801
Mobile Public Library
701 Government St.
Mobile, AL 36602
Atlanta—Fulton Public Library
One Margaret Mitchell Square N.W.
Atlanta, GA 30303
Mississippi State Law Library
450 High St.
Jackson, MS 39215
Louisiana State Library
760 North Third St.
Baton Rouge, LA 70802
DOE/Forrestal Building
Freedom of Information Reading Room
1000 Independence Ave., S.W.
Washington, DC 20585
Defense Nuclear Facilities Safety Board
625 Indiana Ave., N.W., Suite 700
Washington, DC 20004

FOR FURTHER INFORMATION CONTACT: For further information, to register to speak at the public hearings, or to obtain a copy of the environmental impact statement, call the WIPP Information line at 1–800–336–9477 (staffed 7:30 AM to 4:30 PM mountain time; answering machine at other times).

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background, Purpose and Need for Agency Action

TRU waste is waste that contains alpha particle-emitting radionuclides with an atomic number greater than that of uranium (92), and half lives greater than 20 years, in concentrations greater than 100 nanocuries per gram of waste. Since the mid 1940s, DOE and its predecessor agencies have conducted research and development, nuclear weapons production and fuel reprocessing activities that have produced TRU waste. Continued operation of Departmental facilities, decontamination and decommissioning of defense production facilities, and environmental restoration activities are expected to generate additional TRU waste in the future.

The Department needs to safely dispose of the accumulated TRU waste and provide for disposal of the additional TRU waste to be generated. Since TRU waste emits alpha radiation for a long period of time and some TRU waste contains hazardous constituents that could be harmful if taken into the body, the waste must be isolated from means of environmental transport (primarily air and water) for a long time period for safe disposal. To this end, the Department has constructed the Waste Isolation Pilot Plant near Carlsbad, New Mexico.

The draft SEIS II examines the environmental impacts of the proposed action: disposal at WIPP of the volume of defense TRU waste allowed by the WIPP Land Withdrawal Act (i.e., by burying it 2,100 feet deep in a salt deposit), after treatment to meet planning basis WIPP waste acceptance criteria. Three action alternatives examine the impacts of disposal of DOE TRU waste at WIPP, with three alternative treatments (planning basis WIPP waste acceptance criteria, shred and grout treatment to reduce gas generation, and thermal treatment to meet Resource Conservation and Recovery Act Land Disposal Restrictions). The non-thermal treatment alternatives do not include disposal of TRU waste commingled with polychlorinated biphenyls. If the Department were to decide that shred and grout or thermal treatment would be the minimal treatment required for disposal at WIPP, the planning basis waste acceptance criteria would be revised appropriately. Two no-action alternatives examine the impacts of leaving the waste at generator sites. One no-action alternative assumes continued management of TRU waste in existing and planned storage facilities, while the other assumes construction of new monitored retrievable storage facilities for TRU waste that has been thermally treated to meet Resource Conservation and Recovery Act Land Disposal Restrictions. The proposed action is identified as the Department's preferred alternative.

Public Hearing and Procedures

The public hearings will be conducted in an informal ''round table'' setting. Comments will be recorded and a transcript of the comments will be prepared. A sound system at the comment table will enable other participants to hear commenters. For participants who want to ask questions about the content, methodology, and results of the draft SEIS II analysis before commenting, DOE will provide that information in a separate room. Clarifying questions regarding the content of the draft SEIS II may be asked as part of comments at the public hearing, but the time needed to answer the questions will be counted as part of the questioner's allotted speaking time. A quiet area will be set aside where commenters can handwrite their comments or record their comments on audiotape.

The hearing will not be an adjudicatory or evidentiary hearing and speakers will not be cross-examined, although DOE's hearing panel members may ask clarifying questions or respond to questions raised by the commenter. The hearing transcripts will be available in the public reading rooms as soon as possible after the hearings have concluded.

Participants can register in advance to present oral comments at a particular hearing location by calling 1–800–336–9477 at least a week before the hearing. To ensure that as many persons as possible have the opportunity to present comments, Government representatives and representatives of organizations (one per organization) will be allowed 10 minutes to comment and individuals will be allowed 5 minutes. Reservations for commenting times will be accepted from any representative of a Government or organization. Individual commenters must make reservations on

their own behalf. An individual may register a group of commenters, but such groups will be scheduled to speak last, and only to the extent time is available after individuals have commented. Persons who have not registered in advance may register to comment when they arrive at the hearing to the extent time is available.

Speakers should confirm their scheduled time at the registration desk the day of the hearing. Persons presenting oral comments at the hearing are requested to provide DOE with written copies of their comments at the hearing, if possible.

More details are available in the public involvement plan. To obtain a copy of that plan call 1–800–336–9477.

Issued in Washington, D.C., this 25th day of November, 1996.

Alvin L. Alm,

Assistant Secretary, Environmental Management.

[FR Doc. 96–30460 Filed 11–27–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Availability of the Final Environmental Impact Statement on the Disposal of the S1C Prototype Reactor Plant

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has completed and filed with the U.S. Environmental Protection Agency the Final Environmental Impact Statement on the Disposal of the S1C Prototype Reactor Plant. The Final Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508); and DOE NEPA Implementing Procedures (10 CFR Part 1021). The Final Environmental Impact Statement and its supporting references will be available to the public at the Windsor, Connecticut Public Library. The Final Environmental Impact Statement is also available by mail upon request.

SUPPLEMENTARY INFORMATION:

Background

The S1C Prototype reactor plant is located on the 10.8 acre Windsor Site in Windsor, Connecticut, approximately 5 miles north of Hartford. The S1C Prototype reactor plant first started operation in 1959 and served for more than 30 years as both a facility for testing reactor plant components and equipment and for training Naval personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S1C Prototype reactor plant was shut down in 1993. Since then, the S1C Prototype reactor plant has been defueled, drained, and placed in a stable protective storage condition.

Alternatives Considered

1. Prompt Dismantlement—Preferred Alternative

This alternative would involve the prompt dismantlement of the reactor plant. All structures would be removed from the Windsor Site, and the Windsor Site would be released for unrestricted use. To the extent practicable, the resulting low-level radioactive metals would be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste would be disposed of at the DOE Savannah River Site in South Carolina. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S1C Prototype reactor plant low-level waste fall within the projections of Naval Reactor waste provided to the Savannah River Site, which are included in the Savannah River Site Waste Management Final Environmental Impact Statement dated July 1995.

2. Deferred Dismantlement

This alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage for 30 years before dismantling it. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay away. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60.

3. No Action

This alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage indefinitely. Since there is some residual radioactivity with very long half lives such as nickel-59 in the defueled reactor plant, this alternative would leave this radioactivity at the Windsor Site indefinitely.

4. Other Alternatives Considered

These alternatives include permanent on-site disposal. Such on-site disposal could involve building an entombment structure over the S1C Prototype reactor plant or developing a below ground disposal area at the Windsor Site. Another alternative would be to remove the S1C Prototype reactor plant as a single large reactor compartment package for offsite disposal. Each of these alternatives was considered but eliminated from detailed analysis.

Public Comments on Draft Environmental Impact Statement

Naval Reactors held a public hearing on the Draft Environmental Impact Statement in Windsor, Connecticut. Comments from 28 individuals and agencies were received in either oral or written statements at the hearing or in comment letters. Nearly all of the commenters expressed a preference for the prompt dismantlement alternative. Most comments resulted in either no changes or minor clarifications in the final environmental impact statement. The comments which resulted in the more significant changes are discussed briefly below. All of the comments and the Naval Reactors responses are included in an appendix to the Final Environmental Impact Statement.

Some comments requested additional detail on the process, surveys, and criteria identified in the draft environmental impact statement for unrestricted release of the site under either the prompt dismantlement or deferred dismantlement alternatives. In response to these comments, appendices are included in the final environmental impact statement which provide additional details on these matters.

Several comments questioned whether the cost and volume of radioactive waste generated for each alternative included site remediation as well as reactor dismantlement. The draft environmental impact statement discussed the overall site remediation impacts; however the quantitative cost and waste volume discussions focused on the dismantlement of the reactor plant, which is where essentially all of the radioactivity is located. The final environmental impact statement includes impacts from all efforts anticipated from the time of the record of decision until completion of each alternative (in the cases of prompt and deferred dismantlement, this is through transfer of the property to another owner). The most significant changes reflected in the final environmental impact statement are cost, volume (but not number of shipments) of radioactive waste, and the volume and number of shipments of non-radioactive, non-hazardous solid waste. These changes did not change significantly the estimated impact of the alternatives on the environment or the health and safety of the workers or the public.

Preferred Alternative

Because prompt dismantlement would result in unrestricted release of the Windsor Site at the earliest time with little occupational radiation exposure risk to the workers, and given that impacts associated with prompt dismantlement have a higher degree of certainty, Naval Reactors has identified prompt dismantlement as the preferred alternative.

Availability of Copies of the Final Environmental Impact Statement

The Final Environmental Impact Statement has been distributed to interested Federal, State, and local agencies, and to individuals who have expressed interest. Copies of the Final Environmental Impact Statement and its supporting references are available for inspection at the Windsor Public Library at 323 Broad Street, Windsor, CT 06095. Requests for copies of the Final Environmental Impact Statement should be directed to Mr. C. G. Overton, Chief, Windsor Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 393, Windsor, CT 06095; telephone (860) 687–5610.

Issued at Arlington, VA this 22nd day of November 1996.

F.L. Bowman,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 96–30451 Filed 11–27–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–86–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 22, 1996.

Take notice that on November 19, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheet listed as follows to become effective on December 19, 1996:

First Revised Sheet No. 420

Columbia states that the tariff sheet is submitted to comply with Order No. 582, specifically with Section 154.109(b) of the Commission's regulations respecting the financing and construction of lateral facilities, including new delivery points.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but such protests 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. 96–30424 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–85–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 22, 1996.

Take notice that on November 19, 1996, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1997:

Eighth Revised Sheet Number 156
Ninth Revised Sheet Number 157

Northern Border states that it proposes to increase the Maximum Rate from 4.221 cents per 100 Dekatherm-Miles to 5.345 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 2.213 cents per 100 Dekatherm-Miles to 2.259 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

On October 15, 1996, Northern Border filed with the Commission in Docket No. RP96–45–000 a Stipulation and Agreement (Stipulation) in its rate case which when placed into effect will result in a significantly lower cost of service and resulting Maximum Rate under Rate Schedule IT–1. Once the Stipulation is effective, Northern Border will make the appropriate filing to effectuate a Maximum Rate based on the cost of service established by the terms of the Stipulation.

Northern Border states that the herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30423 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–270–002]

Northern Natural Gas Company; Notice of Compliance Filing

November 22, 1996.

Take notice that on November 20, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 1996:

Substitute Second Revised Sheet No. 135
Original Sheet No. 135A
Original Sheet No. 135B
Original Sheet No. 135C
Original Sheet No. 135D
Substitute Second Revised Sheet No. 136

On June 6, 1996 in Docket No. RP96–270–000, Northern filed tariff sheets to provide increased storage service flexibility under its FDD and IDD Rate Schedules. The Commission issued an order on July 5, 1996 and a technical conference was held on August 1, 1996. On November 5, 1996, the Commission issued an ''Order after Technical Conference''. Northern states that the reason for this filing is to comply with the Commission's Order.

Northern states that copies of the filing were served upon the company's 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, 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 Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30422 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–187–006]

Northwest Pipeline Corporation, Notice of Compliance Filing

November 22, 1996.

Take notice that on November 20, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective December 21, 1996:

2nd Sub Fourth Revised Sheet No. 231

Northwest states that this filing is submitted in compliance with the Commission's October 21, 1996 Order on Rehearing in Docket Nos. RP95–187–005, TM95–2–37–005 and RP94–220–014 (77 FERC ¶ 61,056). Northwest states that the proposed tariff sheet revises Northwest's catch-up adjustment applicable to lost and unaccounted-for volumes used in the calculation of Northwest's transportation fuel use requirements factors (fuel factors). Northwest further states that the revised catch-up adjustment will not affect Northwest's currently effective fuel factors, but will be part of the annual calculation of Northwest's fuel factors that will become effective April 1, 1997.

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. 96–30419 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–64–004]

South Georgia Natural Gas Company; Notice of Refund Report

November 22, 1996.

Take notice that on October 30, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing a refund report, in accordance with Section 154.501 of the Commission's regulations, summarizing the SFAS 106 refunds made to its customers on September 30, 1996.

South Georgia states that the Refund Report sets forth the amount refunded on September 30, 1996 to all shippers for the period January 1, 1996 through August 31, 1996.

South Georgia states that copies of the refund report has been mailed upon all parties listed on the official service lists compiled by the Secretary in the above referenced 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. 96–30420 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–760–021]

Transcontinental Gas Pipe Line Corporation; Notice of Report of Refunds

November 22, 1996.

Take notice that on April 1, 1996, Transcontinental Gas Pipe Line Corporation (Transcontinental) tendered for filing a report detailing refunds and surcharges totaling $4,543,725.21, including interest, paid to its Southern Expansion Project transportation shippers on March 29, 1996, for the period November 1, 1990, through October 31, 1991.

Transcontinental states that the refunds were made as a result of the Commission's order issued October 16, 1995, in Docket No. CP88–760–018 which changed the effective date of implementing a switch from modified fixed variable to straight fixed variable rate design from November 1, 1991, to November 1, 1990.

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 Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 2, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30415 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–000]

Trunkline Gas Company; Notice of Informal Settlement Conference

November 22, 1996.

Take Notice that an informal settlement conference will be convened in these proceedings on December 5, 1996 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Lorna J. Hadlock (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30421 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–87–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 22, 1996.

Take Notice that on November 19, 1996, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, the tariff sheets identified below:

First Revised Volume No. 1

Sheet No. 44
Sheet No. 45
Second Revised Volume No. 2
Sheet No. 49
Sheet No. 50

WIC states that the instant tariff sheets are filed to revise the scheduling and allocation priorities in WIC's individually-certificated and open access tariffs so that the priority of imbalance payback gas is the same as the underlying service agreement. Firm imbalance payback will only get the high scheduling priority to the extent that the shipper's overall nomination is within shipper's firm daily entitlement.

WIC states that copies of the filing were served upon WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file with a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 the protestants parties to the proceedings. Any person wishing to become a party must file a motion 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30425 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4031–041]

City of Peru; Notice of Availability of Environmental Assessment

November 22, 1996.

An environmental assessment (EA) is available for public review. The EA is an application for an amendment of license for the Starved Rock Lock and Dam Project. The amendment of license application concerns the addition of a new transmission line within the project boundary. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Starved Rock Lock and Dam Project is located in LaSalle County in Illinois.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE, Washington, D.C. 20426. Copies can also be obtained by calling the project manager, Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30418 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2705–003 Washington]

Seattle City Light; Notice of Availability of Environmental Assessment

November 22, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing and Compliance has reviewed the application for a new license for the existing Newhalem Creek Hydroelectric Project (project) and has prepared a Final Environmental Assessment (FEA) for the project. The project is located on Newhalem Creek, a tributary of the Skagit River, near the town of Newhalem, in northern Washington.

In the FEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30417 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Amendment of License

November 22, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License

b. *Project No:* 2442–020

c. *Date Filed:* November 12, 1996

d. *Applicant:* City of Watertown

e. *Name of Project:* Watertown Project

f. *Location:* Black River, Jefferson County, New York

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r)

h. *Applicant Contact:* Mr. Robert G. Upson, P.E., City Engineer, City of Watertown, Room 305, Mun. Bldg., 245 Washington Street, Watertown, NY 13601, (315) 785–7746

i. *FERC Contact:* Anum Purchiaroni, (202) 219–3297

j. *Comment Date:* December 11, 1996

k. *Description of Project:* City of Watertown, licensee for the Watertown Project, filed an application to amend its license. The licensee proposes to rehabilitate the three existing Francis generating units, rather than replace them with new Kaplan generating units. The work will include replacing the runners, rewinding the existing generators, and modernizing the electrical and communications equipment at the project. The total plant generating capacity would be reduced from the authorized 10,800 kW to about 7,000 kW. The maximum discharge would be reduced from 6,000 cfs to about 4,700 cfs. The licensee states in its filing that no major modifications will be performed on the powerhouse. The licensee is not proposing any changes to project operation, water levels or license mitigation requirements in its amendment application.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30416 Filed 11–27–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of October 14 Through October 18, 1996

During the Week of October 14 through October 18, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: November 20, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 14 through October 18, 1996]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 15, 1996	Ashok K. Kaushal, Albuquerque, New Mexico.	VFA–0228	Appeal of an Information Request Denial. IF GRANTED: The September 26, 1996 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Ashok K. Kaushal would receive access to certain Department of Energy information.
Oct. 16, 1996	Le Piers, Inc., Fosston, Minnesota	VEE–0034	Exception to the Reporting Requirements. IF GRANTED: Le Piers, Inc. would not be required to file Form EIA–782B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
Oct. 16, 1996	Nugent Motor Company, Colebrook, New Hampshire.	VEE–0033	Exception to the Reporting Requirements. IF GRANTED: Nugent Motor company would not be required to file Form EIA–782B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
Oct. 17, 1996	META, Inc., Arlington, Virginia	VWZ-0007	Motion for Dismissal. IF GRANTED: C. Lawrence Cornett's Part 708 complaint would be dismissed.
Oct. 17, 1996	Nathaniel Hendricks, Putney, Vermont	VFA–0229	Appeal of an Information Request Denial. IF GRANTED: The January 26, 1996 Freedom of Information Request Denial issued by the Argonne Group would be rescinded, and Nathaniel Hendricks would receive access to certain Department of Energy information.

[FR Doc. 96–30449 Filed 11–27–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of October 7 Through October 11, 1996

During the week of October 7 through October 11, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 20, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 2

Week of October 7 Through October 11, 1996

Personnel Security Hearing

ALBUQUERQUE OPERATIONS OFFICE, 10/9/96, VSO–0099

An Office of Hearings and Appeals Hearing Officer issued an opinion addressing the continued eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found that the Albuquerque Operations Office had presented sufficient evidence to show that the individual (i) deliberately omitted significant information from a security questionnaire, (ii) is a user of alcohol habitually to excess and suffers from alcohol abuse, and (iii) has engaged in conduct which tends to show that he is not reliable. The Hearing Officer also found that the individual had not shown he was rehabilitated or presented evidence which mitigated the security concerns of the DOE. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Whistleblower Proceeding

META, INC., LOGISTICS APPLICATIONS, INC., 10/08/96, VWA–0006, VWA–0012

Eugene Greer filed a complaint under the Department of Energy's Contractor

Employee Protection Program. Greer alleged that he lost his employment with META, Inc., as a result of his cooperation with an investigation conducted by the Office of Inspector General into misuse of government property by two DOE employees responsible for supervising the META contract. The investigation resulted in a reprimand for one of the DOE employees. There was no allegation that META intentionally did anything improper, but that the two DOE officials who were the subjects of the IG investigation orchestrated Greer's dismissal by making negative comments about his work to META officials. META claimed that Greer's dismissal was the result of a corporate reorganization and that the DOE officials had no input into the decision.

The Hearing Officer found that Greer had not sustained his burden of demonstrating that DOE officials contributed in any way to his dismissal. The Hearing Officer noted that it is often impossible for the complainant to find a ''smoking gun'' that proves an employer's retaliatory intent and that the testimony of contractor officials who have been accused of retaliating must be viewed with some skepticism. However, since there was no allegation of intentional wrongdoing and the testimony presented by META officials was consistent and reasonable, the Hearing Officer found their testimony to be credible. Consequently, he found that Greer's role in the IG investigation had no bearing upon the loss of his employment. Consequently, the relief Greer requested was denied.

Refund Applications

STATE ESCROW DISTRIBUTION, 10/11/96, RF302–19

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $15,400,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

THE 341 TRACT UNIT OF THE CITRONELLE FIELD/NATIONAL COOPERATIVE REFINERY, ET AL., 10/10/96, RF345–69, ET AL.

The Department of Energy granted Applications for Refund filed by five refiner cooperatives in the 341 Tract Unit of the Citronelle Field refund proceeding. The DOE rejected arguments by a group of Utilities, Transporters and Manufacturers and a group of States to the effect that these refiner cooperatives had previously waived their rights to receive more than the 5.4 percent share allocated to other refiners. The DOE also determined that the refunds should not be disbursed until it was clear that no appeal of the determination had been filed. The funds will be placed in a separate interest bearing account earmarked for these refiner cooperatives, who will be entitled to their refunds as well as accrued interest, should the outcome of any litigation be favorable to them. The total refund granted was $1,746,845.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name of firm	Case No.	Received
CITY OF KERNERSVILLE	RC272–354	10/10/96
TOWNSHIP OF PRINCETON	RC272–355	
CRUDE OIL SUPPLE REF DIST	RB272–00088	10/8/96
EAST POINT TRAWLERS, INC	RJ272–23	10/7/96
GRAY TRUCK CO., ET AL	RF272–97946	10/11/96
KEIGHTLY BROS. INC	RC272–333	10/8/96
POLK CNTY FARMERS COOP., ET AL	RF272–97804	10/8/96
REDWING CARRIERS, INC., ET AL	RG272–00096	10/7/96

Dismissals

The following submissions were dismissed.

Name	Case No.
AMERICAN FALCON CORP.	RF272–90314
COCA-COLA BOTTLING CO. CONSOLIDATED	RF272–92518
COLUMBUS CONSOLIDATED GOVT	RF272–95156
EQUITY COOPERATIVE	RG272–706
GREAT WESTERN AIRLINES, INC	RG272–1004
ITALIANO & PLACHE, L.L.P.	VFA–0219
MONTGOMERY TANK LINES	RG272–465
OAK RIDGE OPERATIONS OFFICE	VSO–0107
SCHENECTADY NAVAL REACTORS OFF	VSO–0112
SQUAW LAKE COOPERATIVE CO	RG272–707
SUTHERLAND FARMERS COOP	RG272–491

[FR Doc. 96–30448 Filed 11–27–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of September 30 Through October 4, 1996

During the week of September 30 through October 4, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf

reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 20, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 1

Week of September 30 Through October 4, 1996

Appeals

Harold Bibeau, 10/4/96, VFA–0212

Harold Bibeau filed an Appeal from a determination issued to him by the Oak Ridge Operations Office (DOE/OR). In his Appeal, Mr. Bibeau asserted that DOE/OR improperly failed to provide him with documents regarding human radiation or hormone experiments he had requested pursuant to the FOIA. During the pendency of the Appeal, several potentially responsive documents were discovered by DOE/OR. Consequently, the DOE remanded the matter to DOE/OR for a determination regarding the newly discovered documents.

James H. Stebbings, 9/30/96, VFA–0211

James Stebbings (Stebbings) filed an Appeal from a partial denial by the Department of Energy's Argonne Group (Argonne) of a request for information which was submitted under the Freedom of Information Act. Stebbings appealed the adequacy of Argonne's search. The DOE found that Argonne had conducted a search reasonably calculated to uncover responsive material. Because the requester could not provide any information that further records existed, the Appeal was denied.

Personnel Security Hearing

Albuquerque Operations Office, 10/4/96, VSO–0104

A Hearing Officer issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 CFR Part 710. The Hearing Officer found that: (i) the individual has a mental condition, substance abuse, which causes, or may cause a significant defect in judgment or reliability; (ii) the individual has a long history of abuse of illegal drugs; (iii) the individual provided false information to the DOE; (iv) the acts of the individual tend to show that he is not honest, reliable, or trustworthy; and (iv) the DOE's security concerns were not overcome by evidence mitigating these concerns. Accordingly, the Hearing Officer found that the individual should not be granted an access authorization.

Whistleblower Proceeding

Richard W. Gallegos, 10/4/96, VWA–0004

Richard W. Gallegos claimed that he was retaliated against by Sandia National Laboratory for making disclosures during a five-year period about mismanagement at the Lab. An Office of Hearings and Appeals Hearing Officer concluded that Mr. Gallegos had not shown by a preponderance of the evidence that he made disclosures that are protected by the DOE's Contractor Employee Protection Program, or that, if they were protected disclosures, they contributed to adverse actions taken against him after October 1, 1993, the date on which employees at Sandia became covered by the Contractor Employee Protection Program. The request for relief filed by Mr. Gallegos was accordingly denied.

Refund Applications

Burt County Cooperative, et al., 10/1/96, RR272–218 et al.

The DOE denied the Motions for Reconsideration filed by the National Bank for Cooperatives (CoBank) on behalf of seven cooperatives that purchased refined petroleum products during the refund period. CoBank failed to present reasons sufficient to warrant modification of our July 28, 1994 Decision and Order, since it could not certify that it would pass through, in full, any refund to the members of the seven cooperatives. Consequently, there was no assurance that the refunds would go to people who were actually injured by the overcharges.

Texaco, Inc./Fairpark Grocery, 10/2/96, RF321–21088

The Department of Energy rescinded a refund that was granted to Fairpark Grocery because the check was not presented for payment and the owner of the outlet could not be located. The DOE, therefore, directed that the refund be redeposited into the Texaco escrow account.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Artcraft Industries, Inc, et al	RF272–97802	10/2/96
Edmonds School District No. 15, Vicentian Sisters of Charity	RF272–97928 RF272–97935	10/2/96
Inter-State Hardwoods Co., Inc., et al	RF272–90296	10/4/96
Louisiana Land & Exploration Co.	RF272–98207	10/1/96
Western AG-Minerals Co.	RK272–3911	10/2/96

Dismissals

The following submissions were dismissed.

Name	Case No.
Albuquerque Operations Office	VSO–0111
Channel Flying, Inc	RF272–98008
Collinson, Inc	RF272–99126
Hillin Production Company	RF272–99129
Irving N. Loomis & Sons, Inc	RF272–99125
Lyondell Petrochemical Co	RR272–239
Petro San Juan	VEE–0029
Reuben Johnson & Son, Inc	RF272–99127
St. Anne's Hospital	RG272–737
T. A. Loving Company	RF272–99116
Town of East Greenwich	RG272–740

[FR Doc. 96–30450 Filed 11–27–96; 8:45 am]
BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces procedures concerning the refunding of $30,000 (plus accrued interest) in consent order funds. The funds are being held in escrow pursuant to a Stipulation for Compromise Settlement involving Houston-Pasadena Apache Oil Company.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107. All Applications should conspicuously display a reference to Case Number VEF–0022.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, (202) 426–1575.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(c) of the procedural regulations of the Department of Energy, 10 C.F.R. § 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision relates to a Stipulation for Compromise Settlement entered into by the Houston-Pasadena Apache Oil Company (Apache) which settled possible pricing violations in the firm's wholesale transactions of motor gasoline during the period October–December 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Apache settlement fund was issued on September 16, 1996. 61 Fed. Reg. 50018 (September 24, 1996).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute funds remitted by Apache and being held in escrow. The DOE has decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings. In the first stage, the DOE will consider claims for refunds made by firms and individuals that purchased motor gasoline from Apache during the audit period and were identified as overcharged Apache customers in DOE enforcement documentation.

The second stage of the refund process will take place only in the event that the meritorious first stage applicants do not deplete the settlement funds. Any funds that remain after all first stage claims have been decided will be distributed to state governments for use in four energy conservation programs, in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

All first stage applications should be submitted within 90 days of publication of this notice. All comments and applications received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

Dated: November 19, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Decision and Order of the Department of Energy

Special Refund Procedures

November 19, 1996.

Name of Petitioner: Houston-Pasadena Apache Oil Co.

Date of Filing: September 1, 1995.

Case Number: VEF–0022.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC) (formerly the Economic Regulatory Administration (ERA)) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, l995. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Stipulation for Compromise Settlement (Settlement Stipulation) concerning the Houston-Pasadena Apache Oil Company (Apache).

Background

Apache was a ''reseller-retailer'' of motor gasoline during the period of price controls. Accordingly, Apache was subject to the provisions of 10 C.F.R. Part 212, Subpart F, governing wholesale and retail sales of refined petroleum products. On April 30, l985, the ERA issued a Proposed Remedial Order (PRO) to Apache concerning Apache's compliance with the price regulations for the period March 1,1979 through December 31, l979 (the audit period). Apache provided documents for a more limited period (October–December l979), and based upon those documents, the ERA found that Apache sold motor gasoline at prices in excess of those permitted under the DOE price regulations governing reseller-retailers during that period. After considering Apache's challenge to the PRO, the OHA issued a final Remedial Order (RO) to Apache on June 19, l989. *See Houston/Pasadena Apache Oil Company*, 19 DOE ¶ 83,001 (1989). In the RO, the OHA remanded to the ERA a portion of the PRO involving retail transactions and two sales to Dow Chemical Company (Dow) and affirmed the rest of the PRO. The OHA also directed Apache to refund the amount of $160,713 plus interest, this sum representing the overcharges realized by the firm in its wholesale transactions during the period October-December l979. Apache did not honor its repayment obligation and the matter was referred to the Department of Justice (DOJ) for resolution. On June 4, l993, the DOJ and Apache executed a Stipulation for Compromise Settlement resolving the issues addressed by the RO. Pursuant to this settlement, Apache agreed to pay $30,000 in full settlement of the DOE claim. Apache's compliance with the settlement has resulted in payment to DOE of $30,000 which we shall disburse pursuant to the procedures set forth in this Decision and Order. These funds are presently in an interest-bearing escrow account maintained by the Department of the Treasury.

Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. Generally, it is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Apache. We therefore grant OGC's petition and assume jurisdiction over distribution of the funds.

On September 16, 1996, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the Apache settlement fund. The PDO was published in the Federal Register and a 30 day period was provided for the submission of comments regarding our proposed refund plan. *See* 61 Fed. Reg. 50018 (September 24, l996). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Apache settlement fund. Consequently, the procedures will be adopted as proposed.

Refund Procedures

A. Refund Claimants

Refund monies shall be distributed to those wholesale customers which were injured in their transactions with Apache during the

period October 1, l979 through December 31, 1979. These customers of Apache are listed in Appendix A to the RO. If any of these customers are affiliates of Apache, they will be ineligible to apply for a refund in this proceeding.

B. Calculation of Refund Amounts

For claims against the funds obtained from Apache, we have established a maximum potential refund (allocable share) for each of the customers identified in the Apache RO as an overcharged customer. These claimant-specific maximum potential refunds are based upon the ratio of overcharges incurred by each customer to the total overcharge amount multiplied by the principal amount in the Apache escrow account. A list of the identified Apache customers and their maximum potential refunds is presented in the Appendix to this Decision. Each successful refund claimant shall also receive a pro rata share of interest which has accrued on the Apache escrow fund account.

C. Showing of Injury/Injury Presumptions

As in previous Subpart V proceedings, those customers who were ultimate consumers (end-users) of Apache motor gasoline shall be presumed injured by Apache's alleged overcharges. They will therefore not be required to make a further demonstration of injury in order to receive a refund.

Reseller claimants (including retailers and refiners) who purchased on a regular (non-spot) basis and whose maximum potential refund is $10,000 or less will be presumed injured and therefore need not provide further demonstration of injury. *See E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund.

In addition, Tesoro Crude (Tesoro Energy), the only potential reseller claimant whose allocable share exceeds $10,000, may elect either to receive a refund under the small claims presumption outlined above or to pursue its potential refund of $16,034.97. If Tesoro limits its claim to the $10,000 small claims threshold, it need not demonstrate injury beyond the requirements established for other small claimants. If the firm elects to claim its entire potential refund it must establish that it did not pass the Apache overcharges along to its customers.[1] *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Tesoro can make such an injury showing by demonstrating that it would have kept its motor gasoline prices at the same level had the Apache overcharges not occurred.

While there are a variety of means by which a claimant could make this showing, Tesoro should demonstrate that at the time it purchased Apache motor gasoline, market conditions would not permit it to increase its prices to pass through the additional costs associated with the Apache overcharges. In addition, Tesoro must show that it had a ''bank'' of unrecovered product costs sufficient to support its refund claim in order to demonstrate that it did not subsequently recover those costs by increasing its prices. However, the maintenance of a cost bank does not automatically establish injury. *See Tenneco Oil/Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./ Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

Finally, we hereby establish a minimum amount of $15 for refund claims. We have found in prior refund proceedings that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 C.F.R. § 205.286(b). This restriction rules out the participation in this proceeding of two of the firms listed in the Appendix: Gulf Coast Waste, and Parrish Corp.[2]

D. Refund Application Requirements

To apply for a refund from the Apache settlement fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of the person to contact for any additional information, and the name and address of the person who should receive any refund check.[3] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) The applicant's use of motor gasoline from Apache: e.g., consumer (end-user), cooperative, or reseller;

(3) A statement certifying that the applicant purchased motor gasoline from Apache during the October 1979–December l979 period;

(4) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Apache refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(5) If the applicant is or was in any way affiliated with Apache, it should explain this affiliation, including the time period in which it was affiliated;

(6) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(7) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of the relevant documents should also be provided;

(8) The following statement signed by the individual applicant or a responsible official of the firm filing the refund application:[4]

''I swear (or affirm) that the information contained in this application is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.''

All applications should be either typed or printed and clearly labeled ''Houston-Pasadena Apache Oil Co. Special Refund Proceeding, Case No. VEF–0022.'' Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than 90 days from the publication of this Decision and Order in the Federal Register, and sent to: Houston-Pasadena Apache Oil Co., Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

Any representative that requests that it be a payee of a refund check must file with the OHA if it has not already done so a statement certifying that it maintains a separate escrow

[1] In the event that Tesoro demonstrates that it should be treated as an end-user instead of as a reseller, it will not be required to make this injury showing.

[2] Although the allocable share of Clay Texaco, $14.70, is under the $15 threshold, we have calculated that with interest its refund would exceed $15.

[3] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of l986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[4] We will not process applications signed by filing services or other representatives. In addition, the statement must be dated on or after the date of this Decision and Order. Any application signed and dated before the date of this Decision will be summarily dismissed.

account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicants. Representatives who have not previously submitted an escrow account certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HG–13, Chief, Docket and Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

E. Distribution of Funds Remaining After First Stage

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of l986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Apache escrow account the OHA determines will not be needed to effect direct restitution to injured Apache customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Houston-Pasadena Apache Oil Company pursuant to the Stipulation for Compromise Settlement that became effective on June 4, 1993, may now be filed.

(2) All Applications for Refund must be postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: November 19, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Applicant	Allocable share
Car Wash	$31.17
Clay Texaco	14.70
DuMac Oil	22.59
Gulf Coast Waste*	8.97
Jas Lee	126.06
Joe Lee	3,059.22
John Parker	28.60
Kirby Car Wash	19.83
Lloyd Parrish	288.03
Main Stop	48.90
Parrish Corp.*	11.43
Quail Valley Gulf	166.95
So Sweet Energy	2,098.14
Tesoro Energy (Tesoro Crude)	16,034.97
Trio Oil Co	1,414.17
True Oil Co	1,119.96
Two Oil Co	5,489.67
Yims Texaco	16.64
Total	$30,000.00

*Under $15 threshold. *See* n.2 of Decision.

Note: The allocable share entries were generated by multiplying the principal amount in the Apache escrow account by the percentage of total overcharges incurred by each individual claimant as determined by the ERA audit of Apache's business records.

[FR Doc. 96–30447 Filed 11–27–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5657–1]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), notice is hereby given of a proposed settlement agreement in the following case: *Sierra Club* versus *Carol M. Browner*, Civ. No. 93–0124 (consol. with 93–0125, 93–0197, and 93–0564) (D.D.C.). This action was filed under section 304(a)(2) of the Act, 42 U.S.C. 7604(a)(2), contesting among other matters EPS's failure to promulgate regulations containing standards applicable to emissions from new nonroad engines pursuant to section 213(a) of the Act. The Settlement Agreement concerns issuance by EPA of guidance to states on State Implementation Plan emissions credits for California Tier 2 Utility and Lawn and Garden Equipment Engine Emission Regulations.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to John Hannon, Esq. at the above address and must be submitted on or before December 30, 1996.

Dated: November 20, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96–30482 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5475–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 04, 1996 Through November 08, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–BLM–K67037–NV Rating EO2, Twin Creeks Mine Consolidation and Expansion, which encompasses the former Rabbit Creek Mine and the former Chimney Creek Mine, Plan of Operation and Permit Application Approval, Winnemucca District, Humboldt County, NV.

Summary: EPA expressed environmental objections due to potential impacts to water quality/quantity, biological resources, including impacts associated with groundwater drawdown from pit dewatering; as well as the project's potential risks related to geologic hazards. EPA also requested additional information regarding these issues, as well as mitigation measures, geochemical characterization, reclamation, and ecological risk assessment.

ERP No. D–NPS–K61212–CA Rating EC2, San Francisco Maritime National Historical Park, General Management Plan, Implementation, San Francisco County, CA.

Summary: EPA expressed environmental concerns regarding water quality and erosion control, hazardous

materials, and construction activities. EPA requested additional information on these issues be included in the Final EIS.

ERP No. D–NPS–K65187–CA Rating EC2, Santa Rosa Island Resources Management Plan, Improvements of Water Quality and Conservation of Rare Species and their Habitats, Channel Islands National Park, Santa Barbara County, CA.

Summary: EPA expressed environmental concerns with potential impacts associated with the weed and road management programs. EPA requested that the FEIS demonstrate consistency with the applicable Basin Plan, and encouraged Park Service to modify the preferred alternative to include more environmental protection features found in the Conservation Team Recommendations Alternative.

Regulations

ERP No. RR–DOA–A90083–00, 7 CFR Part 12—Highly Erodible Land and Wetland Conservation.

Summary: EPA commented that the interim final rule raised a number of issues that may affect implementation of the Clean Water Action Section 404 regulatory program. Rather than proposing specific revisions to the regulations regarding the Swampbuster program. EPA recommended that issues be addressed, where possible, through the development of a formal interagency agreement between EPA, NRCS, the Corps of Engineers and the US Fish and Wildlife Service. EPA also recommended that the final rule clarify the Swampbuster status of prior-converted cropland when wetland characteristics return as a result of a lack of maintenance of the land or other circumstances beyond the control of the property owner. EPA raised concerns over the adequacy of the Environmental Assessment (EA) and recommended that the EA be revised prior to publication of the final rule.

ERP No. R–DOA–A99214–00, 7 CFR Part 1466—Environmental Quality Incentives Program—Commodity Credit Corporation.

Summary: EPA supported the proposed approach for designating priority areas, and recommended establishing a financial incentive program for states to develop priority areas that effectively direct funds to critical environmental resource problems, and that the Commodity Credit Corporation reject these proposals that do not meet the relevant criteria. EPA also recommended that in defining a ''large confined livestock operation,'' the final rule should emphasize that assistance is meant for family farmers and ranchers and that a specific level for defining large operations be established, allowing for exceptions based upon ability to pay and on maximizing environmental benefits per dollar.

Dated: November 25, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–30496 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5475–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed November 18, 1996 Through November 22, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960542, Final EIS, FHW, MO, MO–13 Highway Improvement, Existing MO–13 to MO–10 just south of Richmond to US 24 just south of Lexington, Funding, COE Section 10 and 404 Permits and US Coast Guard Bridge Permit Issuance, Ray and Lafayette Counties, MO, Due: December 30, 1996, Contact: Donald Neumann (573) 636–7104.

EIS No. 960543, Draft Supplement, DOE, NM, Waste Isolation Pilot Plant Disposal Phase, Updated Information, Disposal of Transuranic Waste, Carlsbad, NM, Due: January 28, 1997, Contact: Harold Johnson (505) 234–7349.

EIS No. 960544, Final EIS, DOI, UT, Wasatch County Water Efficiency Project and Daniel Replacement Pipeline Project, Implementation, Wasatch County, UT, Due: December 30, 1996, Contact: Karen Ricks (801) 226–7126.

EIS No. 960545, Final EIS, DOE, CT, S1C Prototype Reactor Plant Disposal, Windsor Site Located at the Knolls Atom Power Laboratory, CT, Due: December 30, 1996, Contact: Christopher G. Overton (860) 687–5610.

Dated: November 25, 1996

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–30497 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5656–9]

Proposed Cost Recovery Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Pipe and Piling Superfund Site, Omaha and Avoca, Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed cost recovery settlement under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h)(1), Pipe and Piling Superfund Site, Omaha and Avoca, Nebraska.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a cost recovery administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h)(1). This settlement is intended to resolve the liability of Pipe and Piling Supplies (U.S.A.) Ltd. (Pipe & Piling) for the response costs incurred by the EPA in overseeing a removal action conducted by Pipe & Piling at Pipe and Piling Superfund Site, Omaha and Avoca, Nebraska. The proposed settlement consent order was signed by the Environmental Protection Agency (EPA) on October 29, 1996. Because EPA's total response costs did not exceed $500,000, the Attorney General's concurrence is not required for this settlement.

DATES: Written comments must be provided on or before December 30, 1996.

ADDRESSES: Comments should be addressed to Daniel J. Shiel, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Pipe and Piling Supplies (U.S.A.) Ltd.*, EPA Docket No. VII–96–F–0031.

The proposed administrative settlement may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy by mail please refer to the matter name and docket number set forth above and enclose a check in the amount of $3.75 (25 cents per page for reproduction costs), payable to the United States Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns the Pipe and Piling Nebraska Superfund Site located in Omaha and Avoca, Nebraska. In November 1992, EPA Region VII issued a CERCLA Section 106 unilateral administrative order (UAO) to Pipe & Piling Supplies requiring it to remove asbestos-containing materials from two locations in Nebraska. EPA treated the two locations, one in Omaha and one in Avoca, as one site. Pipe & Piling conducted the removal action as required by the UAO.

Pipe & Piling did not agree to reimburse EPA's costs of overseeing the removal action at the time EPA issued the UAO. By letter dated February 29, 1996, EPA sent Pipe & Piling a cost reimbursement bill for $34,684.15. Pipe & Piling responded by questioning the appropriateness of some charges included within the bill. In the proposed settlement, Pipe & Piling has agreed to reimburse EPA $20,000.

Dated: November 15, 1996

Dennis Grams,

Regional Administrator.

[FR Doc. 96–30480 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5657–2]

Termination of Review of Department of Energy Petition to EPA for a No-Migration Determination for the Waste Isolation Pilot Plant (WIPP) Under the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency announces that the Office of Solid Waste has terminated its review of the final no-migration petition for the Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP). The WIPP is a geological repository intended for the disposal of mixed hazardous and radioactive wastes. The hazardous portion of the waste was originally subject to EPA's land disposal restrictions of the Resource Conservation and Recovery Act (RCRA). On September 23, 1996 the President signed Public Law 104–201 that, among other things, exempts WIPP from the provisions of the land disposal restrictions. Consequently, EPA has terminated its review of DOE's no-migration petition, effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of the issues discussed in this notice, contact Reid Rosnick (703–308–8758), (rosnick.reid@epamail.epa.gov), or Chris Rhyne (703–308–8658), (rhyne.chris@epamail.epa.gov), Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Wastes proposed for disposal at WIPP are mixed wastes, and are defined as a mixture of hazardous waste regulated under Subtitle C of RCRA, and radioactive materials regulated under the Atomic Energy Act. Consequently, these wastes have been regulated by EPA and the State of New Mexico as a hazardous waste, and by EPA (the Office of Radiation and Indoor Air) as a radioactive material.

Prior to the National Defense Authorization Act for Fiscal Year 1997, the hazardous portion of the wastes were subject to the land disposal restrictions found in section 3004 (m) of RCRA, and codified in the Code of Federal Regulations at 40 CFR part 268. The regulations require that hazardous wastes be treated to specific standards prior to any land disposal, unless a ''no-migration'' demonstration can be made in accordance with 40 CFR 268.6. Persons seeking a no-migration determination must submit a petition to the EPA Administrator ''* * * demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous waste, or hazardous waste constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.''

In June 1996, DOE submitted a no-migration petition to the Agency. This petition was designed to demonstrate that there would be no migration of the hazardous wastes disposed of at the WIPP for at least 10,000 years. The Agency announced the availability of the petition in the Federal Register on August 19, 1996 (see 61 FR 42899), and provided 60 days of public comment on the petition. EPA then began a completeness check and technical review of the petition.

In September 1996, the President signed the National Defense Authorization Act for Fiscal Year 1997. Included as a subsection of the Act was the Waste Isolation Pilot Plant Land Withdrawal Amendments Act, which prescribed significant changes to the way that RCRA applies to WIPP. The Act states that transuranic mixed waste designated by the Secretary of DOE for disposal at WIPP is exempt from the treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act and is not subject to the land disposal restrictions in sections 3004 (d), (e), (f), and (g) of the Solid Waste Disposal Act (the land disposal restrictions). Consequently, EPA terminated review of the no-migration petition for the WIPP when the bill was signed into law. It was the sense of the Congress that the land disposal restrictions, which restrict the land disposal of the hazardous portion of the mixed waste, were redundant with EPA's radioactive waste compliance certification standards at 40 CFR 191 and 194 (Congressional Record, June 20, 1996, page S6591). The 191 and 194 standards must be met by DOE prior to shipment of waste to WIPP, and in essence require that the transuranic waste be contained within the prescribed boundaries for at least 10,000 years.

In addition to EPA's role in regulation of the WIPP through the radiation protection standards, the hazardous portion of the mixed transuranic waste will continue to be regulated by the State of New Mexico through the RCRA hazardous waste permitting program. DOE must obtain a permit from the State that shows that the hazardous portion of the waste will be safely handled during the operating life of the facility, the closure period (when the facility shafts are sealed and permanent markers are installed), and for a period of time after closure known as the post-closure period. The State's RCRA permit, along with the compliance certification issued by EPA, will ensure that there is adequate protection of human health and the environment during and after disposal operations at WIPP.

EPA will continue to participate in the regulation of the WIPP under RCRA by offering assistance to the State of New Mexico in the preparation of the RCRA permit for the facility.

Dated: November 22, 1996.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 96–30481 Filed 11–27–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

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 information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 28, 1997.

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.: 3060–0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form No.: FCC 495A, FCC 495B.

Type of Review: Extension.

Respondents: Businesses or others for profit.

Number of Respondents: 150.

Estimate Hour Per Response: 40 hours per response.

Total Annual Burden: 12,000.

Needs and Uses: The Forecast of Investment Usage and Actual Usage of Investment Reports are needed to detect and correct forecast errors that could lead to significant misallocation of network plant between regulated and nonregulated activities. FCC's purpose is to protect the regulated ratepayer from subsidizing the nonregulated activities of rate regulated telephone companies.

OMB Approval No.: 3060–0478.

Title: Informational Tariffs.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 300.

Estimate Hours Per Response: 50 hours.

Total Annual Burden: 16,500 hours.

Needs and Uses: Pursuant to Section 47 U.S.C. 226(h)(1)(A), providers of operator services must file informational tariffs with the FCC. The tariffs will be reviewed to determine whether they are unjust or unreasonable.

OMB Approval No.: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990—CC Docket No. 90–571.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for profit.

Number of Respondents: 72.

Estimate Hour Per Response: 112.6 hours per response (avg.)

Total Annual Burden: 8110 hours.

Needs and Uses: 47 CFR Part 64, Subpart F implements certain provisions of the ADA of 1990. Section 64.605 establishes procedures for filing complaints. Information will be used to determine whether a state's program is certifiable according to federal requirements and to determine the merits of complaints filed. Those affected are states seeking certification of their programs and any member of the public who wants to file a complaint against specific carriers.

OMB Approval No.: 3060–0298.

Title: Tariffs (Other Than Tariff Review Plan)—Part 61.

Form No.: N/A.

Type of Review: Revised collection.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 2000.

Estimate Hours Per Response: 202 hours per response (avg.)

Total Annual Burden: 972,423 hours.

Needs and Uses: Part 61 is designed to ensure that all tariffs filed by common carriers are formally sound, well organized, and provide the Commission and the public with sufficient information to determine the justness and reasonableness as required by the Act, of the rates, terms and conditions in those tariffs.

OMB Approval No.: 3060–0292.

Title: Part 69 Access Charges.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for profit.

Number of Respondents: 1458.

Estimate Hours Per Response: 5.8 hours (avg.)

Total Annual Burden: 33,825 hours.

Needs and Uses: The rules in 47 CFR Part 69 establish methods for compensating exchange carriers for the origination or termination of interstate and foreign telecommunications in order to eliminate unlawful discrimination or preferences resulting from prior methods. The rules establish procedures for the pooling of revenues for such services also.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–30376 Filed 11–27–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, December 3, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, December 5, 1996 at 10:00 a.m.

PLACE: 999 E. Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Future Meeting Dates
Correction and Approval of Minutes
Advisory Opinion 1996–48: Bruce D. Collins on behalf of National Cable Satellite Corporation
Administrative Matters

PERSONS TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–30660 Filed 11–26–96; 3:02 pm]

BILLING CODE 6715–01–M

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.: 203–011393–001.

Title: U.S./Canary Islands and West Africa Carrier Discussion Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
SafBank Line, Ltd.

Synopsis: The proposed modification changes the name of the Agreement to the U.S./West Africa Carrier Discussion Agreement, updates the address of Lykes Bros. and deletes the Canary Islands and inland countries in Africa from the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Dated: November 22, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–30384 Filed 11–27–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Susquehanna Bancshares, Inc., Lititz, Pennsylvania; to acquire 100 percent of the voting shares of Atcorp, Inc., Marlton, New Jersey, and thereby indirectly acquire Equity National Bank, Atco, New Jersey, and Farmers Banc Corp., Mullica Hill, New Jersey, and thereby indirectly acquire Farmers national Bank, Mullica Hill, New Jersey.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Bancshares, Inc. Jennings, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank, Jennings, Louisiana (in organization).

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation/Bremer Financial Corporation, St. Paul, Minnesota; to acquire 100 percent of the voting shares of First American Bank, N.A., Moorhead, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, November 22, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–30436 Filed 11–27–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heartland Financial USA, Inc., Dubuque, Iowa; to acquire Tri-State Community Credit Corporation, Dubuque, Iowa, and thereby engage in operating a consumer finance company, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y; and act as agent in the sale of insurance directly related to extensions of credit by the consumer finance company, pursuant to § 225.25(b)(8)(ii)(A-C) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 22, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–30435 Filed 11–27–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 4, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–30659 Filed 11–26–96; 2:54 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Protection and Advocacy System Annual Statement of Objectives and Priorities.

Description: Section 142 (a)(2) of the DD Act requires the State Protection and Advocacy System (P&As) to develop, by January 1st of each year, a Statement of Objectives and Priorities (SOP) and provide an opportunity for the public to comment on it. The final statement must be submitted (along with the prior year's PPR) to the regional office of DHHS. The Statement will provide the public and the Department a better understanding of the operation of the advocacy services and provide more comprehensive reporting to Congress.

Respondents: State, Local or Tribal Govt.; individuals or households; and not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SOP	55	1	40	2,200

Estimated Total Annual Burden Hours: 2,200.

Title: State Developmental Disabilities Council Three Year State Plan.

Description: Part B, Sections 122 and 124 of the DD Act requires that each State must prepare and submit to the Secretary, DHHS, and have in effect, a State Plan providing information on individuals with developmental disabilities within a particular State and a description of the service needs of individuals with developmental disabilities and their families. The plan sets forth the goals and specific objectives to be achieved by the State in meeting the service needs of this population. The Plan describes State priorities, strategies, and actions, and the allocation of funds to meet stated goals and objectives.

Respondents: State, Local or Tribal Govt.; individuals or housholds; and not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Three Year State Plan	55	1	100	5,500

Estimated Total Annual Burden Hours: 5,500.

Title: Developmental Disabilities Annual Protection and Advocacy Program Performance Report.

Description: Section 107(b) of the DD Act requires that by January 1st of each year P&A system established in a State shall prepare and transmit to the Secretary a Report describing activities, accomplishments, and expenditures of the System during the preceding year. This Report will provide ADD with information needed to ascertain whether a State is fulfilling the requirements of Public Law 104–183.

The Report will provide ADD an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests. It will also be used to submit an Annual Report to Congress.

Respondents: State, Local or Tribal Govt.; individuals or households; and not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DD P&A PPR	55	1	40	2,200

Estimated Total Annual Burden Hours: 2,200.

Title: State Developmental Disabilities Council Annual Program Performance Report.

Description: Section 107 of the DD Act requires the State DD Councils of each State to prepare and transmit to the Secretary, DHHS, an annual Report for the preceding fiscal year. It is to describe the activities and resultant accomplishments carried out with Part B funds received for the Federal fiscal year, and the general situation in the State for individuals with developmental disabilities. The information is necessary for annual technical assistance and monitoring, as well as preparation of the Secretary's Annual Report to the President, the Congress, and the National Council on Disabilities.

Respondents: State, Local or Tribal Govt.; individuals or households; and not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DD Council PPR	55	1	44	2,420

Estimated Total Annual Burden Hours: 2,420.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 22, 1996.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 96–30455 Filed 11–27–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96E–0196]

Determination of Regulatory Review Period for Purposes of Patent Extension; DOMITOR®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DOMITOR® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product DOMITOR® (medetomidine hydrochloride). DOMITOR® is indicated as a sedative and analgesic in dogs over 12 weeks of age to facilitate clinical examinations, clinical procedures, minor surgical procedures not requiring muscle relaxation, and minor dental procedures not requiring intubation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DOMITOR® (U.S. Patent No. 4,544,664) from ORION-YHTYMA OY and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 20, 1996, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of DOMITOR® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DOMITOR® is 4,000 days. Of this time, 2,294 days occurred during the testing phase of the regulatory review period, while 1,706 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: April 8, 1985. FDA has verified the applicant's claim that April 8, 1985, was the date the investigational new animal drug application became effective.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: July 19, 1991. The applicant claims July 2, 1991, as the date the new animal drug application (NADA) for DOMITOR® (NADA 140–999) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgement letter assigning a number to the NADA was July 19, 1991, which is considered to be the initially submitted date for the NADA.

3. *The date the application was approved*: March 19, 1996. FDA has verified the applicant's claim that NADA 140–999 was approved on March 19, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,095 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 28, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–30388 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0194]

Determination of Regulatory Review Period for Purposes of Patent Extension; DOMITOR®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DOMITOR® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example,

half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product DOMITOR® (medetomidine hydrochloride). DOMITOR® is indicated as a sedative and analgesic in dogs over 12 weeks of age to facilitate clinical examinations, clinical procedures, minor surgical procedures not requiring muscle relaxation, and minor dental procedures not requiring intubation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DOMITOR® (U.S. Patent No. 4,670,455) from ORION-YHTYMA OY and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 20, 1996, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of DOMITOR® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DOMITOR® is 4,000 days. Of this time, 2,294 days occurred during the testing phase of the regulatory review period, while 1,706 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: April 8, 1985. FDA has verified the applicant's claim that April 8, 1985, was the date the investigational new animal drug application became effective.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: July 19, 1991. The applicant claims July 2, 1991, as the date the new animal drug application (NADA) for DOMITOR® (NADA 140–999) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgement letter assigning a number to the NADA was July 19, 1991, which is considered to be the initially submitted date for the NADA.

3. *The date the animal drug was approved*: March 19, 1996. FDA has verified the applicant's claim that NADA 140–999 was approved on March 19, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,095 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 28, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–30389 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0271]

Determination of Regulatory Review Period for Purposes of Patent Extension; TAXOTERE®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TAXOTERE® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TAXOTERE® (docetaxel). TAXOTERE® is indicated for the treatment of patients with locally advanced or metastatic breast cancer who have progressed during anthracycline-based therapy, or who have relapsed during anthracycline-based adjuvant therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TAXOTERE® (U.S. Patent No. 4,814,470) from Rhone-Poulenc Rorer S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's

eligibility for patent term restoration. In a letter dated September 10, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TAXOTERE® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TAXOTERE® is 2,016 days. Of this time, 1,358 days occurred during the testing phase of the regulatory review period, while 658 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 8, 1990. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on November 8, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 27, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for TAXOTERE® (NDA 20–449) was initially submitted on July 27, 1994.

3. *The date the application was approved*: May 14, 1996. FDA has verified the applicant's claim that NDA 20–449 was approved on May 14, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,035 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 28, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–30386 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0275]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYOVIEW™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYOVIEW™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MYOVIEW™ (technetium tc99m tetrofosmin). MYOVIEW™ is indicated for the scintigraphic delineation of regions of reversible ischemia in the presence or absence of infarcted myocardium. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MYOVIEW™ (U.S. Patent No. 5,045,302) from Amersham International PLC, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 10, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MYOVIEW™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYOVIEW™ is 2,062 days. Of this time, 1,084 days occurred during the testing phase of the regulatory review period, while 978 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* June 20, 1990. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on June 20, 1990.

2. *The date the application was initially submitted with respect to the*

human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: June 7, 1993. The applicant claims June 4, 1993, as the date the new drug application (NDA) for MYOVIEW™ (NDA 20–372) was initially submitted. However, FDA records indicate that NDA 20–372 was submitted on June 7, 1993.

3. *The date the application was approved:* February 9, 1996. FDA has verified the applicant's claim that NDA 20–372 was approved on February 9, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 491 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 28, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–30387 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0450]

Advanced Technology Laboratories; Premarket Approval of Ultramark® 9 High Definition™ Imaging (HDI™) Ultrasound System With L10–5 Scanhead

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Advanced Technology Laboratories, Bothell, WA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Ultramark® 9 HDI™ Ultrasound System with L10–5 Scanhead. After reviewing the recommendation of the Radiological Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on April 11, 1996, of the approval of the application.

DATES: Petitions for administrative review by December 30, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION: On February 17, 1994, Advanced Technology Laboratories, Bothell, WA 98041–3003, submitted to CDRH an application for premarket approval of the Ultramark® 9 HDI™ Ultrasound System with L10–5 Scanhead. The device is an Ultrasonic Pulse-Echo Imaging System. The Ultramark® 9 HDI™ Ultrasound System with L10–5 Scanhead is indicated as an adjunct to mammography and physical breast examination to provide a high degree of physician confidence in differentiating benign from malignant or suspicious breast lesions. This device provides the physician with additional information to guide a biopsy decision. Utility of this system has been demonstrated for lesions with an indeterminate level of suspicion (LOS 2–4) by conventional diagnostic modalities. Using the HDI™ system in the evaluation of solid mass characteristics can reduce the number of biopsies performed on indeterminate lesions.

On December 11, 1995, the Radiological Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On April 11, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 30, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 24, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–30443 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0451]

Cardiac Pacemakers, Inc.; Premarket Approval of VIGOR® DR Pacemaker System/VIGOR® SR Pacemaker System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Pacemakers, Inc., St. Paul, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the VIGOR® DR Pacemaker System/ VIGOR® SR Pacemaker System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on June 21, 1995, of the approval of the application.

DATES: Petitions for administrative review by December 30, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carole C. Carey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On September 30, 1994, Cardiac Pacemakers, Inc., St. Paul, MN 55112, submitted to CDRH an application for premarket approval of the following: VIGOR® DR (dual chamber) Model 1230/1235 Pulse Generators, VIGOR® SR (single chamber) Model 1130/1135 Pulse Generators, and the Model 2075 Software Module to be used with commercially available CPI® Model 2035 Handheld Programmer and Model 6575 or 6577 Telemetry Wand; Model 6942 Bidirectional Torque Wrench; Model 6562 Horseshoe Magnet; Model 6580 Electrogram Cable; Model 6589 Printer Paper; and commercially available pacemaker leads and accessories that are compatible with the pulse generators. The devices are generally indicated for long-term cardiac pacing. Generally accepted indications for long-term pacing include, but are not limited to, sick sinus syndrome; chronic sinus arrhythmias; including sinus bradycardia; sinus arrest; and sinoatrial (SA) block; second- and third-degree atrioventricular (AV) block; bradycardia-tachycardia syndrome; and carotid sinus syndrome. Patients who demonstrate hemodynamic improvement from AV synchrony should be considered for one of the dual-chamber or atrial pacing modes. Dual-chamber modes are specifically indicated for treatment of conduction disorders that require restoration of rate and AV synchrony, including varying degrees of AV block; low cardiac output or congestive heart failure related to bradycardia; and certain tachyarrhythmias. The adaptive-rate pacing modes of the VIGOR® DR and VIGOR® SR pulse generators are indicated for patients exhibiting chronotropic incompetence and who would benefit by increased pacing rates concurrent with physical activity.

On May 9, 1995, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On June 21, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 30, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 7, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–30508 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0443]

Review of Clinical Safety Data in Marketing Applications; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop, as part of its ''good review practices'' (GRP's), to provide an opportunity for input from the pharmaceutical industry, academia, and the public on the principles and methods being used by FDA in the review of clinical safety data in new drug product applications. Information and ideas generated at the workshop will be used to develop a guidance for reviewers who participate in the agency's clinical review process. A working draft of that guidance, ''Draft Guidance for Reviewers: Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review,'' along with a tentative

workshop agenda, will be available 3 weeks before the workshop.

DATES: The public workshop will be held on Wednesday, December 18, 1996, from 8:30 a.m. to 5 p.m. Because space is limited, interested parties are encouraged to register as soon as possible, or at least by December 13, 1996. There is no registration fee for the workshop. The administrative docket will remain open until January 31, 1997, to receive written comments, data, information, or views on the draft guidance or the workshop.

ADDRESSES: The public workshop will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD. Persons interested in attending can register by faxing their name and title, organization name, if any, address, telephone and fax numbers to Paul A. David at FAX 301–594–2859.

Three weeks prior to the workshop, a copy of the draft guidance for reviewers, along with a tentative workshop agenda, will be available through CDER's Fax-on-Demand, 301–827–0577 or 800–342–2722, under the index, document no. 0506. Information on the workshop and registration also will be available via the Internet using the World Wide Web (WWW). To connect to the CDER home page, type http://www.fda.gov/cder and go to the ''What's Happening'' section. A transcript of the workshop will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 business days after the workshop at a cost of 10 cents per page.

Written comments on the draft reviewer guidance or on the workshop can be submitted until January 31, 1997, to the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be viewed at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul A. David, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–120), 5600 Fishers Lane, Rockville, MD 20857, 301–594–5530.

SUPPLEMENTARY INFORMATION: In March 1994, FDA launched a major initiative to develop and implement GRP's. The goal of the GRP's initiative is to identify and implement methods for improving the quality and efficiency of the clinical reviews of new product applications.

To manage this large initiative, the agency developed a multitrack plan to be implemented in stages. Tasks currently under development include: Defining the critical elements of the clinical review; designing a process for feedback, evaluation, and evolution in review practices and procedures; developing a data base on regulatory policy for clinical review; and defining good data handling practices.

The December 18, 1996, workshop is a part of an effort to define the critical elements of the clinical safety review process and develop a guidance for reviewers that describes those elements and sets institutional expectations for each level of review. The guidance being developed is intended for use by agency officers and other clinical reviewers during the review of new drug product applications. The draft guidance will be discussed at the workshop.

The primary goal of the workshop is to provide an opportunity for input from industry, academia, and the public on the principles and methods for the review of clinical safety data in new drug applications. To encourage the exchange of ideas and comments, the day-long workshop has been divided into the following four major sessions: (1) Characterizing the exposed population, establishing the common adverse events profile, establishing the serious adverse events profile, and integrating important safety findings using the review of systems approach. Each session will include a panel discussion and a period at the end for public comment.

The agency hopes to answer the following questions during the workshop: (1) What approaches to safety data review could speed the overall review process? (2) What steps could be taken to standardize the presentation of safety review data? (3) Are there review or review-related issues that are especially troublesome for those submitting safety data? (4) Do some approaches to data presentation make the reviewer's job easier or more difficult?

As it proceeds with the finalization of the guidance for reviewers, the agency will consider carefully all data and information presented at the workshop and submitted in writing on the guidance and workshop

Dated: November 21, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–30509 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Uncompensated Services Reporting and Recordkeeping—42 CFR 124, Subpart F (OMB No. 0915–0077)—Extension and Revision

Titles VI and XVI of the PHS Act, commonly known as the Hill-Burton Act, provide for government grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide a ''reasonable volume'' of services to persons unable to pay. Facilities are also required to provide assurances periodically that the required level of uncompensated care is being provided, and to follow certain notification and recordkeeping procedures. These requirements are referred to as the uncompensated services assurance.

Certain types of facilities can apply for one of four compliance alternatives which reduce the reporting, recordkeeping, and notification requirements. A new compliance alternative has been added to this clearance package.

The regulations contain provision for reporting to the government the amount of free care provided, as well as provisions for following certain notification and recordkeeping procedures. The regulations also define the procedures for applying for certification (and annual recertification) under a compliance alternative. All of these regulations are included in this clearance request. The Uncompensated

Services Assurance Report (USAR) (HRSA form 710) is one of the methods of reporting the amount of free care provided.

There are no changes to the USAR form. The burden estimates have been reduced because many facilities have met their obligation and are no longer obligated to report. Burden estimates are as follows:

Type of requirement and regulatory citation	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Disclosure Burden (42 CFR):					
Published Notices (124.504(a))	863	1	863	1.0	863
Individual Notices (124.504(c))	863	1	863	50.0	43,150
Determinations of Eligibility (124.507)	863	396	341,748	1.25	427,185
Reporting:					
Uncompensated Services Report—HRSA Form 710 (124.509(a))	374	1	374	14.0	5,236
Application for Compliance Alternatives:					
Public Facilities (124.513)	5	1	5	6.0	30
Small Obligation Facilities (124.514(c))	0	.....	.....	.....	.....
CHC, MHC, NHSC (124.515(b)(2)(ii) and 124.515(b)(3)(iii)(B))	0	.....	.....	.....	.....
Charitable Facilities (124.516(c))	2	1	2	6.0	12
Annual Certification for Compliance Alternatives:					
Public Facilities (124.509(b))	355	1	355	0.5	178
Charitable Facilities (124.509(b))	19	1	19	0.5	10
Small Obligation Facilities (124.509(c))	2	1	2	0.5	1
Complaint Information (124.511(a)):					
Individuals	4	1	4	0.25	1
Facilities	4	1	4	0.5	2
Total reporting and notification burden	1,250	.....	344,239	.....	476,668

Recordkeeping requirements	Number of record-keepers	Hours per year	Total hour burden
Non-alternative Facilities (124.510(a))	863	70	60,410
Small Obligation Facilities (124.510(b))	0	.....	.....
Public Facilities (124.510(b))	0	.....	.....
Charitable Facilities (124.510(b))	0	.....	.....

Total burden for this project is estimated to be 537,078 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 22, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–30385 Filed 11–27–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 22, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–30397 Filed 11–27–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4051–N–03]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1515. (This is not a toll-free number. A Telecommunications Device

for Hearing and Speech-impaired Individuals (TTY) is available at 1-800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of l989 (Pub.L. 101-235), approved December 15, 1989, requires that HUD ''publish in the Federal Register a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from July 1, 1996 through September 30, 1996.

1. Waters Mortgage Corporation, Plantation, Florida

Action: Withdrawal of HUD–FHA mortgagee approval and a proposed civil money penalty of $214,000.

Cause: A HUD Office of Inspector General Audit that disclosed violations of HUD–FHA Section 203(k) program requirements that included: alleged false statements to HUD–FHA concerning the source of mortgagors' downpayments and the amount paid for property; charging ineligible/unsupported fees; permitting ineligible consultant fees to be included in mortgage amounts; improper underwriting; property rehabilitation work not timely completed; and failure to verify mortgagor assets to close loans.

In addition, a HUD monitoring review by the Quality Assurance Division that cited violations of the Section 203(k) program that included: miscalculating the maximum mortgage amounts; permitting the mortgagor entity to circumvent the required investment; violating HUD's 7 unit limitation; making unauthorized disbursements from Rehabilitation Escrow Accounts; increasing the Department's inability by obtaining HUD–FHA mortgage insurance on defaulted loans and increasing the mortgage amounts; and improperly advising the Department that certain defaulted loans had been paid in full and the HUD–FHA mortgage insurance terminated.

2. Provident Home Mortgage Corporation, El Segundo, California

Action: Withdrawal of HUD–FHA mortgagee approval and a proposed civil money penalty in the amount of $50,000.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA requirements that included: failure to remit to HUD–FHA Up-Front Mortgage Insurance Premiums (UFMIPs); failure to provide evidence that UFMIPs have been remitted to HUD–FHA; failure to provide dates of payment of UFMIPs evidencing the timeliness of payment; failure to maintain an acceptable Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to comply with the reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to properly maintain loan records; and failure to timely submit loans to HUD–FHA for insurance endorsement.

3. FT Mortgage d/b/a Carl I. Brown Company, Dallas, Texas

Action: Settlement Agreement that includes indemnification to HUD–FHA for any claim losses in connection with 94 improperly originated HUD–FHA insured mortgages and 15 Title I loans; payment to the Department in the amount of $88,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that cited violations of HUD–FHA Section 203(k) program requirements and the Title I property improvement loan program requirements including: failure to conduct face-to-face interviews with prospective borrowers; submission of alleged false inspection reports stating that 203(k) rehabilitation work had been completed; submission of appraisal reports citing values that were overinflated; submission of 203(k) rehabilitation plans containing work items that were reflected on the appraisal reports; failure to properly document the borrowers source of funds to close the transactions; failure to adequately determine the borrowers' acquisition cost; failure to properly originate Title I home improvement loans; permitting the same individual to complete the appraisal reports, prepare 203(k) rehabilitation plans, and perform compliance inspections on the completed rehabilitation work, failure to properly calculate maximum mortgage amounts; approving and closing a loan program that was not eligible under the 203)k) program; and approving a qualifying loan assumption using an alleged false Verification of Employment form.

4. Stuart-Wright Mortgage Banker, La Palma, California

Action: Settlement Agreement that includes: indemnification to the Department in connection with 37 improperly originated HUD–FHA insured mortgages; a buydown of 46 overinsured mortgages; payment of a civil money penalty in the amount of $32,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: use of alleged false gift letters; approving mortgagors that did not meet minimum investment requirements; use of funds provided by sellers and/or real estate agents for downpayments and/or closing costs; permitting pre-release of escrow deposits with subsequent redeposit for the benefit of the mortgagors; permitting unexplained distributions to be reflected on HUD–1 Settlement Statements; failure to implement and maintain an adequate Quality Control Plan; failure to verify mortgagors' source of funds used to close the transaction; and failure to report program violations to HUD–FHA.

5. Vanderbilt Mortgage and Finance, Inc., Knoxville, Tennessee

Action: Settlement Agreement that includes: submission of accurate loan data to the Department under the Home Mortgage Disclosure Act (HMDA); payment of a civil money penalty in the amount of $5,000; and corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Submission of inaccurate data to HUD–FHA under HMDA.

6. Kaufman and Broad Mortgage Company, Woodland Hills, California

Action: Settlement Agreement that includes: submission of accurate loan data to the Department under the Home Mortgage Disclosure Act (HMDA); payment of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Submission of inaccurate data to HUD–FHA under HMDA.

7. Dollar Mortgage Corporation d/b/a Heritage West Mortgage, La Mesa, California

Action: Settlement Agreement that includes: submission of accurate loan data to the Department under the Home Mortgage Disclosure Act (HMDA); payment of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Submission of inaccurate data to HUD–FHA under HMDA.

8. Home Owners Funding Corp., Bloomington, Minnesota

Action: Proposed Settlement Agreement that would include: payment to the Department of a civil money penalty in the amount of $2,500; and

corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Failure to timely submit HMDA loan data to HUD–FHA.

9. Shelter Mortgage Services, Inc., Haddonfield, New Jersey

Action: Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Failure to timely submit HMDA loan data to HUD–FHA.

10. Amerifirst Financial, Inc., Mesa, Arizona

Action: Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA requirements under HMDA.

Cause: Failure to timely submit HMDA loan data to HUD–FHA.

11. Lovell & Malone, Inc., Nashville, Tennessee

Action: Proposed Settlement Agreement that would include: payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Failure to timely submit HMDA loan data to HUD–FHA.

12. Parmann Mortgage Associates, Inc., Ramsey, New Jersey

Action: Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under HMDA.

Cause: Failure to timely submit HMDA loan data to HUD–FHA.

13. Bankers Affiliated Mortgage, Inc., Riverside, California

Action: Withdrawal of HUD–FHA mortgagee approval.

Cause: Failure to meet HUD–FHA financial requirements for approval as a mortgagee.

14. S&S Financial, Inc., Woodland Hills, California

Action: Withdrawal of HUD–FHA mortgagee approval.

Cause: Failure to submit an acceptable audited annual financial statement.

15. Mortgagees and Title I Lenders That Failed To Comply With HUD–FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

Action: Withdrawal of HUD–FHA mortgagee approval and Title I lender approval.

Cause: Failure to submit to the Department the required annual audited financial statement and/or remit the required annual recertification fee.

Mortgagees Withdrawn: FIRST NATIONAL BANK, OSCEOLA, AR; HOME FEDERAL SAVINGS AND LOAN, JONESBORO, AR; SECURITY BANK CONWAY FSB, CONWAY, AR; BANK OF CABOT, CABOT, AR; MERCHANTS NATIONAL BANK, FORT SMITH, AR; TRANSAMERICA OCCIDENTAL LIFE INSURANCE, LOS ANGELES, CA; SAN FRANCISCO FEDERAL SAVINGS, SAN FRANCISCO, CA; HOUSEHOLD BANK FSB, WOOD DALE, IL; FIRST NATIONAL BANK FT COLLINS, FORT COLLINS, CO; GREAT COUNTRY BANK, ANSONIA, CT; PAN AMERICAN MORTGAGE CORP, MIAMI, FL; AMERICAN BANK OF THE SOUTH, MERRITT ISLAND, FL; AMERICAN MORTGAGE CORP–SOUTH, MERRITT ISLAND, FL; ANDREW JACKSON SAVINGS BANK, GAINESVILLE, FL; ANDREW JACKSON SAVINGS BANK, TALLAHASSEE, FL; MIDDLE GEORGIA BANK, BYRON, GA; FIRST SAVINGS BANK, DANVILLE, IL; FIRST NATIONAL BANK SPRINGFIELD, SPRINGFIELD, IL; HERITAGE PULLMAN BANK AND TRUST, CHICAGO, IL; FIRST BANK AND TRUST COMPANY, MOUNT VERNON, IL; FIRST NATIONAL BANK CHICAGO, CHICAGO, IL; HERITAGE BANK BLUE ISLAND, TINLEY PARK, IL; NORTH FEDERAL SAVINGS BANK; CHICAGO, IL; HARRIS BANK NAPERVILLE, NAPERVILLE, IL; NBD BANK NA, INDIANAPOLIS, IN; STAR FINANCIAL BANK–COLUMBIA, COLUMBIA CITY, IN; CITIZENS BANK WESTERN INDIANA, TERRE HAUTE, IN; FIRSTAR BANK COUNCIL BLUFFS, COUNCIL BLUFFS, IA; FIRSTAR BANK SIOUX CITY, SIOUX CITY, IA; PELLA NATIONAL BANK, PELLA, IA; IOWA STATE SAVINGS BANK, CLINTON, IA; CENTRAL NATIONAL BANK, JUNCTION CITY, KS; MANHATTAN NATIONAL BANK, MANHATTAN, KS; UNITED KANSAS BANK AND TRUST, MERRIAM, KS; CITIZENS NATIONAL BANK, PAINTSVILLE, KY; NATIONAL CITY BANK, ASHLAND, KY; BANK OF MURRAY, MURRAY, KY; FARMERS DEPOSIT BANK, FLEMINGSBURG, KY; LIBERTY NATIONAL BANK AND TRUST, RADCLIFF, KY; LONDON BANK AND TRUST COMPANY, LONDON, KY; CITIZENS NATIONAL BANK, HAMMOND, LA; FIRST NATIONAL BANK ST MARY PA, MORGAN CITY, LA; NATIONAL MORTGAGE CORP, BATON ROUGE, LA; LOYOLA FSB, BALTIMORE, MD; CAPE COD BANK AND TRUST COMPANY, HYANNIS, MA; JOHN HANCOCK MUTUAL INSURANCE CO, BOSTON, MA; WARE CO–OPERATIVE BANK, WARE, MA; STATE STREET BANK AND TRUST CO, BOSTON, MA; PAUL REVERE PROTECT LIFE INSURANCE, WORCESTER, MA; PAUL REVERE VARIABLE ANNUAL INSURANCE CO, WORCESTER, MA; OLD KENT BANK–SOUTHWEST, KALAMAZOO, MI; OLD KENT BANK BIG RAPIDS, BIG RAPIDS, MI; SAULT BANK, SAULT SAINTE MARIE, MI; ANCHOR FEDERATED, MUSKEGON, MI; ANCHOR FEDERATED, GRAND RAPIDS, MI; COMMERCIAL STATE BANK, ST. PAUL, MN; GOODHUE COUNTY NATIONAL BANK, RED WING, MN; CENTER NATIONAL BANK, LITCHFIELD, MN; FIRST NATIONAL BANK, NORTHFIELD, MN; FIRST NATIONAL BANK, BAUDETTE, MN; STATE BANK OF COKATO, COKATO, MN; CITIZENS STATE BANK ST. LOUIS PARK, ST. LOUIS PARK, MN; INVESTORS SAVINGS BANK FSB, WAYZATA, MN; FIRST FEDERAL BANK FOR SAVINGS, STARKVILLE, MS; BAILEY MORTGAGE COMPANY, JACKSON, MS; SOUTHTRUST BANK SOUTH MISSISSIPPI, BILOXI, MS; COMMERCE BANK POPLAR BLUFF NA, POPLAR BLUFF, MO; AMERIFIRST BANK, SIKESTON, MO; FIRST NATIONAL BANK SIKESTON, SIKESTON, MO; CITY NATIONAL SAVINGS ALA, JEFFERSON CITY, MO; FIRST INTERSTATE BANK–MONTANA NA, KALISPELL, MT; BANK OF MONTANA BUTTE, BUTTE, MT; FIRSTIER BANK NA OMAHA NE, OMAHA, NE; FIRST BANK, OMAHA, NE; SOUTHWEST BANK AND TRUST COMPANY OMAHA, OMAHA, NE; PROVIDENT FEDERAL SAVINGS BANK, LINCOLN, NE; NFS SAVINGS BANK, NASHUA, NH; FIRST NATIONAL BANK PORTSMOUTH, PORTSMOUTH, NH; BANKERS COOP MORTGAGE SERVICES, BEDFORD, NH; INTERNATIONAL STATE BANK, RATON, NM; SUNWEST BANK OF ROSWELL NA, ROSWELL, NM; FIRST NATIONAL BANK, CLOVIS, NM; SUN WORLD FEDERAL SAVINGS BANK, ALAMOGORDO, NM; ALBUQUERQUE NM UNION SAVINGS BANK, ALBUQUERQUE, NM; WYOMING

COUNTY BANK, WARSAW, NY; CHASE MANHATTAN BANK NA PR, HATO REY, PR; RIVER BANK AMERICA, NEW ROCHELLE, NY; INTERNATIONAL LADIES GAR WK UN, NEW YORK, NY; PENSION FUND LOCAL 1 AMALG LITH, NEW YORK, NY; MORGAN STANLEY MTG CAPITAL INC, NEW YORK, NY; FIRST STATE BANK, CAVALIER, ND; FIRST SOUTHWEST BANK-MANDAN, MANDAN, ND; STUTSMAN COUNTY STATE BANK, JAMESTOWN, ND; BANK OF TIOGA, TIOGA ND, BANK ONE MARIETTA NA, MARIETTA OH, FIRST BANK OF OHIO TIFFIN, TIFFIN, OH; MUTUAL FEDERAL SAVINGS BANK MI, MIAMISBURG, OH; WESTSTAR BANK NA, BARTLEVILLE, OK; MINERSVILLE SAFE DEPOSIT BANK, MINERSVILLE, PA; GERMANTOWN SAVINGS BANK, BALA CYNWYD, PA; LINCOLN SAVINGS BANK, CARNEGIE, PA; FIRST KEYSTONE FEDERAL SAVINGS, MEDIA, PA; CENTRAL PENNSYLVANIA SAVINGS, SHAMOKIN PA, GRANGER O HARA MORTGAGE, FLORENCE, SC; FIRST NATIONAL BANK SHELBYVILLE, SHELBYVILLE, TN; COFFEE COUNTY BANK, MANCHESTER, TN; TENNESSEE COMUNITY BANK, COVINGTON, TN; CORPUS CHRISTI NATIONAL BANK, CORPUS CHRISTI, TX; PARKER SQUARE BANK NA, WICHITA FALLS, TX; ZIONS FIRST NATIONAL BANK, SALT LAKE CITY, UT; AMERIBANC SAVINGS BANK, ANNANDALE, VA; MUTUAL MORTGAGE CORPORATION, VIENNA, VA; YAKIMA FEDERAL SAVINGS AND LOAN, YAKIMA, WA; FIRST INTERSTATE BANK WASH NA, SEATTLE, WA; WEST BEND SAVINGS BANK, WEST BEND, WI; FIRSTAR BANK MILWAUKEE NA, WAYZATA, MN; FIRST WISCONSIN NATIONAL BANK, OSHKOSH, WI; CITY BANK, HONOLULU, HI; FPI MORTGAGE COMPANY, SACRAMENTO, CA; ARCS MORTGAGE INC, CALABASAS, CA; NORWEST–DIRECTORS MTG LN CORP, RIVERSIDE, CA; TRANSAMERICA LF INS ANNUITY CO, LOS ANGELES, CA; LA CRUMBRE SAVINGS BANK, SANTA BARBARA, CA; GOLDEN OAK BANK, OAKHURST, CA; TST HARMS INC, JACKSONVILLE, FL; HOME BANK OF TENNESSEE, DUCKTOWN, TN; AMERICAN BANK AND TR COUSHATTA, COUSHATTA, LA; GREAT NORTHERN MORTGAGE CO, ROLLING MEADOWS, IL; TEXAS BANK, ODESSA, TX; UNITED SAVINGS BANK, LEBANON, MO; BOATMENS FIRST NATIONAL BANK, OKLAHOMA CITY, OK; UNITED SECURITY BANK, SPOKANE, WA; FIRST STATE BANK, ALEXANDRIA, MN; MERCHANTS AND FARMERS BANK TR, LEESVILLE, LA; UNIVERSAL NATIONAL BANK, MIAMI, FL; ALCOLA MORTGAGE CORPORATION, HUNTINGTON BEACH, CA; NATURE COAST MORTGAGE INC, BROOKSVILLE, FL; CAPP MORTGAGE INC, SEVIERVILLE, TN; FOUNDERS BANK OF ARIZONA, SCOTTSDALE, AZ; FIRSTAR BANK MILWAUKEE NA, MILWAUKEE, WI; SOUTHTRUST BANK DECATUR, DECATUR, AL; BAY FEDERAL SAVINGS AND LOAN, BALTIMORE, MD; THATCHER BANK FSB, SALIDA, CO; COMMUNITY BANK PETTIS COUNTY, SEDALIA, MO; WESTBAY CAPITAL, NEWPORT BEACH, CA; BANK OF SCOTTSDALE, SCOTTSDALE, AZ; EL CAPITAN NATIONAL BANK, SONORA, CA; SUNSET CREDIT SERVICES, SANTA FE SPRINGS, CA; DEVIN REALTY INC, BOULDER, CO; BANK OF FLORIDA IN MIAMI, MIAMI, FL; SOUTHERN NATIONAL BANK OF NC, WINSTON–SALEM, NC; EMPIRE MORTGAGE COMPANY INC, SPRINGFIELD, MO; DLJ MORTGAGE CAPITAL INC, NEW YORK, NY; CITIZENS GUARANTY BANK, IRVINE, CA; PALMER AMERICAN NATIONAL BANK, DANVILLE, IL; NORTHERN TRUST BANK OHARE NA, CHICAGO, IL; PEOPLES BANK WESTERN PA, NEW CASTLE, PA; EQUITY NATIONAL MORTGAGE GROUP, OKLAHOMA CITY, OK; BARNETT BANK OF ATLANTA, ATLANTA, GA; NORTHERN TRUSTBANK–DU PAGE, OAK BROOK, IL; DESERT MORTGAGE CORPORATION, PALM DESERT, CA; UNION COUNTY BANK, BLAIRSVILLE, GA; NORTHERN TRUST BANK, LAKE FOREST, IL; BUSINESS MORTGAGE AND TRUST CO, CLEARWATER, FL; FIRST KNOXVILLE BANK, KNOXVILLE, TN; MCMILLIN MORTGAGE INCORPORATED, SAN DIEGO, CA; UBS SECURITIES INC, NEW YORK, NY; COMMUNITY BANK, LEXINGTON, KY; GEAUGA SAVINGS BANK, NEWBURY, OH; COMMERCE BANK, LAWRENCE, KS; SELECT MORTGAGE ASSOCIATES INC, BELLEVUE, WA; UNITED NEW MEXICO BANK LEA CITY, HOBBS, NM; M AND I NATIONAL BANK OF ASHLAND, ASHLAND, WI; CALCORP FINANCE INC, MASON CITY, IA; OLD KENT BANK CADILLAC, CADILLAC, MI; TMC CORP, DES MOINES, IA; AMERICAN NATIONAL BANK FREMONT, FREMONT, NE; GATEWAY BANK, LAGRANGE, IN; FIRSTAR BANK-MINOCQUA, MINOCQUA, WI; INTRUST BANK EL DORADO NA, EL DORADO, KS; OLD SECOND COMMUNITY BANK AURORA, AURORA, IL; PRUDENTIAL MORTGAGE BANKERS CO, FORT LAUDERDALE, FL; UPTOWN NATIONAL BANK CHICAGO, CHICAGO, IL; HERITAGE GLENWOOD BANK, GLENWOOD, IL; SOUTHTRUST BANK MIDDLE TN, NASHVILLE, TN; ARKANSAS BANK, JONESBORO, AR; BEVERLY HILLS SECURITIES COMPANY, PHOENIX, AZ; INTERSTATE BANK OF OAK FOREST, OAK FOREST, IL; SAN ANTONIO MORTGAGE SERVICES, SAN ANTONIO, TX; BANK ONE APPLETON NA, APPLETON, WI; M AND I BANK, CAMBRIDGE, WI; PEOPLES STATE BANK, CLAREMORE, OK; GOLDCREST FINANCIAL INC, CORONA, CA; OXFORD BANK AND TRUST, ADDISON, IL; CULBERTSON STATE BANK, CULBERTSON, MT; BANK OF MYSTIC, MYSTIC, CT; ADMIRAL MORTGAGE CORP, DOVER, DE; FIRST NATIONAL BANK AND TRUST CO, NICHOLASVILLE, KY; FAMILY TRUST MORTGAGE INC, LAUDERHILL, FL; AUSTIN–WILLIAMS MORTGAGE CORP, AUSTIN, TX; PHELPS COUNTY BANK, ROLLA, MO; FARMERS STATE BANK, WALLACE, NE; SUBURBAN MORTGAGE GROUP INC, BLUEBELL, PA; HAWKEYE BANK OF ANKENY, ANKENY, IA; MERCANTILE MORTGAGE BROKERS, RYE, NY; FIRST COLONIAL BANK NA, PRAIRIE VILLAGE, KS; FIRSTAR BANK MT PLEASANT, IA; CITIZENS STATE BANK, WICKLIFFE, KY; RUSHMORE FEDERAL SAVINGS BANK, BETHESDA, MD; INTRUST BANK HAGSVILLE NA, HAYSVILLE, KS; MAIN STREET SAVINGS BANK FSB, CONYERS, GA; LIBERTY MORTGAGE CORP NW, ARLINGTON HEIGHTS, IL; HOME AMERICA MORTGAGE CO, BATON ROUGE, LA; TEXAS MORTGAGE CONSULTANTS INC, AUSTIN, TX; SOUTHWEST BANK, FORT WORTH, TX; VINE STREET TRUST CO, LEXINGTON, KY; CITIZENS STATE BANK, ROYSE CITY, TX; STATE SAVINGS BANK OF CARO, CARO, MI; ANALY MORTGAGE CENTER INC, ROHNERT PARK, CA; FIRST FINANCIAL FUNDING INC, FRANKLIN, TN; FRONTIER BANK LARAMIE COUNTY, CHEYENNE, WY; ROCKLAND MORTGAGE CORP, HOCKESSIN, DE; FIRST INTEGRITY BANK, STAPLES, MN; CPTPFC, SAINT LOUIS, MO; MORTECH FINANCIAL CORPORATION, OXNARD, CA; BANK OF AMERICA NEW MEXICO, ALBUQUERQUE, NM; FIRST NATIONAL BANK AND TRUST CO,

VERSAILLES, KY; CHARTER NATIONAL BANK HOUSTON, HOUSTON, TX; LANDMANDS NATIONAL BANK, AUDUBON, IA; GATEWAY BANK, NORWALK, CT; FIRST MORTGAGE SERVICES INC, CAYCE, SC; BUILDERS FINANCE LTD, PLANTATION, FL; SECURITY TRUST CO NA, BALTIMORE, MD; CIVICBANK OF COMMERCE, OAKLAND, CA; FIRST LANCASTER FUNDING CORP, LANCASTER, PA; TRACY STATE BANK, TRACY, MN; AMERICAN NATIONAL BANK, KENNEWICK, WA; EXCHANGE NATIONAL BANK, MARYSVILLE, KS; WESTCHESTER MORTGAGE CO, TARZANA, CA; WONDER LAKE STATE BANK, WONDER LAKE, IL; HARRIS BANK CARY GROVE, CARY, IL; MARIETTA SAVINGS BANK, MARIETTA, OH; EASTBANK NA, NEW YORK, NY; LIBERTY NATIONAL BANK, AUSTIN, TX; DURANGO NATIONAL BANK, DURANGO, CO; GLENWOOD INDEPENDENT BANK, GLENWOOD SPRINGS, CO; CORNERSTONE MORTGAGE CORP, OXFORD, MS; MIDWEST CAPITAL MORTGAGE CORP., SCHAUMBURG, IL; MORTGAGE ALLIANCE CORPORATION, DENVER, CO; FIRST NATIONAL BANK MORGANTOWN, CHARLESTON, WV; CHASE MANHATTAN BANK CT NA, BRIDGEPORT, CT; SAXON MORTGAGE FUNDING CORP, RICHMOND, VA; PREMIER MORTGAGE CORPORATION, COLUMBIA, SC; FIRST CHESAPEAKE FINANCIAL, RICHMOND, VA; WEST JERSEY COMMUNITY BANK, FAIRFIELD, NJ; BOW MILLS BANK AND TRUST, BOW, NH; FARMERS AND MERCHANTS BANK, CRESCENT, OK; LUBBOCK NATIONAL BANK, LUBBOCK, TX; OLYMPIC MORTGAGE COMPANY INC, SEATTLE, WA; INTERNATIONAL MORTGAGE BANKERS, IRVINE, CA; INTERSTATE MORTGAGE FUNDING, ALBUQUERQUE, NM; MORTGAGE ADVOCATES CORPORATION, COLUMBIA, SC; STATEWIDE MORTGAGE CORP, ELLICOTT CITY, MD; MORTGAGEMAX, PHOENIX, AZ; FIRST NATIONAL BANK GRAPEVINE, GRAPEVINE, TX; FLORIDA FIRST MORTGAGE INC, LOXHATCHEE, FL; PREMIER MORTGAGE SERVICES INC, BILLINGS, MT; SPLENDOR MORTGAGE CO, CAMP SPRINGS, MD; PACIFIC EMPIRE MORTGAGE CORP, LAKE FOREST, CA; STATE NATIONAL BANK, EL PASO, TX; RESOURCE MORTGAGE CAPITAL INC, GLEN ALLEN, VA; ROYAL PALM MORTGAGE CORPORATION, DELRAY BEACH, FL; SECURITY HOME MORTGAGE CORP, ACTON, MA; ALL AMERICAN MORTGAGE, RANCH CORDOVA, CA; CORNERSTONE BANK, DERRY, NH; FIRST CITY MORTGAGE CORP, DALLAS, TX; FIRST NATIONAL BANK SHELBY, SHELBY, NC; RWP REALTY CAPITAL CORP, NEW YORK, NY; WYOMISSING MORTGAGE CO, WYOMISSING, PA; ROYAL OAK SAVINGS BANK FSB, RANDALLSTOWN, MD; ASSURED MORTGAGES AND FIN'L SE, MIAMI, FL; FIRST NATIONAL BANK CONWAY CNT, MORRILTON, AR; COMMUNITY BANK WEST TN, SELMER, TN; GOULD FUNDING CORP, GREAT NECK, NY; WACCAMAW FINANCIAL SERVICES, MYRTLE BEACH, SC; BANK OF MOUNTAIN VIEW, MOUNTAIN VIEW, AR; FIRST INTERSTATE BANK ALASKA NA, ANCHORAGE, AK; PEACHTREE FEDERAL CREDIT UNION, ATLANTA, GA; CENTRAL MORTGAGE CORP, LITTLE ROCK, AR; B FIRST MORTGAGE CO LTD PARTNER, WARWICK, RI; PEACHTREE NATIONAL BANK, PEACTREE CITY, GA; COMMERCIAL FINANCIAL SERVICES, LAS VEGAS, NV; OMEGA FINANCIAL INC, RANDOLPH, MA; MULTI–FAMILY CAPITAL RESOURCES, RICHMOND, VA; PRUDENTIAL SECURITIES REALTY F, NEW YORK, NY; SOUTHWEST STATE BANK, DENVER, CO; FALLS SAVINGS BANK FSB, CUYAHOGA FALLS, OH; GENTRY MORTGAGE LP, HONOLULU, HI; SERVICE ONE CREDIT UNION INC, BOWLING GREEN, KY; MORTGAGE ASSOCIATES, ATLANTA, GA; RIVER VALLEY MORTGAGE, SACRAMENTO, CA; STRATFORD FUNDING INC, SOUTHFIELD, MI; FAIRFIELD MORTGAGE ASSN GAINESVILLE, GAINESVILLE, GA; RG MORTGAGE CORPORATION, POMONA, CA; FIRST NATIONAL BANK–PALCO, HAYS, KS; SCOTT COUNTY BANK, WALDRON, AR; LEGACY FINANCIAL SERVICES INC, EDMONDS, WA; SUN COAST FUNDING LP, NEWPORT BEACH, CA; HUNTINGTON NATIONAL BANK—IN, INDIANAPOLIS, IN; HOME FINANCIAL BANCGROUP INC, CHICAGO, IL; TIMBERLAKE MORTGAGE CO, HENDERSON, NC; HUNTINGTON NATIONAL BANK–FLORIDA, MAITLAND, FL; CITIZENS BANK, HICKMAN, KY; HINSBROOK BANK AND TRUST, WILLOWBROOK, IL; LTG INC, SAN GABRIEL, CA; CENTRAL COAST NATIONAL BANK, ARROYO GRANDE, CA; COMMERCE BANK—SAN LUIS OBISPO, SAN LUIS OBISPO, CA; AMERICAN SUBURBAN MORTGAGE CORP, WAUKEGAN, IL; CALIBER BANK, PHOENIX, AZ; CAPITOL BANK AND TRUST, CHICAGO, IL; FARMERS UNION BANK, RIPLEY, TN; AMERICAN SAVINGS—FSB, MUNSTER, IN; SAUNDERS COMPANY, MONTEREY, CA; KEYSTONE FINANCIAL INC, VISTA, CA; BANK NORTHWEST, HAMILTON, MO; BANK OF—WESTMINISTER, WESTMINISTER, CA; FIRST NATIONAL BANK–BAR HARBOR, BAR HARBOR, ME; PEOPLES HERITAGE MORTGAGE CORP, PORTLAND, ME; CORRIDOR MORTGAGE CORPORATION, SAN DIEGO, CA; TORNELL MORTGAGE COMPANY, COON RAPIDS, MN; AMERICAN STATE BANK OF—GRYGLA, GRYGLA, MN; FMB–FIRST MICHIGAN BANK, GRAND RAPIDS, MI; MADISON SAVINGS AND LOAN ASSN, PALM HARBOR, FL; MINUTEMAN FUNDING CORPORATION ANDOVER, MA; DWJ MORTGAGE CORPORATION, ALAMO, CA; PHOENIX FINANCIAL GROUP, HOHOKUS, NJ; FIRST FINANCIAL MORTGAGE CO, CORBIN, KY; PACIFIC COMMERCE BANK, CHULA VISTA, CA; MORTGAGE ADVISORS INC, SAINT LOUIS, MO; TRIAD MORTGAGE COMPANY INC, GREENSBORO, NC; FIRST PACIFIC NATIONAL BANK, ESCONDIDO, CA; QUAKERTOWN NATIONAL BANK, QUAKERTOWN, PA; THE BANK OF COMMERCE NA, AUBURN, CA; PROVINCE CAPITAL, MARIETTA, GA; FINANCIAL NETWORK EXCHANGE DBA MORTGAGE EXCHANGE, CONCORD, CA; PACIFIC RELIANCE MTG CORP, PASADENA, CA; TANEYTOWN BANK AND TRUST CO, TANEYTOWN, MD; FIRST EQUITY FUNDING GROUP INC, SAINT LOUIS, MO; GENOA BANKING COMPANY, GENOA, OH; CENTURION MORTGAGE CORPORATION, HARVEY, LA; MIDWEST FINANCIAL GROUP INC, BARRINGTON, IL; MERCANTILE BANK CAPE GIRARDEAU, CAPE GIRARDEAU, MO; A M MORTGAGE CORPORATION, COLUMBUS, OH; HERITAGE MORTGAGE SERVICES, BROOKLYN, MN; LINCO MORTGAGE INCORPORATED, DENHAM SPRINGS, LA; FWB BANK, ROCKVILLE, MD; HUNTINGTON FEDERAL SAV BK OF–CHICAGO, IL; RIVERSIDE MORTGAGE CO LLC, SHREVEPORT, LA; GARDEN STATE BANK, LAKEWOOD, NJ; UNITED MORTGAGE CORPORATION, VIENNA, VA; AMERICAN FAMILY MORTGAGE, HANOVER PARK, IL; CANNING AND TURNER INC, VENTURA, CA; CITIZENS MORTGAGE CORPORATION, SOUTHFIELD, MI; BANK OF—HILLSIDE, HILLSIDE, IL; AMERICAN NATIONAL LOAN CO,

INC; DEERFIELD BEACH, FL; TIB BANK OF—THE KEYS, KEY LARGO, FL; RESIDENTIAL MORTGAGE CORP, AIEA, HI; BOSTON CAPITAL MORTGAGE CO LP, BOSTON, MA; GULF COAST FINANCIAL SVCS INC, SLIDELL, LA; MERCHANTS AND FARMERS BANK, SALISBURY, MO; UNIVERSAL MORTGAGE INC, BILLINGS, MT; STATES MORTGAGE CORPORATION, FLANDERS, NJ; MORTGAGE PROFESSIONALS OF CENT, MAITLAND, FL; THE WOMENS BANK NA, DENVER, CO; SEMINOLE BANK, SEMINOLE, FL; FIRST NATIONAL BANK, LINCOLNWOOD, IL; FIRST SECURITY MORTGAGE INC, OAK BROOK, IL; AMERICAN PIE MORTGAGE, WOODLAND HILLS, CA; AMARIS MORTGAGE COMPANY, CHICAGO, IL; AMERICAN MORTGAGE EXPRESS INC, COLUMBIA, MD; BRENTWOOD NATIONAL BANK, BRENTWOOD, TN; AMERICAN ROYAL MORTGAGE CORP, EDISON, NJ; ALL SEASONS MORTGAGE INC, METAIRIE, LA; PRIME LENDING GROUP, MANCHESTER, MO; MERCANTILE BANK JOPLIN, JOPLIN, MO; ANDREWS FEDERAL CREDIT UNION, SUITLAND, MD; SOUTHTRUST BANK NC, NA; FIRST RATE MORTGAGE INC, CORONA, CA; FIRST UNITED FINANCIAL CENTER, SCHAUMBURG, IL; MORTGAGE CENTER INC, MARTINSBURG, WV; RITTENHOUSE MORTGAGE FINANCE INC, BALA CYNWYD, PA; NEW YORK CENTRAL MORTGAGE INC–DBA NEW YORK CENTRAL FUNDING, TARZANA, CA; FIRST SELECT MORTGAGE, DENVER, CO; HOFSAL CORPORATION, SAN DIEGO, CA; CONGRESS MORTGAGE SERVICES INC, TUCKER, GA; INTER LINK MORTGAGE SERVICE CO, DEARBORN, MI; CANTERBURY MORTGAGE BANKING INC, DEERFIELD BEACH, FL; BAZANE ENTERPRISES INC, PANORAMA CITY, CA; CAROLINA RESIDENTIAL MORTGAGE, BURLINGTON, NC; OXFORD FUNDING GROUP LTD, CHICAGO, IL; BAYBANKS MORTGAGE CORPORATION, WESTWOOD, MA; CAPITAL FUNDING MORTGAGE CORP, LAUDERHILL, FL.

Title I Lenders Withdrawn:

SOUTHTRUST BANK OF DOTHAN NA, DOTHAN, AL; FIRST INTERSTATE BANK NA, TEMPE, AZ; FORDYCE BANK AND TRUST COMPANY, FORDYCE, AR; ST PAUL FEDERAL BK FOR SAVINGS, CHICAGO, IL; MAGNA BANK, DECATUR, GA; FIRST BANK, OFALLON, IL; FIRST NATIONAL BANK, MADISON, IL; PROVIDENT BANK MARYLAND, BALTIMORE, MD; GREAT LAKES BANCORP, ANN ARBOR, MI; OLD KENT BANK, BIG RAPIDS, MI; FIRST FEDERAL OF MICHIGAN, DETROIT, MI; SECOND NATIONAL BANK, SAGINAW, MI; BANK ONE, STURGIS, MI; OLD KENT BANK SOUTHEAST, TRENTON, MI; UNIVERSITY BANK, SAULT STE MARIE, MI; ADA NATIONAL BANK, ADA, MN; FIRST NATIONAL BANK, AITKIN, MN; AVON STATE BANK, AVON, MN; STATE BANK, COKATO, MN; FIRST MINNESOTA BANK NA, GLENCOE, MN; FARMERS AND MERCHANTS BANK, FOREST, MS; FIRST BANK, CREVE COEUR, MO; NFS SAVINGS BANK FSB, NASHUA, NH; MANUFACTURERS HANOVER TRUST CO, HICKSVILLE, NY; FIRST NATIONAL BANK, OAKES, ND; CHIPPEWA VALLEY BANK, RITTMAN, OH; MAHONING NATIONAL BANK, YOUNGSTOWN, OH; LIBERTY BANK AND TRUST OK CITY, OKLAHOMA CITY, OK; BENEFICIAL MUTUAL SAVINGS BANK, PHILADELPHIA, PA; MEMPHIS STATE BANK, MEMPHIS, TX; GROOS BANK N A, SAN ANTONIO, TX; TEXAS CITY BANK NA, TEXAS CITY, TX; BRIDGEPORT BANK, BRIDGEPORT, WV; BANK ONE, APPLETON NA, APPLETON, WI; M & I BANK OF CAMBRIDGE, CAMBRIDGE, WI; RURAL AMERICAN BANK LUCK, LUCK, WI; M AND I NATIONAL BANK, NEILLSVILLE, WI; FIRSTAR BANK RICE LAKE NA, RICE LAKE, WI; FIRST STATE BANK, CHARLEVOIX, MI; FIRST OF AMERICA, ANN ARBOR, MI; ROIG COMMERCIAL BANK, HUMACAO, PR; FLINT CREEK VALLEY BANK, PHILIPSBURG, MT; FIRST NATIONAL BANK BORGER, BORGER, TX; IPSWICH STATE BANK, IPSWICH, SD; UNITED NORTHERN FEDERAL SAV BK, WARTERTOWN, NY; SECURITY STATE BANK, LITTLEFIELD, TX; HUNTINGTON NATIONAL BANK, MORGANTOWN, WV; COMMERCE BANK, EL DORADO, KS; WENONO STATE BANK, WENONA ILL, IL; FPL EMPLOYEES FEDERAL CR UN, HIALEAH, FL; COMMERCIAL STATE BANK, ANDREWS, TX; NORTH FEDERAL SAVINGS BANK, CHICAGO, IL; MONTANA BANK, SUPRIOR, MT; FIRSTAR BANK MINOCQUA, MINOCQUA, WI; MADISON NATIONAL BANK, MADISON HEIGHTS, WI; HARRIS UNITED FEDERAL CU, GARFIELD HEIGHTS, OH; SWECA FEDERAL CREDIT UNION, SHREVEPORT, LA; FIRSTAR BANK MANITOWOC, MANITOWOC, WI; CAPITAL POWER FEDERAL CREDIT UNION, SACRAMENTO, CA; SAFEWAY FEDERAL CREDIT UNION, REDMOND, WA; ARGONNE CREDIT UNION, ARGONNE, IL; UMB COLUMBINE NATIONAL BANK, DENVER, CO; FIRST BANK OF ST CHARLES COUNTY, WENTZILLE, MO; FARMERS STATE BANK, WALLACE, NE; AMERIBANK, BLOOMINGTON, MN; D AND N SAVINGS BANK FSB, HANCOCK, MI; SUMMIT FEDERAL CREDIT UNION, AKRON, OH; FIRST NATIONAL BANK, FREDONIA, KS; AMERICAN BANK, BURNSVILLE, MN; JODAB FEDERAL CREDIT UNION, LOUISVILLE, KY; LOUVIERS FED C U #18765, WILMINGTON, DE; M AND I BANK, EAGLE RIVER, WI; CENTRAL BANK, STILLWATER, MN; FIRST CENTRAL CREDIT UNION, WACO, TX; CHATTANOOGA FED EMPLOYEES C U, CHATTANOOGA, TN; VALLEY NATIONAL BANK, MCALLEN, TX; TRANSPORT FEDERAL CREDIT UNION, TUKWILA, WA; GRANGE NB OF WYOMING COUNTY, LACEYVILLE, PA; CITIZENS STATE BANK, CLARA CITY, MN; COMMUNITY BANK, MARSHALL, MO; BANK ONE, FENTON, MI; NAVY ARMY FEDERAL CREDIT UNION, CORPUS CHRISTI, TX; FIRST FEDERAL SAVINGS BANK, WINSTON SALEM, NC; CARNEGIE SAVINGS AND LOAN ASSN, CARNEGIE, PA; FIRST NATIONAL BANK, ASH FLAT, AR; ARCS MORTGAGE INC, CALABASAS, CA; THE GERMANTOWN FEDERAL CU, PHILADELPHIA, PA; AMERICAN SAVINGS MORTGAGE CORP, LAKE JACKSON, TX; METRO SAVINGS BANK FSB, WOODRIVER, IL; FIRST VIRGINIA BANK PLANTERS, BRIDGEWATER, VA; WESLA FEDERAL CREDIT UNION, SHREVEPORT, LA; BOSSIER HOSPITAL FED CR UN, BOSSIER CITY, LA; GIRARD NATIONAL BANK, GIRARD, KS; FRANKLIN THRIFT AND LOAN ASSN, ORANGE, CA; ARMCO HOUSTON FEDERAL CU, HOUSTON, TX; LIFE SAVINGS ASSOCIATION, AUSTIN, TX; LEBANON STATE BANK, LEBANON, WI; DIRECTORS MORTGAGE LOAN CORP, RIVERSIDE, CA; KEY BANK OF WYOMING, CHEYENNE, WY; BAGER BANK SSB, MILWAUKEE, WI; THE CITIZENS BANKING COMPANY, SALINEVILLE, OH; EMPIRE MORTGAGE COMPANY INC, SPRINGFIELD, MO; VACATION OWNERS CREDIT UNION, BELLEVUE, WA; PEOPLES BANK AND TRUST COMPANY, CHALMETTE, LA; IMPERIAL THRIFT AND LOAN ASSOC, GLENDALE, CA; MUNDACA INVESTMENT CORPORATION, BRENTWOOD, TN; THE MONEY STORE DC INC, VIRGINIA BEACH, VA; ROSEVILLE COMMUNITY BANK NA,

ROSEVILLE, MN; FIRST WESTERN NATIONAL BANK, MOAB, UT; FIRSTAR BANK WISCONSIN RAPIDS, WISCONSIN RAPIDS, WI; BUTTE COMMUNITY BANK, PARADISE, CA; PLUMAS BANK, SUSANVILLE, CA; RAILROAD SAVINGS BANK FSB, WICHITA, KS; ASMC ACCEPTANCE CORP, LAKE JACKSON, TX; MORTGAGE ALLIANCE GROUP INC, GLENDALE, CA; AMCORE BANK NA NORTHWEST, WOODSTOCK, IL; NBD BANK, COLUMBUS, OH; FIRSTAR BANK OTTUMWA, OTTUMWA, IA; M AND I SOUTH SHORE BANK, CUDAHY, WI; M AND I WAUWATOSA STATE BANK, WAUWATOSA, WI; SNOW BANK NA, DILLON, CO; FIRST STATE BANK OF WESTERN IL, LAHARPE, IL; NATIONSBANK VIRGINIA NA, RICHMOND, VA; LIBERTY NATIONAL BANK, AUSTIN, TX; PALISADE SAVINGS BANK FSB, RIDGEFIELD PARK, NJ; NEVADA NATIONAL BANK, NEVADA, IA; MANUFACTURER'S CREDIT CORP, NORWALK, CT; FIRST NATIONAL BANK RIVER FALLS, RIVER FALLS, WI; LINCOLN SAVINGS BANK, CARNEGIE, PA; MERCANTILE BANK OF KANSAS, ROELAND PARK, KS; KEY BANK OF COLORADO, FORT COLLINS, CO; COMMUNITY BANK AND TRUST CO, OKLAHOMA CITY, OK; FIRST TRUST COMPANY ND NA, FARGO, ND; BANK ONE EAST LANSING, EAST LANSING, MI; HUNTINGTON NATIONAL BANK, HUNTINGTON BEACH, CA; FIRST NATIONAL BANK KINGMAN, KINGMAN, KS; CHILLICOTHE STATE BANK, CHILLICOTHE, IL; THE BUFFALO BANK ELEANOR, ELEANOR, WV; SOUTHERN NATIONAL BANK NC, WINSTON SALEM, NC; BRAZOPORT TEACHERS FEDERAL CU, FREEPORT, TX; FIRST LOUISIANA FINANCIAL, HARAHAN, LA; RG MORTGAGE CORPORATION, POMONA, CA; FIRST NATIONAL BANK OTTAWA K, OTTAWA, KS; KEYSTONE FINANCIAL, VISTA, CA; ROBERT WINGER MORTGAGE COMPANY, TUCSON, AZ; BOMAC CAPITAL CORP, IRVINE, CA; CALCORP FINANCE INC, BELL, CA; MOUNTAIN STATES MORTGAGE CENTER, SANDY, UT; SUNBURST BANK, GRENADA, MS; FIRST PACIFIC NATIONAL BANK, ESCONDIDO, CA; WESTERN CITIES MORTGAGE CORP, TUSTIN, CA; PACIFIC EMPIRE MORTGAGE CORP, LAKE FOREST, CA; PADRE FINANCIAL SERVICES CORP, SAN DIEGO; AMERITEX RESIDENTIAL MTG INC, HURST, TX; KIDDCO MORTGAGE COMPANY INC, CINCINNATI, OH; SECURITY FUNDING GROUP INC, MILFORD, OH; GRANDVIEW MORTGAGE CORP, GLENDALE, CA; COMMUNITY LENDING CORPORATION, COLLEGE PARK, GA; ADVANTAGE MORTGAGE CORPORATION, NAPERVILLE, IL; CITIZENS BANK OF KANSAS NA, KINGMAN, KS; BANCNET INC, SCHAUMBURG, IL; DONALD C KINNSCH, LAKE ELSINORE, CA; FULTON BANK, LANCASTER, PA; COMMUNITY FUNDING INC, MISSION VIEJO, CA; NEIGHBORHOOD HOUSING SERVICES, NEW YORK, NY; CENTRAL BANK AND TRUST, FORT WORTH, TX; FIRST COMMUNITY BANK, NEWELL, IA; ADVANCE FINANCIAL SERVICES INC, BLOOMINGDALE, IL; MORTGAGE AMERICA FINL CENTER I, MIAMI, FL; STONERIDGE CREDIT CORPORATION, SAN JOSE, CA; A AND I MORTGAGE CORPORATION, SAN DIEGO, CA; AVALON MORTGAGE INC, DENVER, CO; BAZANE ENTERPRISES INC, PANORAMA CITY, CA; ADMIRAL MORTGAGE CORP, DOVER, DE; F M MORTGAGE CORPORATION, FARGO, ND; HOMESOURCE MORTGAGE CORP, DALLAS, TX; COAST PARTNERS INVESTORS CORP, SAN FRANCISCO, CA; US MORTGAGE CONSULTANTS INC, LAS VEGAS, NV.

Dated: November 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–30500 Filed 11–27–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Emergency Approval and Request for Public Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service has submitted the proposal for the collection of information listed below to the Office of Management and Budget (OMB) for emergency approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below.

DATES: Comments must be submitted on or before December 6, 1996.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, OMB, Attention: Interior Department Desk Officer, Washington, D.C. 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., (MS 224–ARLSQ), Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title: Wild Exotic Bird Import Application.

OMB Approval Number: 1018–0084.

Service Form Number: 3–200.

Description: The Wild Bird Conservation Act of 1992, (WBCA) authorizes the Fish and Wildlife Service (Service) to issue permits for the importation of individual birds from otherwise prohibited species for the following purposes (after a finding that such imports are not detrimental to the species' survival): scientific research, personally owned pets of individuals returning to the United States after being out of the country for at least one year; zoological breeding or display programs; and cooperative breeding program designed to promote the conservation of the species in the wild that are developed and administered by organizations meeting certain standards. The information required on the application is used by the Service to determine if an applicant should be granted a permit to import a bird species under the provisions of the WBCA. This requirement is being amended to add applications from foreign governments and foreign breeding facilities in accordance with recently enacted regulations to implement the WBCA. This amendment does not affect existing information collection requirements for scientific research, personal pets, zoological breeding or display, or cooperative breeding in any way.

The WBCA affords additional protection to birds that are protected by the Convention on International Trade

in Endangered Species (CITES). The WBCA prohibits the importation of any exotic bird that is listed in the Appendices of CITES unless the importation qualifies for one of the exemptions in the WBCA, for which a permit must be obtained in advance or, the exotic bird species to be imported is contained on an approved list in accordance with the WBCA, for which no permit is required.

Frequency: On occasion.

Description of Respondents: Individuals or households; businesses or other for profit; non-profit institutions; small businesses or organizations; and foreign governments.

Completion Time: The reporting burden for all permits, except those for personally owned pets, will average four hours per response. Permits for personally owned pets will average one hour per application. Applications from foreign governments and breeding facilities will require an average of ten hours to complete. The average completion time for all applicants is 2.0 hours per response.

Annual Responses: Service experience indicates that approximately 600 applicants apply each year for permits including personally owned pets; 10 or less foreign governments; and, 20 foreign breeding facilities will apply. The total annual responses will be 630.

Annual Burden Hours: 1,300.

Dated: October 16, 1996.

Marshall P. Jones, Jr.,

Assistant Director—International Affairs.

[FR Doc. 96–30463 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–822376

Applicant: Ms. Devera Stevens, Somerville, TX.

The applicant requests a permit to export one male and one female captive-born tiger (*Panthera tigeris*) to Nelson Aldana, Quezon City, Philippines, for the purpose of enhancement of the species through captive breeding and conservation education.

PRT–822182

Applicant: Geneva Farms, Inc., Geneva, FL,

The applicant requests a permit to import and re-export ten Morelet's crocodile (*Crocodylus moreletii*) hides from Mexico for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–766818

Applicant: AK Fish and Wildlife Research Center, Anchorage, AK.

Type of Permit: Scientific Research, renewal.

Name and Number of Animals: Sea Otter (*Enhydra lutris*), as described below.

Summary of Activity to be Authorized: The applicant has requested renewal of the permit to take (capture, recapture instrumented otters, immobilize, draw blood, radio-tag, surgically implant 100 with TDR/transmitter package, sonic tag 25 and release) 225 sea otters (*Enhydra lutris lutris*) in Alaskan waters and 50 sea otters (*Enhydra lutris nereis*) in California waters.

Source of Marine Mammals for Research/Public Display: Alaskan and California waters as described above.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: November 22, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–30382 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–55–P

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Great Lakes Panel on Aquatic Nuisance Species (ANS), a regional committee of the Aquatic Nuisance Species Task Force, and a related Information and Education (I&E) Symposium. A number of topics will be addressed during the Panel Meeting, including review of the Panel's Fiscal Year 1997 Work Plan, committee reports, reports on ANS issues and initiatives, and reports from panel members. During the Symposium, the methodology and results of an ANS I&E inventory will be presented, perspectives on ANS I&E efforts in the Great Lakes region will be discussed, and I&E efforts related to prevention and control of ANS and addressing policymakers and educators will be assessed. The Meeting and Symposium are open to the public. Interested persons may make oral statements at the Panel Meeting or submit written statements for consideration.

DATES: The Great Lakes Panel on ANS will be held from 10:00 a.m. to 4:30 p.m. on Wednesday, December 4, 1996. The ANS I&E Symposium will be held from 8:30 a.m. to 4:30 p.m. on Thursday, December 5, 1996.

ADDRESSES: Both the Great Lakes Panel on ANS Meeting and ANS I&E Symposium will be held at the Holiday Inn—North Campus, 3600 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Matthew A. Doss or Kathe Glassner-Shwayder of the Great Lakes Commission who may be reached at 313–665–9135 or Robert A. Peoples,

ANS Task Force Coordinator, who may be reached at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Great Lakes Panel on ANS, a regional committee of the Aquatic Nuisance Species Task Force established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4723(a)), and a related I&E Symposium. Minutes of the meeting will be maintained by the ANS Task Force Coordinator, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622 and the Great Lakes Panel Coordinator, Great Lakes Commission, the Argus II Building, 400 Fourth Street, Ann Arbor, MI 48103–4816. The minutes will be available for inspection at these locations during regular business hours within 30 days following the meeting.

Dated: November 21, 1996.

Rowan W. Gould,

Acting Assistant Director—Fisheries, Acting Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 96–30357 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–962–1410–00–P; AA–6645–A; AA–6694–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyances under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Natives of Afognak, Incorporated, successors in interest to Natives of Afognak, Inc. and Port Lions Native Corp., for 4,756.31 acres and 20,556.63 acres, respectively. The lands involved are located on or in the vicinity of Afognak, Kodiak, Whale, and Raspberry Islands, Alaska, as follows:

Seward Meridian, Alaska

T. 23 S., R. 21 W., T. 25 S., R. 21 W., T. 26 S., R. 21 W., T. 24 S., R. 22 W., T. 27 S., R. 22 W., T. 26 S., R. 23 W., T. 27 S., R. 23 W., T. 25 S., R. 24 W., and T. 26 S., R. 24 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the KODIAK DAILY MIRROR. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 (907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 30, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary L. Cunningham,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–30439 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–$$–P

[CA–058–1430–01 and CA–059–1430–01; CAS 048777 and CAS 051360]

Public Land Order No. 7228; Partial Revocation of Public Land Orders No. 2677 and No. 2693; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Public Land Order No. 2677 insofar as it affects 4,649.04 acres of lands withdrawn for the Yolla Bolly National Cooperative Land and Wildlife Management Area, and Public Land Order No. 2693 insofar as it affects 60 acres of land withdrawn for the Clear Lake National Cooperative Land and Management Area. The lands are no longer needed for those purposes, and the revocations are necessary to facilitate two pending land exchanges under Section 206 of the Federal Land Policy and Management Act of 1976. The lands are temporarily closed to surface entry and mining because of the two pending land exchanges. The lands have been and continue to be open to mineral leasing. The California Department of Fish and Game has concurred with these revocations.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2677, which withdrew public lands for the Yolla Bolly National Cooperative Land and Wildlife Management Area, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 23 N., R. 7 W.,
  Sec. 2, lots 3 and 4, S½NW¼, and S½ (originally described as W½ and SE¼).
T. 24 N., R. 7 W.,
  Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
  Sec. 10;
  Sec. 22;
  Sec. 26, W½NW¼, SW¼, and W½SE¼;
  Sec. 34.
T. 25 N., R. 7 W.,
  Sec. 22, W½;
  Sec. 28, all except 18.21 acres patented Mineral Survey No. 4686;
  Sec. 34, W½E½, and W½W½.

The areas described aggregate 4,649.04 acres in Tehama County.

2. Public Land Order No. 2693, which withdrew public land for the Clear Lake National Cooperative Land and Wildlife Management Area, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 13 N., R. 7 W.,
  Sec. 25, N½NW¼NW¼;
  Sec. 26, NE¼NE¼.

The area described contains 60 acres in Lake County.

3. The lands described in paragraphs 1 and 2 are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1988).

Dated: November 4, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–30461 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–40–P

[MT–924–1430–01; MTM 13213 and MTM 40645]

Public Land Order No. 7226; Partial Revocation Executive Order No. 5237 and Revocation of Public Land Order No. 5739; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 524.61 acres of public lands withdrawn by the Bureau of Land Management for classification of Federal oil shale reserves. This order also revokes a public land order in its entirety as to

297.76 acres withdrawn for the Bannack National Historic District. The lands are no longer needed for these purposes, and the revocations are needed to transfer the lands to the State of Montana under the Recreation and Public Purposes Act. This action will open the oil shale lands to surface entry and nonmetalliferous mining and the Bannack lands to mining, unless closed by overlapping withdrawals or temporary segregations of record. The oil shale lands have been and will remain open to metalliferous mining. All the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order No. 5237, dated April 15, 1930, which withdrew public lands for the Bureau of Land Management's oil shale reserve, is hereby revoked insofar as it affects the following described lands:

Principal Meridian, Montana

T. 8 S., R. 11 W.,
Sec. 6, lots 1 to 9, inclusive, S½NE¼, and SE¼NW¼.
T. 8 S., R. 12 W.,
Sec. 1, lot 6;
Sec. 12, E½NE¼.

The areas described contain 524.61 acres in Beaverhead County.

2. Public Land Order No. 5739, which withdrew public lands for the Bannack National Historic District, is hereby revoked in its entirety:

T. 8 S., R. 11 W.,
Sec. 5, lot 8;
Sec. 6, lots 6 to 9, inclusive, and lot 11;
Sec. 7, lot 1, east 660 feet of lot 4, lots 6 and 8, north 660 feet of lot 10, lots 14, 16, and 17, and NE¼NW¼SE¼;
Sec. 8, lot 5.

The areas described contain 297.76 acres in Beaverhead County.

The total areas described aggregate 822.37 acres in Beaverhead County.

3. At 9 a.m. on December 30, 1996, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 30, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on December 30, 1996, the lands described in paragraph 1 will be opened to nonmetalliferous mining and the lands described in paragraph 2 will be opened to mining under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 4, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–30462 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–DN–P

[ID–030–1430–01; IDI–29087]

Notice of Realty Action

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act classification; Idaho.

SUMMARY: The following public lands in Madison County, Idaho have been examined and found suitable for classification for lease to Madison County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) Madison County needs the land for an addition to their Twin Bridges Park.

T. 4 N., R. 40 E., Boise Meridian
Sec. 16, lot 22 (portion)

A lease of these lands (about 3.5 acres) is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations.

2. A right-of-way for ditches and canals constructed by the authority of the United States (Act of August 30, 1890).

3. A reservation of all minerals to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the Bureau of Land Management, 1405 Hollipark Drive, Idaho Falls, Idaho, 83401.

Upon publication of this notice in the Federal Register the lands will be segregated from all forms of appropriation under the public land laws and general mining laws, excluding lease or conveyance under the R & PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register interested persons may submit comments regarding the proposed lease or land classification to the Area Manager at the address listed above.

Any adverse comments will be reviewed by the District Manager, Idaho Falls District Office. In the absence of any adverse comments, the classification will become effective 60 days from the Federal Register publication date.

Dated: November 13, 1996.

Joe Kraayenbrink,

Area, Manager, Medicine Lodge Resource Area.

[FR Doc. 96–30400 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–GG–M

[UT–060–07–1220–00]

Moab Area Recreation Use Restrictions and Authorization of New Special Recreation Permits

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Moab area special recreation restrictions and rules addressing camping, off-highway vehicle use, motorized boating and policy for authorization of new Special Recreation Permits.

SUMMARY: This notice places restrictions on recreation and vehicle use of the Sand Flats Recreation Area, Ken's Lake, Mill Creek, Little Canyon, and Seven Mile Canyon areas and on motorized boating use on the Colorado River from the Westwater Ranger Station and Cisco Landing. It also establishes supplemental policy for issuance of new special recreation permits authorized by the Moab Field Office. Actions are implemented under the authority of 43 CFR 8341, 8364, 8365 and 8372.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Moab District Office,

82 E. Dogwood Ave., Moab, Utah 84532 at (801) 259–6111.

SUPPLEMENTARY INFORMATION:

I. Recreation Restrictions

Increased recreation use of certain public lands near Moab has adversely impacted wildlife, vegetation, soil, visual, and cultural resources and poses a threat to public safety and enjoyment of the lands. Maps of the areas where these special rules and restrictions apply are available at the Moab District Office.

To reduce damage to natural and cultural resource values and provide for public safety in the Ken's Lake and Seven Mile Canyon areas: (1) Motor vehicle and mountain bike travel is restricted to designated routes; (2) campfires may only be built in constructed fire rings, designated fire rings, or fire pans; (3) wood collection for campfire use is prohibited; (4) camping is restricted to improved recreation sites with facilities for overnight use and designated undeveloped campsites; (5) campsite occupancy may be limited to posted numbers of vehicles and persons, (6) campers at designated undeveloped campsites, where public toilets are not available, are required to carry out solid human body waste and must possess and utilize toilets systems, such as porta-potties or recreational vehicles with holding tanks, that allow for the disposal of solid human body waste through authorized sewage systems.

In the Mill Creek Canyon area, camping is prohibited in the ''power dam'' area within ¼ mile of the stream (both forks) for a distance of one mile up canyon from the public/private land boundary on the west and in the Flat Pass area from Flat Pass northeastward to the South Fork of Mill Creek Canyon and within ¼ mile of the stream up and down stream to the private land boundaries.

In the Little Canyon area, camping, motor vehicle and mountain bike use is restricted to designated sites and routes in the following locations to protect wildlife habitat use areas: NW¼ of Section 24 and the SW¼ of Section 13, T. 25 S., R. 20 E. S.L.M.

In the Sand Flats Recreation Area, to reduce damage to natural resource values and provide for public safety: (1) Campfires may only be built in developed metal fire rings, (2) campsite occupancy may be limited to posted numbers of vehicles and persons, and (3) campers at designated undeveloped campsites, where public toilets are not available, are required to carry out solid human body waste and must possess and utilize toilets systems, such as porta-potties or recreational vehicles with holding tanks, that allow for the disposal of solid human body waste through authorized sewage systems. These restrictions supplement previously published rules governing camping and vehicle use in the Sand Flats area.

In the Colorado Riverway, to reduce damage to natural resource values and provide for public safety, campsite occupancy may be limited to posted numbers of vehicles and persons. This restriction supplements previously rules governing camping and vehicle use in the Colorado Riverway.

II. Motorized Boat Use

In order to protect wildlife values as mandated by the U.S. Fish and Wildlife Service (USFWS) no boats may be launched for upstream motorized travel at the Westwater Ranger Station, on the Colorado River from February 1 through October 15. At Cisco Landing no boats may be launched for motorized travel either upstream or downstream, except in emergency situations or for administrative uses as determined by the authorized officer from February 1 through October 15. Shoreline camping along the banks of the Colorado River is not allowed on public land for a distance of two miles below Cisco Landing.

Personnel exempt from the requirements of this notice include any Federal or State employee or local officer, and members of any organized rescue or fire fighting force in the performance of their official duty, or any person authorized by the Bureau. These orders shall remain in effect until rescinded or modified by the authorized officer.

III. Authorization of New Special Recreation Permits

Due to increases in recreation use in the Moab area that exceed monitoring capability and available space, priority for authorization of new special recreation permits for land-based commercial and competitive events (issued by the Moab Office) will be given to applicants proposing uses that (1) do not duplicate existing uses, (2) that take place outside of the months of March, April, May and October, (3) that make use of less crowded weekdays, (4) that utilize lands and facilities off public lands for overnight accommodation of guests, (5) that display and communicate the Canyon Country Minimum Impact Practices, and (6) that focus visitation on sites and areas capable of withstanding repeated use. Other factors, including public demand for the proposed use, the capability of the applicant to carry out the proposed use, projected government revenues, and past performance may be considered when deciding whether or not to issue permits for new events.

Applications for new recreation events must be submitted by the first business day of September of the year prior to the proposed use. The renewal or modification of existing use permits will follow standard Bureau procedures and not be counted as a new use. Applications for renewal of previously issued permits will be treated as new uses not qualifying for renewal privileges whenever the use authorization has lapsed for 1 or more years.

Effective Dates

These restrictions shall remain in effect pending revision of the resource management plan prepared for the Grand Resource Area or until updated by the authorized officer.

Dated: November 15, 1996.

Kate Kitchell,

District Manager.

[FR Doc. 96–30464 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–DQ–P

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1997 is 7.375 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1996, through and including September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–1061, extension 287.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7.375 percent for fiscal year 1997.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 6.87 percent. Rounding this average yield to the nearest one-eighth percent is 6.875 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1996 to 1997. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 7.375 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated November 4, 1996.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 96–30495 Filed 11–27–96; 8:45 am]

BILLING CODE 4310–94–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Food Aid Consultative Group

Notice is hereby given that pursuant to Section 205(b)(6) of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), as amended, the composition of the Food Aid Consultative Group (FACG), shall include representatives from agricultural producer groups in the United States. The FACG meets regularly to review issues, regulations, and procedures relating to food aid programs under Title II of Public Law 480.

Agricultural producer groups in the United States who wish to be considered for membership should contact the Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, D.C. 20523–0809 and explain the group's interest in membership and why it believes it can contribute to the FACG functions regarding Title II programs. Contact person: Tim Lavelle, (703) 351–0138. Individuals who have questions should also contact Mr. Lavelle.

The thirty-day comment period will begin on the date that this announcement is published in the Federal Register.

Dated: October 23, 1996.

Jeanne Marukas,

Acting Director, Office of Food and Peace, Bureau for Humanitarian Response.

[FR Doc. 96–30493 Filed 11–27–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF STATE

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: December 4, 1996 (9:00 a.m. to 5:00 p.m.).

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purpose of the meeting is to discuss and provide nongovernmental input on the partnership between the U.S. Agency for International Development and private voluntary organizations (PVOs).

The meeting is free and open to the public. However, notification by November 29, 1996, through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: October 29, 1996.

John Grant,

Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 96–30492 Filed 11–27–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on October 22, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. § 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: SAS Institute Inc., Cary, NC; GeorForschungsZentrum, Potsdam, GERMANY; and Ark Geophysics Ltd., Milton Keynes, UK.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on July 16, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on August 13, 1996, (61 FR 42055).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 96–30491 Filed 11–27–96; 8:45 am]

BILLING CODE 4410–11–M

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 27, 1996, and published in the Federal Register on July 15, 1996, (61 FR 36913), Applied Science Labs, Inc., Division of Altech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Morphine (9300)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic

classes of controlled substances listed above.

Dated: October 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–30356 Filed 11–27–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–11]

Stanley Dubin, D.D.S.; Revocation of Registration

On September 29, 1994, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stanley Dubin, D.D.S. (Respondent) of Philadelphia, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AD5534842, and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. §§ 823(f) and 824(a)(5).

By letter dated January 8, 1995, the Respondent, acting *pro se,* filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on December 12, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, counsel for DEA presented the testimony of witnesses and introduced documentary evidence, and Respondent testified on his own behalf. After the hearing, both parties submitted briefs in support of their positions. On March 15, 1996, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that Respondent's DEA Certificate of Registration be revoked until such time as he may be reinstated under 42 U.S.C. § 1320a–7(a).

Neither party filed exceptions to Judge Tenney's decision, and on April 17, 1996, the record of these proceedings was transmitted to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. § 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Findings of Fact, and Conclusions of Law, and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent graduated from Temple University dental school in 1964. In 1996, he bought an existing dental practice that included a large number of Medical Assistance patients. Effective January 26, 1977, Respondent was permanently terminated by the State Office of Medical Programs, Bureau of Medical Assistance, from participation in the Pennsylvania Medical Assistance Program, based upon his fraudulent billing of the Medical Assistance Program and the quality of treatment rendered to his patients. Respondent was notified of this action by a letter dated December 27, 1976, which also indicated that he was ''prohibited from organizing, arranging, rendering, or ordering any service for Medical Assistance recipients for which [he] may receive payments in the form of administrative expenses, shared fees or rebates through any group practice, clinic, medical center or other facility.''

In January 1977, Respondent appealed his termination from the Medical Assistance Program. On September 10, 1979, Respondent's case was dismissed based upon his failure to pursue the appeal, and his termination was affirmed.

In late 1983, the Medicare Fraud Control Unit of the Pennsylvania Office of Attorney General (Fraud Control Unit) received information that Respondent was billing the Medical Assistance Program for dental work performed on Medical Assistance patients. Subsequently, an undercover agent posing as a Medical Assistance recipient received dentures from Respondent, for which Respondent billed the Medical Assistance Program. The Fraud Control Unit also interviewed dentists who were employed by Respondent, as well as other office personnel. It was discovered that Respondent did all of the hiring for his dental practice and that any dentist employed by Respondent had to be enrolled in the Medical Assistance Program. At the time of the investigation, Respondent employed three dentists, and had a fifty-fifty fee sharing arrangement with two of the dentists. For work done by the third dentist, Respondent received fifty-five percent of the fees paid by the Medical Assistance Program, and when Respondent treated the Medical Assistance recipients himself, he received the full reimbursement amount.

During the course of the investigation, the investigators learned that the patients needing denture work were treated by Respondent, and the other patients were treated by his employee dentists. A review of dental records from 1981 through 1985 revealed that many of the Medical Assistance invoices for denture work were submitted for payment with the forged signature and provider identification number of one of the dentists employed by Respondent. The employee dentists stated that they had not authorized their signature on work they had not performed. In addition, records were reviewed from the dental laboratory that filled denture prescriptions from Respondent's practice. Several of the prescriptions had the signature of one of the employee dentists, who indicated that the signatures were not his. The Fraud Control Unit determined that between 1981 and 1985, Respondent had received at a minimum approximately $162,000 from the Medical Assistance Program through the provider numbers of the dentists he employed.

On December 4, 1987, Respondent was indicted by the Fifth Statewide Investigating Grand Jury for the Commonwealth of Pennsylvania for Medical fraud, criminal conspiracy, forgery, and tampering with or fabricating physical evidence. On May 20, 1991, Respondent pled guilty to one count of Medicaid fraud, and was sentenced to two years probation, fined $10,000 and ordered to pay costs of $2,500 and restitution to the Department of Public Welfare in the amount of $87,500.

As a result of his conviction, Respondent entered into a Consent Agreement with the State Board of Dentistry whereby his license to practice dentistry was suspended for one year, with the suspension stayed in favor of a three month suspension and a nine month probationary period. In addition, Respondent was required to pay a $1,000 fine.

By letter dated April 8, 1992, Respondent was notified by the United States Department of Health and Human Services of his mandatory ten year exclusion from the Medicare program pursuant to 42 U.S.C. § 1320–7(a).

Respondent testified at the hearing before Judge Tenney that he never received the December 27, 1976 letter notifying him of his permanent termination from the state Medical Assistance Program. Like Judge Tenney, the Acting Deputy Administrator does not credit this testimony, since there is evidence that Respondent appealed this termination. Respondent denied filing the appeal of the termination and stated that he does not know who filed the

appeal on his behalf. However, the Acting Deputy Administrator does not credit this testimony either, in light of evidence in the record that Respondent was represented by three successive attorneys in his appeal before it was dismissed for failure to pursue.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. § 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.

It is undisputed that subsection (5) of 21 U.S.C. § 824(a) provides the sole basis for the revocation of Respondent's DEA Certificate of Registration. Pursuant to 42 U.S.C. § 1320a–7(a), Respondent has been excluded from the Medicare program for a ten year period effective April 28, 1992, and from the Pennsylvania Medical Assistance Program permanently. Respondent contends that even though there is a lawful basis, revocation would be unduly harsh, since there are no allegations that he has misused controlled substances. Furthermore, Respondent argues that he has been practicing dentistry for five years since his Medicaid fraud conviction and is in good standing in the community in which he practices.

The Acting Deputy Administrator finds that the Drug Enforcement Administration has previously held that misconduct which does not involve controlled substances may constitute grounds, under 21 U.S.C. § 824(a)(5), for the revocation of a DEA Certificate of Registration. See *Gilbert L. Franklin, D.D.S.*, 57 Fed. Reg. 3441 (1992); *George D. Osafo, M.D.*, 58 Fed. Reg. 37,508 (1993); *Nelson Ramirez-Gonzalez, M.D.*, 58 Fed. Reg. 52,787 (1993).

The Acting Deputy Administrator concludes that revocation is an appropriate sanction in this case. In 1977, Respondent was permanently terminated from participation in the Medical Assistance Program for the Commonwealth of Pennsylvania based upon fraudulent billing and inadequate quality of care. Despite this termination, Respondent continued to treat Medical Assistance recipients at his dental practice using on the Medical Assistance claims, the names and provider numbers of his employee dentists without their permission. In addition, in direct violation of the termination letter, Respondent received a percentage of the reimbursement fees paid to his employee dentists by the Medical Assistance Program. The Acting Deputy Administrator concurs with Judge Tenney that, ''these actions cast substantial doubt on Respondent's integrity * * *.''

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. §§ 823 and 824, and 28 C.F.R. §§ 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD5534842, issued to Stanley Dubin, D.D.S., be, and it hereby is, revoked until such time as he may be reinstated under 42 U.S.C. § 1320a–7(a), and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective January 28, 1997.

Dated: November 19, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–30378 Filed 11–27–96; 8:45 am]

BILLING CODE 4410–09–M

Demetris A. Green, M.D.; Revocation of Registration

On February 20, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Demetris A. Green, M.D., of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BG3952339, under 21 U.S.C. 824(a)(3) and 824(a)(4), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Texas and his continued registration would be inconsistent with the public interest. The order also notified Dr. Green that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA mailed the show cause order to Dr. Green at two addresses in Houston, Texas. Subsequently, the DEA received a signed receipt showing that one of the orders was received on February 24, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Green or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Green is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that, by order dated November 3, 1994, the Texas State Board of Medical Examiners (TSBME) suspended Dr. Green's license to practice medicine based upon his ''intemperate use of alcohol or drugs, that in the opinion of the board, could endanger the lives of patients.'' The TSBME further found that on October 7, 1994, Dr. Green was involuntarily admitted to a treatment program for symptoms related to cocaine addiction. The TSBME ordered that Dr. Green surrender his DEA Certificate of Registration, as well as his state controlled substance license.

Based upon the TSBME order, the Texas Department of Public Safety (DPS) canceled Dr. Green's Texas controlled substance registration on December 1, 1994. Subsequent to the TSBME and DPS actions, in March 1995, Dr. Green issued controlled substance prescriptions. Consequently, on December 9, 1995, Dr. Green entered into an Agreed Order with the TSBME whereby the suspension of his medical license was continued for a minimum of two years, and he was again ordered to surrender his DEA Certificate of Registration. Efforts by DEA to obtain Dr. Green's surrender of his DEA registration have been unsuccessful. In light of the actions by the TSBME and the DPS, the Acting Deputy Administrator concludes that Dr. Green is not currently authorized to handle controlled substances in the State of Texas.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3).

This prerequisite has been consistently upheld. See *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104 (1993); *James H. Nickens, M.D.*, 57 Fed. Reg. 59,847 (1992); *Roy E. Hardman, M.D.*, 57 Fed. Reg. 49,195 (1992). Here, it is clear that Dr. Green is neither currently authorized to practice medicine nor to dispense controlled substances in the State of Texas. Therefore, Dr. Green currently is not entitled to a DEA registration. Because Dr. Green is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address whether Dr. Green's continued registration would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BG3952339, previously issued to Demetris A. Green, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective December 30, 1996.

Dated: November 19, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–30379 Filed 11–27–96; 8:45 am]

BILLING CODE 4410–09–M

Irene C. Kelly, a/k/a Ayter Yalincak, a/k/a Imrag Yalincak; Revocation of Registration

On April 1, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Irene C. Kelly, a/k/a Ayter Yalincak, a/k/a Imrag Yalincak, of Indiana, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BK3903829, under 21 U.S.C. 824(a)(1), 824(a)(3), and 824(a)(4), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f). The order alleged in essence that Ms. Kelly fraudulently misrepresented her medical credentials, thereby falsifying her application for registration, and as a result, her state medical license was voided and she was convicted of practicing medicine without a license. The order also notified Ms. Kelly that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The order was sent by certified mail, and a signed return receipt dated April 6, 1996, was received by the DEA. However, no request for a hearing or any other reply was received by the DEA from Ms. Kelly or anyone purporting to represent her in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) more than thirty days have passed since the receipt of the Order to Show Cause, and (2) no requests for a hearing having been received, concludes that Ms. Kelly is deemed to have waived her hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that on May 26, 1994, the Medical Licensing Board of Indiana (Board) summarily suspended the medical license held by Irene Catherine Mary Kelly, M.D. for 90 days. The Board's order stated that on January 27, 1994, Ms. Kelly, fraudulently obtained a license to practice medicine in the State of Indiana by impersonating a Canadian-educated physician. On her application for state registration, she used the fictitious name of ''Irene Catherine Mary Kelly, M.D.'' and submitted phony documentation that indicated her purported credentials. Subsequently, by an Order dated February 16, 1995, the Board voided ab initio the medical license which was issued to Irene Catherine Mary Kelly, M.D. Subsequently, Ms. Kelly was convicted in state court of practicing medicine without a license, and is currently incarcerated, serving a four year sentence. Ms. Kelly has refused to surrender her DEA Certificate of Registration. The Acting Deputy Administrator concludes that Ms. Kelly is not currently authorized to handle controlled substances in the State of Indiana.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). Here, it is clear that Ms. Kelly is neither authorized to practice medicine nor to dispense controlled substances in the State of Indiana. Therefore, Ms. Kelly is not entitled to a DEA registration. Because Ms. Kelly is not entitled to a DEA registration due to her lack of state authorization to handled controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to specifically address the other issues raised by the Order to Show Cause.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BK3903829, previously issued to Irene Kelly, M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective December 30, 1996.

Dated: November 19, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–30380 Filed 11–27–96; 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 August 6, 1996, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application to the Drug enforcement Administration for renewal of registration as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to import small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any manufacturer holding, or applying for, registration as a bulk, manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 30, 1996.

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 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–30355 Filed 11–27–96; 8:45 am]

BILLING CODE 4410–09–M

Earl G. Rozeboom, M.D.; Revocation of Registration

On March 4, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Earl G. Rozeboom, M.D., of Des Moines, Iowa, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AR4044611, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of his registration under 21 U.S.C. 823(f), for reason that, on or about January 20, 1994, the Iowa Board of Pharmacy Examiners revoked his state controlled substance registration. The order also notified Dr. Rozeboom that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The order was sent by certified mail, and a signed return receipt dated March 15, 1996, was received by the DEA. However, no request for a hearing or any other reply was received by the DEA from DR. Rozeboom or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) more than thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Rozeboom is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that based upon Dr. Rozeboom's excessive prescribing of controlled substances, on November 18, 1993, the Board of Medical Examiners of the State of Iowa placed his license to practice medicine on probation for five years, subject to various terms and conditions. One term of that probation is that, Dr. Rozeboom ''shall not posses, order, dispense, administer or prescribe any controlled drugs until further order of the Board.'' As a result of this action, the State of Iowa, Board of Pharmacy Examiners revoked Dr. Rozeboom's controlled substances registration on or about January 20, 1994. Therefore, the Acting Deputy Administrator concludes that Dr. Rozeboom is not currently authorized to handle controlled substances in the State of Iowa.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104 (1993); *James H. Nickens, M.D.*, 57 Fed. Reg. 59,847 (1992); *Roy E. Hardman, M.D.*, 57 Fed. Reg. 49,195 (1992). Because Dr. Rozeboom is not currently authorized by the State of Iowa to handle controlled substances, he is not entitled to a DEA registration.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders the DEA Certificate of Registration, AR404611, previously issued to Earl G. Rozeboom, M.D., be, and it hereby is, revoked, and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective December 30, 1996.

Dated: November 19, 1996.

[FR Doc. 96–30377 Filed 11–27–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay

in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. NJ960011 and NJ960013 dated March 15, 1996.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision NJ960005. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and States:

Volume IV

Wisconsin: WI960070 (November 29, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey:
NJ960005 (March 15, 1996)
NJ960019 (March 15, 1996)
New York:
NY960002 (March 15, 1996)
NY960003 (March 15, 1996)
NY960008 (March 15, 1996)
NY960013 (March 15, 1996)
NY960014 (March 15, 1996)
NY960015 (March 15, 1996)
NY960016 (March 15, 1996)
NY960018 (March 15, 1996)
NY960026 (March 15, 1996)
NY960033 (March 15, 1996)
NY960042 (March 15, 1996)
NY960049 (March 15, 1996)

Volume II

None

Volume III

Florida:
FL960014 (March 15, 1996)
FL960017 (March 15, 1996)
FL960077 (March 15, 1996)

Volume IV

Minnesota:
MN960005 (March 15, 1996)
MN960007 (March 15, 1996)
MN960008 (March 15, 1996)
MN960012 (March 15, 1996)
MN960015 (March 15, 1996)
MN960027 (March 15, 1996)
MN960031 (March 15, 1996)
MN960035 (March 15, 1996)
MN960039 (March 15, 1996)
MN960049 (March 15, 1996)
MN960058 (March 15, 1996)
MN960059 (March 15, 1996)
MN960061 (March 15, 1996)
Ohio:
OH960002 (March 15, 1996)
OH960024 (March 15, 1996)
OH960028 (March 15, 1996)
OH960029 (March 15, 1996)
OH960035 (March 15, 1996)
OH960036 (March 15, 1996)
OH960038 (March 15, 1996)
Wisconsin:
WI960011 (March 15, 1996)
WI960033 (March 15, 1996)

Volume V

Iowa:
IA960038 (March 15, 1996)
Nebraska:
NE960001 (March 15, 1996)
NE960058 (March 15, 1996)
NE960059 (March 15, 1996)

Volume VI

Alaska:
AK960002 (March 15, 1996)
AK960010 (March 15, 1996)
California:
CA960040 (March 15, 1996)
CA960041 (March 15, 1996)
Hawaii:
HI960001 (March 15, 1996)
Montana:
MT960005 (March 15, 1996)
Oregon:
OR960017 (March 15, 1996)
Washington:
WA960001 (March 15, 1996)
WA960011 (March 15, 1996)

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six

separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 22nd day of November 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–30275 Filed 11–26–96; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet by telephone on Saturday, November 30, 1996. The meeting will begin at 11:00 a.m. Eastern Standard Time.

LOCATION: Members of the Corporation's staff and the public will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 10th floor of 750 First Street, NE., Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on proposed Report of the Board of Directors to accompany the Inspector General's Semi-annual Report to the Congress for the period of April 1, 1996–September 30, 1996.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting should contact Barbara Asante at (202) 336–8800.

Dated: November 25, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–30573 Filed 11–25–96; 4:56 pm]

BILLING CODE 7050–01–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

Meeting of the U.S. National Commission on Libraries and Information Science.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 58085, Tuesday, November 12, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 12 1996, 1:00–5:30 p.m.; December 13, 1996, 9:00 a.m.–5:30 p.m.; December 14, 1996, 9:00 a.m.–1:00 p.m.

CHANGE IN MEETING: December 12, 1996, 10:00 a.m.–4:00 p.m.

Additional topics to be discussed: Review and discussion of national and international developments related to copyright including Conference on Fair Use (CONFU) and the World Intellectual Property Organization (WIPO).

PREVIOUSLY ANNOUNCED TIME AND DATE OF CLOSED SESSION; December 12, 1996, 10:00 a.m.–12:00 noon.

CHANGE IN CLOSED SESSION: December 12, 1996, 4:15–5:15 p.m.

CONTACT PERSON FOR MORE INFORMATION: Barbara L. Whiteleather, NCLIS Special Assistant, on (202) 606–9200.

Dated: November 26, 1996.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 96–30602 Filed 11–26–96; 11:36 am]

BILLING CODE 7527–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological, Geographic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Anthropological and Geographic Sciences (#1757).

Date and Time: December 16, 1996, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Contact Persons: Dr. Dennis O'Rourke, Program Director for Physical Anthropology, and Dr. Lisa Brooks, Program Director for Population Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Human Genome Diversity proposals as part of the special competition selection for pilot projects.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30406 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: December 19 & 20, 1996, 8:30 a.m. to 5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ken P. Chong, Program Director Structural Systems and Construction Processes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited & Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30404 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: December 19, 1996 from 8:30 am to 5:00 pm.

Place: Rooms 1120 and 1280 NSF–4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Tse-yun Feng, Program Director for Cross Disciplinary Activities, Room 1160, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30402 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: Friday, December 13; 8:30 am–5:00 pm.

Place: Rooms 730 National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Room 725, Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate OCE's Research Experiences for Undergraduate (REU) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30405 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following three meetings.

Name: Special Emphasis Panel in Materials Research (1203).

Dates and Times: December 16; December 18; and December 19, 1996; 8:30 am–5:00 pm each day.

Place: Rooms 1020, 320 and 320 respectively, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Liselotte J. Schioler, Program Director, Division of Materials Research, Room 1065.41, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate 1997 Ceramics Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30403 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204)

Date and Time: December 16–18, 1996; 8:30 a.m. until 5:00 p.m.

Place: Rooms 375, 360, 370 & 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Keith N. Crank, James Gentle, and James Davenport, Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Statistics and Probability Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30407 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications (#1207).

Date and time: December 17, 18 & 19, 1996; 8:30 a.m. to 5:00 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Tatsuya Suda, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Networking and Communications Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30408 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Proposal Review Advisory Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–

463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Advisory Team (5128).

Date & Time: Tuesday, December 17, 1996—10:15 a.m. to 5:00 p.m. Wednesday, December 18, 1996—9:00 a.m. to 12:00 p.m.

Place: Room 1295, NSF, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Open.

Contact Person: Mr. Charles Herz, Office of Policy Support, NSF, Room 1285, 4201 Wilson Blvd., Arlington, Va. 22230. (703) 306–1090.

Purpose of Meeting. (1) Inventory and evaluate current stresses on NSF's peer review process, as perceived in the research community, (2) develop a short list of the most feasible options for addressing the most important strains, (3) present pros and cons of the options, from the perspectives of proposers and reviewers and from the perspective of overall goals and functions of the system.

Agenda: Greetings and introduction, Operational and policy context, Current strains on the review system, Main options for improvement; pros and cons, Other issues, Plans for further work and second meeting (if needed).

Dated: November 21, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–30410 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science and Technology Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science and Technology Infrastructure.

Date and Time: December 16–17, 1996 8:00 a.m.–5:30 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure, Room 1270, 4201 Wilson Blvd., Arlington, VA 22230; Telephone (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate full applications submitted to the Recognition Awards for the Integration of Research and Education activity.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 22, 1996.

M. Rebeca Winkler,

Committee Management Officer.

[FR Doc. 96–30409 Filed 11–27–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3091]

DOE Hanford Tank Waste Remediation System; Local Public Document Room

The Nuclear Regulatory Commission (NRC) announces the location of the local public document room (LPDR) for records pertaining to the DOE Hanford Tank Waste Remediation System, Richland, Washington.

Members of the public may now inspect and copy these documents at the Richland Public Library, 955 Northgate Drive, Richland, Washington 99352, telephone (509) 943–7446. The library is open on the following schedule: Monday through Friday 10:30 a.m. to 9:00 p.m.; Saturday 10:30 a.m. to 5:30 p.m.; and Sunday 1:00 p.m. to 5:00 p.m.

Interested parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this 22d day of November 1996.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Divison of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–30445 Filed 11–27–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–361, 50–362, And 50–206]

Southern California Edison Company, et al. San Onofre Nuclear Generating Station; Receipt of Petition For Director's Decision Under 10 CFR 2.206

Notice is hereby given that by request dated September 22, 1996, Stephen Dwyer (Petitioner) requested that the U.S. Nuclear Regulatory Commission (Commission) shut down the San Onofre Nuclear Generating Station ''as soon as possible'' pending a complete review of the ''new seismic risk.'' This request is being considered as a Petition under 10 CFR 2.206.

As a basis for the request, the Petition asserts that a design criterion for the plant, which was ''0.75 G's acceleration,'' is ''fatally flawed'' on the basis of the new information gathered at the Landers and Northridge quakes. The Petitioner asserts (1) that the accelerations recorded at Northridge exceeded ''1.8 G's and it was only a Richter 7+ quake,'' (2) that there were horizontal offsets of up to 20 feet in the Landers quake, and (3) that the Northridge fault was a ''Blind Thrust and not mapped or assessed.''

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. By letter dated November 22, 1996, Petitioner's request that the Commission immediately shut down San Onofre Nuclear Generating Station was denied. As provided by Section 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555–0001.

Dated at Rockville, Maryland this 22nd day of November 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–30446 Filed 11–27–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Securities Trading

November 25, 1996.

In the Matter of Alliance Industries, Inc.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of adequate and accurate information about Alliance

Industries, Inc. (''Alliance''), with respect to the company's financial projections available through its internet home page and as distributed to potential investors as well as other information contained in various press releases and other documents.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the aforementioned company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that the trading in the securities of Alliance be suspended for the period from 9:30 A.M. (EDT) on November 26, 1996 through 11:59 P.M. midnight (EDT) on December 10, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–30615 Filed 11–26–96; 1:11 pm]

BILLING CODE 8010–01–M

[Release No. 34–37969; File No. SR–NYSE–96–21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Entry of Limit-at-the-Close Orders

November 20, 1996.

On July 31, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit limit-at-the-close (''LOC'') orders to be entered in any stock at any time during the trading day up to 3:40 p.m. on expiration days and 3:50 on non-expiration days. On October 2, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 37786 (Oct. 4, 1996), 61 FR 53473 (Oct. 10, 1996). No comments were received on the proposal.

In 1994, the Commission approved, on a pilot basis, NYSE's proposed rule change to permit entry of LOC orders to offset published imbalances of market-on-close (''MOC'')[4] orders in certain stocks.[5] A LOC order is one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. LOC orders are executed behind limit orders at the same price and behind MOC orders.

Currently, LOC orders may be entered only to offset published imbalances of MOC orders. MOC imbalances of 50,000 shares or more in (1) the so-called ''pilot'' stocks,[6] (2) stocks being added to or dropped from an index, and (3) any other stock with the approval of a Floor Official, must be published on the tape as soon as practicable after 3:40 p.m. for expiration days[7] and after 3:50 p.m. on non-expiration days. LOC orders currently must be entered only between 3:40 and 3:55 p.m. on expiration days and between 3:50 and 3:55 p.m. on non-expiration days. On expiration days, LOC orders are irrevocable once entered except in case of legitimate error. On non-expiration days, LOC orders are irrevocable after 3:55 p.m. except in case of legitimate error.

In 1995, the pilot program for LOC orders was expanded from five stocks to all stocks that have published MOC order imbalances of 50,000 shares or more in order to help stimulate use of this order type. At the present time, the NYSE proposes to expand further the use of LOC orders by allowing these orders to be entered in any stock at any time during the trading day up to 3:40 p.m. on expiration days and up to 3:50 p.m. on non-expiration days. Thereafter, consistent with current policy, LOC orders could be entered only to offset published MOC imbalances. Under the proposed rule change, LOC orders would be subject to the same type of order entry and cancellation restrictions currently imposed on MOC orders.[8]

According to the NYSE, the use of LOC orders has remained limited: The narrow order entry window, along with the requirement that LOC orders must offset published MOC imbalances, makes the opportunities for their entry too limited to justify for many member firms the programming necessary to support their use. The Exchange believes that the expansion of the LOC pilot to allow for such orders to be entered throughout the day (up until the cut-off time) would allow investors the possibility of using LOC orders in conjunction with other investment strategies. The Exchange therefore believes that this could attract additional LOC orders, thereby increasing liquidity and potentially reducing volatility at the close. According to the Exchange, increased use of LOC orders may prove to be a useful means to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[10]

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter and Form 19b–4 from James E. Buck, Senior Vice President and Secretary, NYSE, to Ivette Lopex, Assistant Director, Division of Market Regulation, SEC, dated September 27, 1996. Amendment No. 1 expanded the purpose section of the filing to provide a more detailed explanation of the reasons the Exchange is seeking to permit limit-at-the-close (''LOC'') orders to be entered in any stock at any time during the trading day up to 3:40 p.m. on expiration days and 3:50 p.m. on non-expiration days. Thereafter, as with market-on-close (''MOC'') orders, LOC orders could be entered only to offset published imbalances. This proposed revision of the LOC pilot would subject LOC orders to the same type of order entry and cancellation restrictions currently imposed on MOC orders.

[4] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. *See* NYSEW Rule 13.

[5] *See* Securities Exchange Act Release No. 33706 (Mar. 3, 1994), 59 FR 11093 (Mar. 9, 1994) (approving the original LOC pilot program). The latest pilot program for LOC orders expires on July 31, 1997. *See* Securities Exchange Act Release No. 37507 (July 31, 1996) (File No. SR–NYSE–96–18 and Amendment No. 1 thereto).

[6] The term ''pilot stocks'' refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors (''S&P'') 500 stocks and any component stocks of the Major Market Index (''MMI'') not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

[7] The term ''expiration days'' refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently (''Expiration Fridays'') and (2) the trading day on which end of calendar quarter index options expire (''QIX Expiration Days'').

[8] On expiration days, there is a 3:40 p.m. deadline for the entry, reduction, or cancellation of any MOC order. On non-expiration days, there is a 3:50 p.m. deadline for the entry, reduction, or cancellation of any MOC order. Currently, LOC orders can be canceled until 3:55 p.m. on non-expiration days. Under the proposed rule change, LOC orders will be irrevocable on non-expiration days, except in the case of legitimate error, after 3:50 p.m. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, and Elisa Metzger, Special Counsel, SEC, on November 19, 1996.

[9] 15 U.S.C. § 78f(b).

[10] In approving this rule, the Commission has considered the proposed rule's impact on

Continued

As part of an effort by the Exchange to institute certain safeguards to minimize excess market volatility that may arise from liquidation of stock positions related to trading strategies involving index derivative products, the Exchange proposed and the Commission approved, on a pilot basis, the use of LOC orders under limited circumstances. Now, the NYSE proposes to expand the use of LOC orders by allowing such orders to be entered throughout the day up until the cut-off time and removing the restriction that they be entered only to offset published MOC imbalances. The Exchange believes that allowing the entry of LOC orders throughout the day would encourage the use of LOC orders, which in turn may alleviate excess market volatility through the expected increase in market liquidity.

The Commission believes that the NYSE's proposed rule change is consistent with the purposes of the Act. Although the NYSE, in effect, is proposing the use of a new order type throughout the day, the Commission does not believe that allowing entry of LOC orders would have harmful effects on other orders or on the market in general. For example, the LOC orders would continue to be executed behind conventional limit orders at the same price and behind MOC orders.

Under the amended pilot, LOC orders may be entered throughout the day for possible execution at the closing price. LOC orders, however, will continue to be executed in the same manner as in the current pilot: LOC orders at a better price than the closing price will be treated as market orders and executed against each other, limit orders on the book, or the specialist's own account. Moreover, as in the current pilot program, the LOC orders *at* the closing price will not be guaranteed an execution. Finally, as previously, after the cut-off periods of 3:40 p.m. for expiration days and 3:50 p.m. for non-expiration days, LOC orders may be entered only to offset published imbalances.

To the extent that the proposal would encourage entry of LOC orders, which may potentially offset imbalances of MOC orders at the close, the Commission believes that LOC orders will continue to be a useful investment vehicle for curbing excess price volatility at the close. With respect to the use of LOC orders as another order type, the Commission believes that the appropriate procedures for handling LOC orders provided by the NYSE in the proposal will ensure that market, limit and MOC orders will not be disadvantaged by the expanded use of LOC orders.

Finally, the Commission notes that the LOC orders have been on a pilot program since 1994 and the NYSE has submitted detailed reports describing its experience with the pilot program. The Commission, therefore, believes that the Exchange appears to have had sufficient experience with the program to determine its effectiveness. The Commission encourages the Exchange to seek permanent approval of the procedures or to determine to discontinue the program after the Exchange analyzes the data for the report due on May 31, 1997. If the Exchange decides to seek permanent approval of the pilot procedures, any such request should also be submitted to the Commission by May 31, 1997, as a proposed rule change pursuant to Section 19(b) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–96–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30399 Filed 11–27–96; 8:45 am]

BILLING CODE 8010–01–M

efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[11] 15 U.S.C. § 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2478]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic documentation will meet in the Department of State, December 16, 1996 in Conference Room 1205 and December 17, 1996 in Conference Room L315 at 2401 E Street NW at the State Annex—1.

The Committee will meet in open session from 1:30 p.m. on the afternoon of Monday, December 16, 1996, until 4:00 p.m. The remainder of the Committee's sessions from 9:00 a.m. until 3:00 p.m. on Tuesday, December 17, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail histoff@ix.netcom.com).

Dated: November 13, 1996.

William Z. Slany,

Executive Secretary.

[FR Doc. 96–30437 Filed 11–27–96; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 20, 1996 [FR 61, page 43117].

DATES: Comments must be submitted on or before December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Port Facilities Inventory.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0023.

Form Number: MA–400.

Affected Public: Port terminal owners.

Abstract: The collection of port facility data from terminal owners will permit the Maritime Administration to maintain information on those essential port facilities that are required for emergency use at the proper level of accuracy and currency. These surveys would be used only in the event the

data contained on these facilities fell below a level of currency deemed adequate for emergency planning purposes.

Need and Use of the Information: Executive Order 12656, as amended, assigns emergency preparedness functions to the Secretary of Transportation and 49 CFR 1.45 further delegates such authority to the department's Administrators. This requires the Maritime Administration to guarantee that individual port facilities and services are available for use by federal agencies prior to and during national defense emergencies.

Annual Burden: 1 hour.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 22, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–30487 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ending November 15, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1947
Date filed: November 14, 1996
Parties: Members of the International Transport Association.
Subject:
PTC23 EUR–SWP 0003 dated November 8, 1996
Europe-Southwest Pacific Expedited Resos
R–1—045c R–2—047c R–3—055c
R–4—057c R–5—065c R–6—067c
R–7—003aa R–8—015v R–9—079dd
Intended effective date: December 15, 1996

Docket Number: OST–96–1947
Date filed: November 14, 1996
Parties: Members of the International Transport Association.
Subject:
PTC23 ME–TC3 0004 dated November 12, 1996
R1–6
PTC3 ME–TC3 0005 dated November 12, 1996
R7–8
PTC23 ME–TC3 0006 dated November 12, 1996
R9
Expedited Middle East—TC3 Resolutions
R–1—015v R–2—070cc R–3—070q
R–4—070s R–5—071c R–6—084t
R–7—002q R–8—015v R–9—015v
Intended effective date: as early as December 15, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–30391 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Docket OST–96–1674]

Application of Mountain Air Express, Inc. d/b/a MAX; For Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 96–11–23).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Mountain Air Express, Inc. d/b/a MAX fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 2, 1996.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–96–1674 and addressed to Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–9721.

Dated: November 22, 1996.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–30361 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Extension of Public Comment Period Regarding Draft Environmental Impact Statement for Proposed Development at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, Central Region, Kansas City, Missouri.

ACTION: Notice of extension of comment period.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has extended the public comment period regarding the Draft Environmental Impact Statement (EIS) for a proposed new parallel runway and associated proposed development at Lambert-St. Louis International Airport. Two graphics in the Draft EIS are in error. These are Figure 5.9 on page 5–16 and Figure 5.12 on page 5–30. We have prepared an errata sheet to correct this error and have provided reviewers corrected graphics to replace these figures. Corrected graphics have also been placed in copies of the Draft EIS located at city halls and libraries.

DATES: The comment period, which was scheduled to end November 18, 1996, has been extended an additional thirty (30) days. In order to be considered, written comments must be received on or before December 18, 1996.

ADDRESSES: Send comments to Ms. Mo Keane, Federal Aviation Administration, Airports Division, ACE 615B, 601 E. 12th Street, Kansas City, MO 64106–2808.

Issued in Kansas City, Missouri on November 13, 1996.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 96–30522 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee (R, E&D); Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development Advisory Committee. The meeting will be held on January 28–29, 1997 at the

Double Tree Hotel, 300 Army Navy Drive, Arlington, Virginia.

On Tuesday, January 28, 1997 the meeting will begin at 9:00 a.m. and end at 5:00 p.m. On Wednesday, January 29, 1997 the meeting will begin at 8:00 a.m. and end at 1:00 p.m. The meeting agenda will review Committee activities including the Report of the National Airspace (NAS) Research and Development Panel, FAA response to Committee recommendations and discussion on establishing 6 standing subcommittees.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on November 21, 1996.

Andres G. Zellweger,

Director, Office of Aviation Research.

[FR Doc. 96–30518 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Federal Highway Administration

[Docket No. 96–047–NO2]

Study of State Costs and Benefits Associated With Repeal of the National Maximum Speed Limit (NMSL)

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final notice announcing NHTSA/FHWA plan to conduct a study of State costs and benefits associated with the NMSL repeal, as required by Section 347 of the National Highway System (NHS) Designation Act (Pub. L. 104–59).

SUMMARY: This notice is being issued to announce NHTSA's and FHWA's plan to conduct the study (hereinafter referred to as the ''NHS Act study'') of the State costs and benefits associated with repeal of the National Maximum Speed Limit (NMSL), as required by the National Highway System (NHS) Designation Act (Pub. L. 104–59). NHTSA and FHWA (hereinafter referred to as ''the agencies'') published a notice in the Federal Register (61 FR 31212) on June 19, 1996, inviting comments, suggestions, and recommendations from State highway and traffic safety officials, highway safety organizations, researchers, and others on the agencies' proposed strategy for conducting the NHS Act study. The proposed strategy, as described in the initial notice, included a draft study outline, the minimum requirements for specific data from the States that have raised their speed limits, and a proposed schedule for completing the NHS Act study in order to meet the September 30, 1997, deadline established by Section 347 of the Act. This notice summarizes comments from the States and others on the proposed NHS Act Study and outlines the agencies' plan to meet the legislative requirement, in view of the concerns noted by the States.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Delmas Johnson, National Center for Statistics and Analysis, Telephone 202/366–5382, Fax 202/366–7078, Internet address is djohnson@nhtsa.dot.gov. In FHWA, Suzanne Stack, Office of Highway Safety, Telephone 202/366–2620, Fax 202/366–2249, Internet address is sjstack@intergate.dot.gov.

SUPPLEMENTARY INFORMATION: The National Maximum Speed Limit (NMSL), enacted by the Congress during the Arab oil embargo of 1973 to conserve fuel, was initially set at 55 miles per hour (MPH). By March 1974, all States were in compliance with the NMSL. The Congress later passed legislation to make the NMSL permanent and to require the States to certify that the NMSL was being enforced. Congress also passed legislation requiring that a study of the benefits of the NMSL be undertaken. The National Academy of Sciences' Transportation Research Board (TRB) conducted this study and in 1984, published its special report, 55: *A Decade of Experience*.[1] The TRB study, while one of the most thorough and extensive examinations of this important safety issue, recognized the inherent difficulties associated with attempts to accurately estimate the safety, economic, and energy benefits of the NMSL. Even with these difficulties, the TRB study concluded that many lives and taxpayer dollars were saved each year with the NMSL. The TRB study also recognized several unresolved issues, including whether the control of the speed limit is a state or Federal responsibility.

In 1987, Congress passed legislation granting the states the authority to raise the speed limit to no more than 65 MPH on the rural Interstate system and certain rural freeways. By 1988, forty states had raised limits on rural Interstates to 65 MPH, bringing approximately 90 percent of the 34,000 rural Interstate mileage to 65 MPH. In 1995, the National Highway System Designation Act (hereinafter referred to as ''the NHS Act'', Pub. L. 104–59) was passed, establishing the National Highway System and eliminating the Federal mandate for the NMSL. Section 347 of the NHS Act required the Secretary of Transportation to study the impact of actions to raise speed limits above 55/65 MPH, ''in cooperation with any State which raises any speed limit in such State to a level above the level permitted under section 154 of title 23, United States Code * * *'', due September 30, 1997.

The agencies proposed a strategy for meeting the study requirements, as stated in Section 347 of the Act, in the initial Federal Register (61 FR 31212) notice, published on June 19, 1996. The proposed strategy emphasized cooperation between the agencies and the States that have increased their speed limits, as stated in the legislation, for preparation of the study, along with a proposed schedule for completing the NHS Act study. The agencies recognized in the initial notice that the proposed NHS Act study outline, while comprehensive in addressing the costs and benefits of increased speed limits, posed difficulties based on the proposed schedule, particularly in terms of data availability. The initial notice requested comments on the reasonableness of the proposed draft study outline, the feasibility of the proposed schedule, and the availability of state specific data.

This notice summarizes the comments received addressing the issues raised in the initial notice and describes the agencies' plan to meet the legislative requirement in view of the concerns identified in the comments.

Summary of Comments

A total of 39 official comments to the docket were received from State agencies, private citizens, National Motorists Association (NMA) members, and others. Nineteen (19) States were represented in the official docket comments. Eighteen (18) of the 19 States commenting to the docket have increased limits since the NMSL was repealed or are planning to do so. Many of the comments from the States included concerns regarding the complexity and/or comprehensiveness of the agencies' proposed study outline, often in terms of the burden that would be placed upon the States. Many of the

[1] *55: A Decade of Experience*, TRB Special Report 204, National Research Council, Washington DC, 1984.

States commented regarding the unavailability of data and the apparent difficulty in meeting the proposed schedule. Comments from private citizens generally supported the repeal of the NMSL, with one exception. Several NMA members and officials commented, expressing views supporting the NMSL repeal and criticizing the proposed study outline. Comments were also received from the National Association of Governor's Highway Safety Representatives (NAGHSR), the Advocates for Highway and Auto Safety (AHAS), the American Trucking Association (ATA), and a consulting firm, JCW Consulting.

Cooperation and participation from the States with increased speed limits is critical to conducting the NHS Act study, as described in Section 347 of the Act. The States commenting to the docket recognized this critical issue and generally commented in three specific areas: Study Methodology, Data Availability, and Scheduling.

1. Study Methodology

While some of the States submitting comments to the docket indicated that the proposed approach was ''* * * solid'' or ''* * * reasonable'', most commented that the approach was too ambitious. The States also expressed concerns, however, that the approach was too broad, posed an additional burden, and would be difficult to accomplish due to the unavailability of data. NAGHSR commented that the proposed approach is reasonable ''* * * only if all states' data were available * * *'' AHAS commented that while the proposed approach was appropriate, ''. . . reliance on state analyses and failure to consider other . . . issues'' were important concerns.

2. Data Availability

The issue of data availability was addressed to some extent in all of the comments received from the States, along with some of the comments from private citizens and JCW Consulting. All of the States submitting comments to the docket expressed concerns related to the unavailability of data to meet the proposed NHS Act study outline. Among the reasons cited for lack of available data were: specific data not presently collected by the states, e.g., speed monitoring, medical costs related to crash injuries; not possible to provide data in time to meet the proposed schedule; lack of resources; data currently collected inadequate for determining benefits and costs specifically related to increased speeds. Some States suggested that the agencies develop standards for estimating benefits and costs, particularly in the absence of specific state data collection efforts.

3. Scheduling

The States commenting to the docket consistently voiced the concern that the proposed schedule was ambitious, unreasonable, impossible, or unrealistic. One State suggested extending the proposed schedule one year past the September 30, 1997, deadline to avoid creating a ''second-rate report.'' Three of the 18 States commenting to the docket indicated that plans existed to study the impact of increased speed limits in their respective State. However, all three States indicated that results from such studies would not be available in time to submit to the agencies for inclusion in the NHS Act Study. A concern regarding the before and after time frame of one year, as specified in Section 347 of the Act, was also expressed by several States and the ATA. ATA suggested that the agencies use a ten year baseline for conducting the study. Many of the States commented that one year of data after the increased limits became effective may not be adequate for analysis to determine impact. This issue is further complicated in that only nine States (Arizona, California, Illinois, Massachusetts, Montana, Nevada, Oklahoma, Pennsylvania, and Wyoming) may have had increased speed limits in place for at least nine months of calendar year 1996. This would mean, at best, that only one calendar year of data for the time frame after the increased speed limit was in place would be available for these nine States. States with increased speed limits becoming effective later in 1996, therefore, would not have one full year of final data to forward to the agencies prior to the report due date of September 30, 1997.

Analytical Challenges

Due to the concerns expressed by the States and others in the areas of study methodology, data availability, and scheduling, the agencies are faced with several major analytical challenges to conducting the NHS Act study. Several of the States specifically indicated that certain types of data, e.g., decreased travel time, increased fuel consumption, and increased or decreased medical costs, would not be available in time for inclusion in the report or was not presently being collected. Without this type of information from the States, it will be difficult for the agencies to address the entire range of benefits due to increased speed limits in the NHS Act study. The issue of data availability is further complicated in that many States are selectively increasing speed limits on certain road segments and/or roadway types, e.g., 4-lane roads, rather than systemwide, e.g., all Interstates. While the selective application of increased speed limits is indicative of the cautiousness on the part of many States in adopting higher limits, it further complicates the issue of data availability by necessitating the analysis of data by road segment. At the national level, determining the impact of increased speed limits on traffic fatalities will be limited to the latest available data from the Fatal Accident Reporting System (FARS) for calendar 1996, focusing on the nine States that have had increased speed limits in place for most or all of 1996. Finally, determining the impact of increased speed limits related to the amount of vehicle miles traveled and the distribution of vehicle speeds on affected roadways will be limited at best to the preliminary information available to the agencies in the summer of 1997.

The agencies' final plan for conducting the NHS Act study, in view of the States' concerns and the analytical challenges discussed above, is described in the following section.

NHS Act Study Data

The initial Federal Register notice described several major categories of data the agencies needed, as a minimum, for addressing critical components of estimating the impacts of increasing speed limits. Based on the comments from the States and others in the area of data availability, the agencies plan to conduct the NHS Act study using the data described in the following table. This table represents a subset of the minimum data requirements included in the initial Federal Register notice.

NHS ACT STUDY DATA AND OUTLINE

Purpose	Data description	Performing organization
Background	Effective Dates of Change in Limits, Roadway Types, New Limit(s), Types of Vehicles Covered.	NHTSA/FHWA and States.
Determining the Impact of Increased Speed Limits on Traffic Fatalities.	Fatalities—1996 Fatal Accident Reporting System (FARS).	NHTSA—national estimates and impact on limited number of States.
Estimating Costs	Economic Cost of Crashes—Before vs. After Speed Limit Changes, Costs of Fatalities.	NHTSA—national estimates.
Determining Exposure	Vehicle Miles Traveled and Speed Distribution	FHWA—VMT: preliminary estimates, if available; Speed monitoring: from those States making voluntary submissions.

As discussed in Analytical Challenges, the agencies' ability to address the impacts of increased speed limits on injury and other crashes and estimating benefits in the NHS Act study will depend on what the States are able to provide within the study schedule. The agencies plan to use a methodology similar to that used in NHTSA's last Report to Congress on the *Effects of the 65 mph Speed Limit Through 1990* (DOT–HS–807–840, June 1992). This report illustrates the type of analysis of crash data that can be performed for estimating the effect of speed limit changes. In this report, a time series regression model was used to estimate the data, using annual data from 1975 through 1986 as the baseline period, and 1987 through 1990 as the 65 mph period. Fatalities on rural interstate highways in the 38 states that increased their speed limits in 1987 were modeled as a function of fatalities on all other roads in these 38 states, and a dummy (0,1) variable representing the absence/presence of the 65 mph speed limit. This approach resulted in a model that fit the data well (i.e., 88 percent of the variation explained). In general, a longer time frame permits more stable estimates than simply comparing the year before vs. the year after, and thus, would be preferable for the current report.

Schedule for Conducting the NHS Act Study

The agencies plan to conduct the NHS Act study within the following schedule in order to meet the deadline established by Section 347 of the Act.

SCHEDULE FOR CONDUCTING NHS STUDY

Date	Milestone
[Insert date of publication in the FEDERAL REGISTER].	Publish final notice on NHS Act study plan and summary of comments received in response to initial notice.
April 1–May 30, 1997	Informally canvas States on the availability of any State-specific studies on the impact of increased speed limits.
June 30, 1997	NHTSA/FHWA complete draft NHS Act study report including consolidation of individual State studies, as available.
July 1997	Draft NHS study circulated for review within DOT (and specific States, as appropriate).
August 1997	Final NHS study completed and reviewed/approved by DOT.
September 30, 1997	Final NHS study sent to Congress.

The NHS Act study as outlined above will provide the agencies and Congress with a preliminary assessment of the impact of increased speed limits for a limited number of States. The agencies plan to continue informally to communicate with the States regarding the impact of increased speed limits, as more States have had the increased limits in effect for longer time periods.

Issued: November 22, 1996.

Donald C. Bischoff,

Executive Director, National Highway Traffic Safety Administration.

Anthony R. Kane,

Executive Director, Federal Highway Administration.

[FR Doc. 96–30513 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No.96–87; Notice 1]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collections of information.

SUMMARY: This notice solicits public comments on continuation of the requirements for the collection of information on safety standards.

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes labeling requirements on four motor vehicle safety standards, for which NHTSA intends to seek OMB approval. The labeling requirements include brake fluid warning, glazing labeling, safety belt labeling and the vehicle certification labeling.

DATES: Comments must be received on or before January 28, 1997.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St. S.W., Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each NHTSA request for collection of information approval may be obtained at no charge from Mr. Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following four proposed collections of information:

Consolidate Labeling Requirements for Motor Vehicles (Except VIN's)

Type of Request—Extension of a currently approved collection.

OMB Clearance Number—2127–0512

Form Number—This collection of information uses no standard form.

Requested Expiration Date of Approval—Three years from the approval date.

Summary of the Collection of Information—NHTSA requires labeling on various components of motor vehicles. This notice requests comments on the labeling requirements related to:

(1) Master cylinder reservoirs to include a brake fluid warning statement.

(2) Certification labeling on motor vehicle glazing (window material).

(3) Safety belt identification labels, and

(4) Vehicle certification labels.

Description of the need for the information and proposed use of the information—NHTSA requires the label information discussed here for two basic reasons. First, the brake fluid warning and the safety belt labeling are provided to consumers to facilitate proper repair and maintenance of their vehicles. The glazing labels and vehicle certification labels are required as written certifications by equipment and vehicle manufacturers. These labels are the manufacturer's testament that the items are being sold with the manufacturer's assurance that the vehicles or equipment comply with the applicable Federal motor vehicle safety standards.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—These labels are placed on each master cylinder reservoir, each piece of motor vehicle glazing, each safety belt and every motor vehicle intended for retail sale.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that all manufacturers will need a total of 76,317 hours to comply with these requirements, at total annual cost of $1,533,500.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: August 30, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–30512 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–59–P

Discretionary Cooperative Agreements To Assist in the Development of Crash Outcome Data Evaluation Systems (CODES) for States not Previously Funded to Develop CODES

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

ACTION: Announcement of discretionary cooperative agreements to assist in the development and use of Crash Outcome Data Evaluation Systems (CODES) in states not previously funded to develop CODES.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to assist states in the development and use of Crash Outcome Data Evaluation Systems (CODES) and solicits applications for projects under this program from states who have not previously been funded to develop CODES. Under this program states will link their existing statewide traffic records with medical outcome and charge data. The linked data will be used to support highway safety decision-making at the local, regional, and state levels to reduce deaths, non-fatal injuries, and health care costs resulting from motor vehicle crashes. The linkage will involve statewide, population-based data for the two years, 1995 and 1996. The linkage and application of the linked data for decision-making must be completed within 18 months of the funding date.

DATES: Applications must be received at the office designated below on or before February 28, 1997.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30). ATTN: Henrietta R. Mosley, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–97–H–07015. Interested applicants should contact Ms. Mosley to obtain the application packet. Included in the application packet are reports about data linkage and applications for linked data developed by the CODES project.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Henrietta R. Mosley, Office of Contracts and Procurement, at (202) 366–9570. Programmatic questions relating to this cooperative agreement program should be directed to Ms. Tina Morgan, New CODES COTR, NHTSA, Room 6125, (NRD–31) 400 7th Street SW., Washington, DC, 20590: (202) 366–0183.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Crash data alone are unable to convey the magnitude of the medical and financial consequences of the injuries resulting from motor vehicle crashes or the success of highway safety decision-making to prevent them. Outcome information describing what happens to all persons involved in motor vehicle crashes, regardless of injury, is needed.

Person specific outcome information is collected at the crash scene and en route by EMS personnel, at the emergency department, in the hospital,

and after discharge. When these data are computerized and merged statewide, they generate a source of population-based data that are available for use by state and local traffic safety and public health professionals. Linking these records to statewide crash data collected by police at the scene is the key to developing relationships among specific vehicle, crash, and occupant behavior characteristics and their medical and financial outcomes.

The feasibility of linking crash and medical outcome (EMS, emergency department, hospital discharge, death certificate, claims, etc.) data was demonstrated by the Crash Outcome Data Evaluation System (CODES) project. This project evolved from the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) which mandated that the National Traffic Safety Administration (NHTSA) prepare a Report to Congress about the benefits of safety belt and motorcycle helmet use. NHTSA provided funding to the States of Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin to link their state data and use the linked data to analyze the effectiveness of safety belts and motorcycle helmets. The Report was delivered to Congress in February, 1996.

Beyond the feasibility of linking data, the CODES project demonstrated that linked data have many uses for decision-making related to highway safety and injury control. In addition to demonstrating the effectiveness of safety belts and motorcycle helmets on death, injury, and costs, the linked data were used to identify populations at risk for increased severity or high health care costs, the impact of different occupant behaviors on outcome, the safety needs at the community level, the allocation of resources for emergency medical services, the injury patterns by type of roadway and geographic location, and the benefits of collaboration on data quality. Crash, vehicle, and behavior characteristics linked with outcome information enable decision-makers to identify those prevention programs that will have the most impact on preventing or reducing the medical and financial costs associated with motor vehicle crashes.

Because CODES focused on using existing data resources for new applications, its success within each state depended upon collaboration among the existing data owners, particularly the technical experts who had experience collecting, computerizing, and analyzing the state data. States that trained this group to perform the linkage and develop applications for the linked data found it easier to institutionalize CODES.

The CODES states demonstrated that data linkage helped fulfill their expanded data needs without the additional expense and delay of new data collection. The linkage process itself provided feedback about data quality and content problems which led to improvements in the state data. Because NHTSA relies on state data for its various functions, it is also in NHTSA's interest to develop data linkage capabilities among all of the states nationally as a means not only to obtain outcome information but also to improve the quality of state data.

Objective

The objective of this Cooperative Agreement is to provide resources for states to:

1. Develop and institutionalize the capability to link state crash and medical outcome data to identify the medical and financial consequences of motor vehicle crashes.

2. Utilize this information in crash analysis, problem identification, and program evaluation to improve decision-making at the local, state, and national levels related to preventing or reducing deaths, injuries, and direct medical costs associated with motor vehicle crashes.

This cooperative agreement is not intended to fund basic development of data systems. However, it is hoped that this project will inspire those States who have already decided to develop state data to expedite their processes in order to become eligible for CODES funding.

General Project Requirements

1. Link statewide crash to medical outcome data for calendar year 1995 and 1996.

a. Develop a statewide Crash Outcome Data Evaluation System (CODES) that includes outcome information for all persons, injured and uninjured, involved in police reported motor vehicle crashes during 1995 and 1996.

(1) As a minimum, the CODES should consist of statewide crash data linked to hospital, and either EMS or emergency department data, preferably both.

(2) Additional state data (driver licensing, vehicle registration, citation/conviction records, insurance claims, HMO/managed care/etc. outpatient records, etc.) should be linked as necessary to meet State objectives.

b. Set up processes for collaboration among the technical experts who manage the data files being linked.

c. Assign an agency(s) to be responsible for obtaining a computer dedicated for linkage, installing and implementing the linkage software, loading the data files to be linked, performing the linkage and validating the linkage results.

(1) Implement probabilistic linkage methodology to facilitate tracking the crash victim from the scene to final disposition/recovery using existing computerized statewide, population-based databases.

(2) Validate the linkage results by evaluating the rate of false positives and false negatives among the linked and unlinked records.

d. Document the file preparation, linkage and validation processes so the grantee will be able to easily repeat during subsequent years after Federal funding ends.

e. Provide NHTSA a copy of the linked data file with supporting documentation as specified by the COTR for NHTSA's internal use. NHTSA will use these data according to the data use agreement included as part of the application packet. Transfer of the linked data to NHTSA does not include transfer of the ownership of the linked data. NHTSA has no authority or responsibility to release the linked data to the public. NHTSA's responsibility is to serve as the facilitator for developing data linkage capabilities at the state level and to encourage use of the linked data for decision making by the state.

2. Use the linked data to influence highway safety and injury control decision-making.

a. Describe the different types of decision-making processes, currently being utilized in the State, that identify highway safety and injury control objectives and prioritize prevention programs to have the most impact on reducing death, injury and direct medical costs associated with motor vehicle crashes.

b. Describe why linked data are needed to make these decision-making processes more effective and how the data will be incorporated.

c. Implement at least one application of linked data to influence highway safety and injury control decision-making that is expected to have a positive impact on reducing death, injury, and direct medical costs.

3. Develop the computer programs needed to translate the linked data into information useful for highway safety and injury control at the local, regional, or state level.

a. Develop a public-use version of the linked data, copies of which will be distributed upon request.

b. Develop the resources necessary to respond to increasing requests for data and access to the linked data for

analytical, management, planning, and other purposes after Federal funding ends.

c. Use the Internet and other electronic mechanisms to efficiently distribute and share information generated from the linked data.

4. Promote collaboration among the owners and users of the state data to facilitate data linkage and applications for linked data.

a. Establish a statewide CODES collaborative network.

(1) Convene a Board of Directors consisting of the data owners and major users of the State data. The CODES Board of Directors will be responsible for managing and institutionalizing the linked data, establishing the data release policies for the linked data, supporting the activities of the grantee, ensuring that data linkage and application activities are appropriately coordinated within the State, and resolving common issues related to data accessibility, availability, completeness, quality, confidentiality, transfer, ownership, fee for service, management etc. The CODES Board of Directors will meet monthly.

(2) Convene a CODES Advisory Group consisting of the CODES Board of Directors and other stakeholders interested in the use of linked data to support highway safety, injury control, EMS, etc. The CODES Advisory Committee will be informed of the results of the data linkage, application of the data for decision-making, the quality of the state data for linkage and the quality of the linked data for analysis. The CODES Advisory Committee will meet twice a year.

b. Promote coordination of the various stakeholders through use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication between all parties to minimize the expense of travel.

5. Work collaboratively with NHTSA to implement the Cooperative Agreement.

a. Attend Briefing Meeting: Each grantee shall attend a briefing meeting (date and time to be scheduled within 30 days after the award) in Washington, DC with NHTSA staff. The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, review the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making and discuss the agendas for the Board of Directors and Advisory Committee.

b. Submit Detailed Action Plan and Schedule. Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule, covering the remaining funding period, for accomplishing the data linkage and incorporating information generated from linked data into the processes for highway safety or injury control decision-making. The action plan shall be subject to the technical direction and approval of NHTSA.

c. Attend Technical Workshops. All grantees together shall attend two technology transfer workshops in Washington, DC during project performance. The first meeting, to be scheduled during the ninth month of funding, will be organized to share data linkage experiences, review applications of linked data, and resolve common problems. The second meeting will be scheduled at the end of the funding period for the purpose of sharing results and making recommendations for future CODES projects.

6. Institutionalize the data linkage and applications for linked data after Federal funding ends. By the end of the 12th month of funding, each grantee shall submit a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the Cooperative Agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and coordinate activities between the grantee and NHTSA.

2. Provide, at no cost to the grantee, training and technical assistance by a CODES expert for up to two weeks on-site and off-site during the project to assist the grantee in preparing the files for linkage, implementing probabilistic linkage techniques, validating the linkage results, developing applications for the linked data, and organizing the CODES Board of Directors and Advisory Committee.

3. Develop a format in which the linked data and supporting documentation will be delivered to NHTSA.

4. Agree to accept the State's CODES linked data for 1995 and 1996 with limited user rights by NHTSA as defined in the grantee data use agreement.

Period of Support

The project study effort described in this announcement will be supported through the award of up to seven (7) Cooperative Agreements, depending upon the merit of the applications received and the availability of funding. It is anticipated that individual award amounts will range from $200,000–$250,000. Project efforts involving linkage of the state data and applications for the linked data must be completed within eighteen months after funding.

Allowable Uses of Federal Funds

1. For general project requirements, the following cost items are considered to be allowable uses of Federal funds on this project:

a. Costs of personnel resources necessary to perform project management activities, data linkage and processing activities, applications of linked data for decision-making, and reporting requirements. Personnel may be members of the grantee organization or loaned by organizations represented on the CODES Board of Directors. Because the linkage process is relatively easy to implement in the second year by persons who have linkage experience, it is important that the staff trained under this project be available to repeat the linkage and train others in subsequent years.

b. Costs of sufficient dedicated computer and software resources (microcomputer(s), or work station, modem, etc.) relative to the volume of records to implement the probabilistic linkage technology and generate, from the linked data, information useful for decision-making. The computer resources must be dedicated for linking the data and generating output from the linked data so that the highway safety and injury control communities have timely access to the linked data when needed to promote highway safety and injury control objectives during and after the project. The computer resources must be located for use by CODES data owners and project staff. Funds may not be used to upgrade an existing computer that is primarily used by non-CODES personnel to meet non-CODES-related responsibilities of the organization. The computer and software resources may not be permanently tied to an existing computer network in such a way as to preclude their movement in the future, as directed by the CODES Board of Directors, to another organization more interested in continuing the linkage and applications for the linked data.

c. Costs, if necessary, to obtain missing data and/or to expedite the computerization of existing statewide data are limited to no more than 10% of the records in those state data files that already have reached at least a 90% computerization rate.

d. Costs, if necessary, to purchase access to existing statewide computerized injury data such as EMS, emergency department, inpatient, census, and claims for linkage.

e. Costs to perform additional edits and logic checks on the databases to be linked to facilitate the data linkage. Specifically, these edits will address data accuracy problems such as: (1) Out of sequence military times for time of crash, time of report to police and/or time of arrival by police at the scene; (2) town and county codes inconsistent with police and EMS service areas; (3) ages inconsistent with date of birth; (4) hospital destinations inconsistent with the location of the crash; (5) resolving duplicate and unsure matches; and, (6) performing other edits appropriate to the State's data.

f. Costs to convene the CODES Board of Directors and the CODES Advisory Committee.

g. Costs to generate a copy of the CODES linked 1995 and 1996 databases for transfer to NHTSA in an acceptable electronic media and format.

h. Costs to create a public use version of the linked data, copies of which will be distributed upon request.

i. Costs related to use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication and distribution of the information generated from the linked data among all stakeholders.

Eligibility Requirements

The grantee must be a state agency, an educational institution, or a non-profit organization associated with motor vehicle injury control. Only one application should be submitted by a State. States which have previously been funded to develop CODES are not eligible. Because this Cooperative Agreement program requires extensive collaboration among the data owners in the State in order to achieve the program objectives, it is envisioned that, during the pre-application process, the data owners will be actively involved in the development of the formal application.

While the general eligibility requirements are broad, applicants are advised that this Cooperative Agreement program is not designed to support basic developmental efforts. Although no single organization within any State has all of the required data capabilities, the application should demonstrate strong collaborative agreements with the data owners and access to at least the statewide crash, hospital, and either EMS or emergency department data, or both, by the time of the award. In addition, the application also should indicate the availability of local funding and/or shared resources to ensure sufficient resources to meet the program objectives, particularly institutionalization of the data linkage and applications for linked data.

Application Procedure

Each applicant must submit one original and five copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Henrietta R. Mosley, 400 7th Street, SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–97–H–07015. Only complete application packages received on or before 2 p.m., February 28, 1997, will be considered.

Application Content

1. The application package must be submitted with OMB Standard Form 424 (REV. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and certified assurances signed. While the Form 424A deals with budget information and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental budget information sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed in support of this project. Applicants shall assume that awards will be made by June 4, 1997 and should prepare their applications accordingly.

2. The application shall include a program narrative statement of not more than 20 pages which addresses the following as a minimum:

a. A brief description of the State in terms of its highway safety and injury control decision-making processes for planning, performance monitoring, SMS and other functions aimed at reducing unnecessary death, injury, and costs of injuries resulting from motor vehicle crashes. This description should indicate how linked data will help make these processes more effective.

b. A brief description of the existing crash and medical outcome files. Applicants will link 1995 and 1996 statewide crash data to EMS (and/or emergency department) and hospital discharge data to obtain medical and financial outcomes for persons injured in motor vehicle crashes. Linkage to census, other traffic records (vehicle registration, driver licensing, roadway, conviction/citation, etc.), insurance claims, etc., are encouraged relative to the proposed uses for the linked data to meet State priorities for highway safety and injury control decision-making. The following information should be included for each data file chosen for linkage for the period 1995–1996.

(1) The reporting threshold and an indication of the compliance rate statewide;

(2) The level of computerization of the data elements needed to identify the events and persons involved in the events;

(3) The total crashes, total persons involved in crashes, total victims with injuries caused by a motor vehicle crash as identified or estimated and a descriptive profile of the total injured by severity level, if available, statewide;

(4) The date when the 1995 and 1996 files will be available for use;

(5) An evaluation of the completeness and accuracy of the financial data indicating total charges and payor source, if included in the data file; and,

(6) If it will be necessary to obtain and/or computerize missing data (not to exceed 10% of the total cases in the file) in a data file to facilitate its linkage.

c. A brief description of the proposed plan for linkage.

d. A brief description of how the linked data will be converted into information useful for the highway safety and injury control decision-making processes for the purpose of reducing unnecessary death, injury, and costs resulting from motor vehicle crashes.

e. A brief description of each member of the CODES Board of Directors and the proposed arrangements describing the management and use of the linked data.

3. The application shall include an appendix. A large appendix is strongly discouraged. Additional material should be included only if it is necessary to support information about data linkage, applications for linked data or institutionalization discussed in the application. Do not send copies of brochures, documents, etc., developed as the result of a collaborative effort in the State. The appendix should include the following:

a. Letters of support from each member of the CODES Board of Directors. The following information should be included in the letters of

support to demonstrate that the applicant has authorized access to the necessary statewide data and the support necessary to resolve operational issues related to confidentiality, accessibility, availability, ownership, publication rights, routine output, etc.

(1) Why linked data are important to the agency.

(2) The priority assigned by the agency to obtain linked data compared to other responsibilities.

(3) The agency's level of commitment in terms of the number of staff and the dollars or shared resources which will be available to support and institutionalize CODES.

(4) The agency's willingness to collaborate with other data owners to support shared ownership of the linked data.

(5) The agency's permission to release the linked data to NHTSA at the end of the project.

b. A brief description or letters of support should be included for the other stakeholders to be represented on the CODES Advisory Committee. The letters of support should indicate the stakeholder's need for the linked data, and willingness to facilitate the linkage of state data or use of linked data for decision-making.

c. A list of activities in chronological order or a Gantt chart to show the expected schedule of accomplishments and their target dates.

d. Descriptions of the proposed project personnel as following:

(1) Project Director: Include a curriculum vitae along with a description of the director's leadership capabilities to make sure that the various stakeholders work together.

(2) Key personnel proposed for the data linkage and applications of linked data, and other personnel considered critical to the successful accomplishment of this project: include a brief description of qualifications, employment status (permanent, temporary) in the organization, and respective organizational responsibilities. The proposed level of effort in performing the various activities should also be identified.

e. A brief description of the applicant's organizational experience in performing similar or related efforts, and the priority that will be assigned to this project compared to the organization's other responsibilities. Priority will be given to those applicants who have a strong need for data linkage now and in the future.

f. Data Use Agreement. A description of state's existing laws and regulations governing patient confidentiality in the data file being linked and conditions under which the linked data file may be used by NHTSA.

Application Review Process and Evaluation Factors

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. Understanding the intent of the program (30%). The applicant recognizes the importance of CODES to obtain medical and financial outcome data which are necessary for a comprehensive evaluation of the impact of highway safety and injury control countermeasures. The applicant shows an understanding of the importance of developing CODES, as a meaningful and appropriate strategy for improving state traffic records capabilities and ensuring the continuation of CODES after completion of this project.

2. Technical approach for project completion (30%). The reasonableness and feasibility of the applicant's approach for successfully achieving the objectives of the project within the required time frame. The appropriateness and feasibility of the applicant's proposed plans for data linkage and applications for the linked data. Evidence that the applicant has the necessary authorization and support from data owners to access medical and non-medical state data, particularly total charges and information about type and severity of injury which are not routinely available for highway safety analyses and release data.

3. Project personnel (20%). The adequacy of the proposed personnel to successfully perform the project study, including qualifications and experience (both general and project related), the various disciplines represented, and the relative level of effort proposed for the professional, technical and support staff.

4. Organizational capabilities (20%). The adequacy of organizational resources and experience to successfully manage and perform the project, particularly to support the collaborative network and respond to the increasing demand for access to the linked data. The proposed coordination with and use of other organizational support and resources, including other sources of financial support.

Depending upon the results of the evaluation process, NHTSA may choose to alter the number of awards. In addition, NHTSA may suggest revisions to applications as a condition of further consideration to ensure the most efficient and effective performance consistent with the objectives of the project. An organizational representative of the National Association of Governors' Highway Safety Representatives will be assisting in NHTSA's technical evaluation process.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award all meritorious applications, NHTSA may consider the following special award factors in the award decision:

1. Priority will be given to those applicants who propose to link more than the minimum number of data files.

2. Priority will be given to applicants who have the highest probability of maintaining the collaborative network of data owners and users, of institutionalizing the linkage of the crash and medical outcome data on a routine basis, and of continuing to respond to data requests after the project is completed.

3. Priority may be given to an applicant on the basis that the application fits a profile of providing NHTSA with a broad range of population densities (rural through metropolitan) with different highway safety needs.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants). In addition, grantees must certify that data release agreements have been signed by the owners of the data files being linked giving the grantee access for linkage and acknowledging that a copy, of the linked data, per NHTSA's specifications, will be transferred to NHTSA for internal analyses by NHTSA staff.

2. Reporting requirements and Deliverables:

a. Detailed Action Plan and Schedule. Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule for accomplishing the data linkage and applications of linked data for decision-

making, showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the technical direction and approval of NHTSA and will describe the following:

(1) The personnel and hardware resources required to perform the data linkage.

(2) The process for obtaining the different files required for linkage.

(3) The process for accelerating the State's data processing, if necessary, so that the statewide data are available in a timely manner for the linkage.

(4) The process for verifying the data and performing additional edits on the linkage variables.

(5) The process for resolving problems expected during linkage and their proposed solutions.

(6) The milestones for completing the various phases of the probabilistic linkage and validation processes.

(7) The milestones for proposed meeting schedules and actions by the Board of Directors and Advisory Committee.

(8) Date(s) for providing 1995 and 1996 linked database(s) to NHTSA.

(9) The process for identifying the limitations of the final linked database or applications of the linked data, if any.

(10) The process for ensuring access to the linked data as demand for information increases.

(11) The process for choosing those applications of linked data that will have the most impact on reducing death, injury, and costs of injuries related to motor vehicle crashes.

(12) The milestones for implementing the applications.

(13) The benefits expected from the applications of the linked data.

b. Quarterly Progress Reports. During the performance, the grantee will provide letter-type written reports to the NHTSA COTR. These reports will compare what was proposed in the Plan of Action with actual accomplishments during the past quarter; what commitments have been generated; what follow up and support are expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter.

c. Board of Directors and Advisory Committee Meetings. Copies of the agenda and minutes for each Board of Directors and Advisory Committee Meeting will be attached to the Quarterly Progress Report submitted to NHTSA immediately following the meeting.

d. Final Report. The grantee shall deliver to NHTSA, at the end of the project, a final report describing the results of the data linkage process, and the applications of the linked data. The report shall include the following:

(1) A description of the state crash and injury data linked,

(2) A description of the file preparation,

(3) A description of the linkage, validation processes and results,

(4) A description of the applications of linked data implemented for decision-making and results of the decision-making,

(5) A discussion of the limitations of the linked data and subsequent applications of these data,

(6) A description of how the State will institutionalize data linkage and continue to use linked data for decision-making,

(7) A description of the documentation created to facilitate repeating of the linkage process and an estimate of how much time is needed to repeat the linkage in subsequent years, and

(8) A copy of the public-use formats that were successful for incorporating linked data into the State's decision-making processes for highway safety and injury control.

e. CODES Linked Database. The grantee shall deliver to NHTSA after linkage, at the date specified in the Action Plan, the CODES linked databases. NHTSA's funds are not being used to ''buy'' the linked data so NHTSA does not retain rights to the linked data. NHTSA's will use the data to help facilitate the development of data linkage capabilities at the state level and to encourage use of the linked data for decision making by the state. The deliverable will include:

(1) The database in an electronic media and format acceptable to NHTSA, including all persons, regardless of injury severity (none, fatal, non-fatal) involved in a reported motor vehicle crash during 1995 and 1996 and including medical and financial outcome information for those who are linked.

(2) A copy of the file structure for the linked data file.

(3) Documentation of the definitions and file structure for each of the data elements contained in the linked data files.

(4) An analysis of the quality of the linked data and a description of any data bias which may exist based on an analysis of the false positive and false negative linked records.

3. During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement as applicable to the grantee shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Issued: November 22, 1996.

Patricia Breslin,

Director, National Center for Statistics and Analysis.

[FR Doc. 96–30401 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–108; Notice 2]

General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by General Motors Corporation (GM) of Warren, Michigan, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118, and 30120 for a noncompliance with 49 CFR 571.115, Federal Motor Vehicle Safety Standard (FMVSS) No. 115, ''Vehicle Identification Number.'' The basis of the application is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the application was published on October 7, 1996, and commenters were afforded an opportunity for comment (61 FR 52493).

Paragraph S4.6 of Standard No. 115 requires that the VIN for passenger cars, * * * be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar. Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm.

GM's description of the noncompliance follows: Approximately 403 Saturn passenger cars, Model Year 1996, were produced which fail to comply with requirements in FMVSS No. 115. These vehicles were built with VIN plates that are partially obstructed by the instrument panel upper trim cover. The characters on the VIN plates are 4 millimeters high. Based on measurements of 25 cars, Saturn estimates that up to one millimeter of some characters was covered on 91.9% of the cars and more than one millimeter was covered on only 8.1% of the cars (about 22 cars). It is easy to read the VIN characters when up to one millimeter is covered.

GM supported its application for inconsequential noncompliance with the following:

''The VIN is in two other easily accessible places—the certification label on the driver's door and the service parts label on the spare tire cover (the owner's manual identifies these locations). Derivatives of the VIN also appear on the engine and transmission. Because the VIN appears in several places on these cars, as well as on the car's title and registration, these cars can be easily identified for the purpose of determining whether they are subject to [recall] campaigns.

''GM uses a 'posident style' font * * * in which each character has a unique upper and lower half. Police agencies have copies of the font sample and will be able to read the VIN even in the worst case condition (2.25 millimeters was the highest obscuration measured). Even without the aid of the font sample, a customer will likely be able to read most of the characters.

''Saturn has not received any field service reports or complaints from customers, dealers, motor vehicle registration officials, or law enforcement personnel. This indicates that no one is being seriously inconvenienced by this condition.

''The NHTSA has agreed that other comparable instances of non-compliance with FMVSS 115 were inconsequential: Marina Mobili, Inc., 51 Fed. Reg. 40367 (50 motorcycles with less than 17 characters in VIN); Volvo White Truck Corp., 47 Fed. Reg. 35063 (46 trucks with wrong model year code); General Motors Corp., 58 Fed. Reg. 32167 (630 cars with VIN characters smaller than 4 millimeters).

''[GM] this non-compliance is inconsequential to motor vehicle safety. A recall would impose costs on Saturn and inconvenience its customers without creating any safety benefit.''

''GM is not aware of any accidents, injuries, owner complaints or field reports associated with this condition.''

No comments were received on the application.

NHTSA accepts GM's analysis of the reported noncompliance and concurs. The agency agrees that motor vehicle safety will not be compromised because of this reported noncompliance; neither will identification of stolen cars or cars subject to recall campaigns be compromised because the VIN is relatively visible, and located in two other easily accessible places—the certification label on the driver's door and the service parts label on the spare tire cover.

Accordingly, for the reasons expressed above, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety, and the agency grants GM'S application for exemption from notification of the noncompliance as required by 49 U.S.C. 30118 and from remedy as required by 49 U.S.C. 30120. (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 25, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–30514 Filed 11–27–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB No. MC–F–20902]

Colorado Mountain Express, Inc., and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc.—Consolidation and Merger—Colorado Mountain Express

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Colorado Mountain Express, Inc. (Express), of Avon, CO, and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc., and/or d/b/a Vans to Vail (Shuttle), of Glenwood Springs, CO (collectively, applicants), have applied for authority under 49 U.S.C. 14303(a)(1) to consolidate or merge into Colorado Mountain Express (CME), a Colorado general partnership to be formed for this purpose once the transaction is approved. The transaction was approved on an interim basis under 49 U.S.C. 14303(i), and we are now tentatively granting permanent approval. Persons wishing to oppose the transaction must follow the rules at 49 CFR part 1182, Subpart B. If no opposing comments are timely filed, this tentative grant of authority will become effective automatically at the close of the comment period and will be the final Board action. If opposing comments are timely filed, this tentative grant of authority will be deemed vacated, and the Board will consider the comments and any replies, and issue a further decision on the application.

DATES: Unless opposing comments are filed, this notice will be effective on January 13, 1997. Comments are due by January 13, 1997, and, if comments are filed, replies are due by January 28, 1997.

ADDRESSES: Send an original and 10 copies of any comments referring to STB No. MC–F–20902 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423. Also, send one copy of comments to applicants' representatives: (1) Thomas J. Burke, 1625 Broadway, Denver, CO 80202; and (2) Mark W. Williams, 1433 Seventeenth St., Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Express (MC–169174) and Shuttle (MC–174322),[1] both motor carriers of passengers, primarily operate between Denver, CO, and various Colorado ski resorts. They hold similar interstate and intrastate operating rights authorizing: (a) charter and special operations within Colorado; and (b) regular route service mostly between Denver and such points as Aspen, Avon, Beaver Creek, Glenwood Springs, Grand Junction, and Rifle, CO.

Applicants state that their combined, aggregate gross operating revenues exceed the $2 million jurisdictional threshold of 49 U.S.C. 14303(g). Claiming that losses are being incurred in their respective operations, Express and Shuttle seek to consolidate their separate properties, operations, and employees into CME. They assert that the consolidated entity will be more efficient and profitable and will provide more effective and economical service to the public.

Applicants certify that: (1) Shuttle received a conditional safety rating from the U.S. Department of Transportation on October 7, 1996; Express has not received a safety rating recently; (2) they have sufficient insurance to cover the services they intend to offer; (3) no party to the transaction is either domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. We find, based on the application, that the proposed

[1] Although not involved in this transaction, New Orleans Tours, Inc. (MC–160781), a motor passenger carrier engaged in charter and special operations, is affiliated with Shuttle.

transaction is consistent with the public interest and should be authorized.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed consolidation and merger are approved and authorized, subject to the filing of opposing comments.

2. This notice will be effective on January 13, 1997, but will be deemed vacated if opposing comments are filed on or before that date.

Decided: November 25, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30486 Filed 11–27–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Submission for OMB Review; Comment Request

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

ACTION: Submission for OMB review; Comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the OCC, OTS, and the FDIC hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection described below. Additionally, the Board is reviewing the collection under its delegated authority from OMB. The OCC, OTS, Board, and FDIC (collectively, the ''Agencies'') may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on: (a) whether the proposed revisions to the following collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility; (b) the accuracy of the Agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

DATES: Comments must be submitted on or before December 30, 1996.

ADDRESSES: Direct written comments as follows:

OCC: Communications Division, Office of the Comptroller of the Currency, Third Floor, 250 E Street, S.W., Washington, D.C. 20219; Attention: 1557–0014. Comments may also be sent by facsimile transmission to (202) 874–5274 or by electronic mail to: REGS.COMMENTS@OCC.TREAS.GOV.

OTS: Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention: 1550–0032. These submissions may be hand-delivered to 1700 G Street, N.W. from 9:00 a.m. to 5:00 p.m. on business days. They may be sent by facsimile transmission to (202) 906–7755. Comments over 25 pages in length should be sent to Fax (202) 906–6956. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

Board: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th & Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street N.W. Comments received 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, 12 CFR 261.8(a).

FDIC: Jerry Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: COMMENTS@FDIC.GOV). Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB Desk Officer, Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the submission or requests for additional information may be obtained by contacting:

OCC: Jessie Gates, OCC Clearance Officer, or Dionne Walsh, (202)874–5090, Legislative and Regulatory Activities Division.

OTS: Colleen M. Devine, OTS Clearance Officer, (202)906–6025.

Board: Mary M. McLaughlin, Board Clearance Officer, (202)452–3829. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202)452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202)898–3907.

SUPPLEMENTARY INFORMATION:

Title: Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report.

OCC's Title: Comptroller's Corporate Manual. The specific portions of the Comptroller's Corporate Manual that are changed and addressed in this notice are those that pertain to the Interagency Notice of Change in Bank Control, the Interagency Notice of Change in Director or Senior Executive Officer, and the Interagency Biographical and Financial Report.

OMB Number:

OCC: 1557–0014.

OTS: Interagency Notice of Change in Control, 1550–0032; Interagency Notice of Change in Director or Senior Executive Officer, 1550–0047; Interagency Biographical and Financial Report, 1550–0047.

Board: 7100–0134.

FDIC: Interagency Notice of Change in Control, 3064–0019; Interagency Notice

of Change in Director or Senior Executive Officer, 3064–0097; Interagency Biographical and Financial Report, 3064–0006.

Form Number:

OCC: None.

OTS: Interagency Notice of Change in Control, Form 1622; Interagency Notice of Change in Director or Senior Executive Officer, Form 1624; Interagency Biographical and Financial Report, Form 1623; Applicant Certification, Form 1606.

Board: Interagency Notice of Change in Control, Form FR 2081a; Interagency Notice of Change in Director or Senior Executive Officer, Form FR 2081b; Interagency Biographical and Financial Report, Form FR 2081c.

FDIC: Interagency Notice of Change in Control, Form 6822/01; Interagency Notice of Change in Director or Senior Executive Officer, Form 6810/01; Interagency Biographical and Financial Report, Form 6200/06.

Abstract: The collections of information are necessary in order to eliminate duplicative filings and to satisfy Federal law and regulatory authority for each agency. The Agencies use the biographical portion of the collections to evaluate the competence, experience, character, and integrity of the persons proposed as organizers, senior executive officers, directors, or principal shareholders. The financial portion is used to evaluate the financial ability of persons proposed as organizers, senior executive officers, directors, or principal shareholders. These reports are also used to allow or disapprove proposed acquisitions.

Current Actions: A task force of the Federal Financial Institutions Examination Council (FFIEC) has adapted, reformatted, and retitled the three reports, pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI). The reports are retitled: Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report. Comments were solicited in the Federal Register on August 13, 1996 (61 FR 42085). The agencies received no comments on any of the forms.

Type of Review: Revision of previously approved collection.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit; individuals or households.

OCC:

Estimated Number of Respondents: Interagency Notice of Change in Control—20; Interagency Notice of Change in Director or Senior Executive Officer—150; Interagency Biographical and Financial Report—520. (For the Comptroller's Corporate Manual—2,800.)

Estimated Total Annual Responses: Interagency Notice of Change in Control—20; Interagency Notice of Change in Director or Senior Executive Officer—150; Interagency Biographical and Financial Report—520. (For the Comptroller's Corporate Manual—9,700.)

Estimated Total Annual Burden Hours: Interagency Notice of Change in Control—600 hours; Interagency Notice of Change in Director or Senior Executive Officer—300 hours; Interagency Biographical and Financial Report—2,080 hours; Estimated Total—2,980 burden hours. (For the Comptroller's Corporate Manual—23,103 hours.)

OTS:

Estimated Number of Respondents: Change in Control—56; Notice of Hiring or Indemnifying Senior Executive, Officer, or Director—2,942.

Estimated Total Annual Responses: Change in Control—56; Notice of Hiring or Indemnifying Senior Executive, Officer, or Director—2,942.

Estimated Total Annual Burden Hours: Change in Control—1,890 hours; Notice of Hiring or Indemnifying Senior Executive, Officer, or Director—19,133 burden hours.

Board:

Estimated Number of Respondents: Interagency Notice of Change in Control—300; Interagency Notice of Change in Director or Senior Executive Officer—280; Interagency Biographical and Financial Report—1,000.

Estimated Total Annual Responses: Interagency Notice of Change in Control—300; Interagency Notice of Change in Director or Senior Executive Officer—280; Interagency Biographical and Financial Report—1,000.

Estimated Total Annual Burden Hours: Interagency Notice of Change in Control— 9,000 hours; Interagency Notice of Change in Director or Senior Executive Officer—560 hours; Interagency Biographical and Financial Report—4,000 hours; Estimated Total—13,560 burden hours.

FDIC:

Estimated Number of Respondents: Interagency Notice of Change in Control—50; Interagency Notice of Change in Director or Senior Executive Officer—300; Interagency Biographical and Financial Report—2,200.

Estimated Total Annual Responses: Interagency Notice of Change in Control—50; Interagency Notice of Change in Director or Senior Executive Officer—300; Interagency Biographical and Financial Report—2,200.

Estimated Total Annual Burden Hours: Interagency Notice of Change in Control— 1,500 hours; Interagency Notice of Change in Director or Senior Executive Officer—600 hours; Interagency Biographical and Financial Report—8,800 hours; Estimated Total—10,900 burden hours.

Dated: November 20, 1996.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: November 22, 1996.

By the Office of Thrift Supervision.

Catherine C.M. Teti,

Director, Records Management and Information Policy, Office of Thrift Supervision.

Board of Governors of the Federal Reserve System, November 13, 1996.

William W. Wiles,

Secretary of the Board.

Dated at Washington, D.C., this 14th day of November, 1996.

By the Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Regulatory Analysis).

[FR Doc. 96–30396 Filed 11–27–96; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6210–01–P; 6714–01–P

Customs Service

Announcement of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a second prototype test of remote location filing. This notice invites public comments concerning any aspect of the planned test, informs interested members of the public of the eligibility requirements for voluntary participation, describes the basis for selecting participants, and establishes the process for developing evaluation criteria. To participate in the prototype test, the necessary information, as outlined in this notice, must be filed with Customs and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

EFFECTIVE DATE: The test of the second prototype will commence no earlier than January 1, 1997, and will run for approximately one year, and may be extended. Comments concerning any

aspect of the remote filing prototype test must be received on or before December 30, 1996.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 1322, Washington, D.C. 20229–0001.

FOR FURTHER INFORMATION CONTACT:

For systems or automation issues: Joseph Palmer (202) 927–0173, or Patricia Welter (202) 927–0775

For operational or policy issues: Troy Riley (202) 927–0256, or Bonnie Brigman (202) 927–0294

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414). These define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (section 414). Remote Location Filing (RLF) will allow a participant to file electronically a formal or informal consumption entry with Customs from a location within the United States other than the port of arrival (POA) or the designated exam site (DES). Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

Since June 1994, the Customs Remote Team has shared the Customs RLF concept through many public meetings and concept papers, and posted information on the Customs Electronic Bulletin Board and the Customs Administrative Message System. Pursuant to § 101.9, Customs Regulations, Customs has been testing the RLF concept. On April 6, 1995, Customs announced in the Federal Register (60 FR 17605) its plan to conduct the first of at least two prototype tests regarding RLF. The first test (Prototype One) began on June 19, 1995. On February 27, 1996, Customs announced in the Federal Register (61 FR 7300) that it was permitting an extension and expansion of the RLF Prototype One until the implementation of Remote Prototype Two. In today's document, Customs is announcing its plan to conclude the first prototype test on December 31, 1996, and conduct a second prototype test of RLF commencing no earlier than January 1, 1997. The first remote location prototype test was offered in the Automated Commercial System (ACS). Although the second remote prototype test was originally scheduled to be tested in the Automated Commercial Environment (ACE), the success of Prototype One precipitated this second test under the Automated Commercial System (ACS) with a larger participant pool.

The first RLF prototype (Prototype One) will conclude December 31, 1996. Prototype One was conducted with a very limited number of participants at limited locations. It was conducted with minimal system changes thereby requiring Customs to intervene manually in tracking and processing. All procedures and processes were closely coordinated with all selected and affected parties. The intent of Prototype One was to test such operational issues as communication, cargo movement and release, and service to and from remote locations. Prototype One tested features such as filing from a remote location, alternate exam location, and entry summary workload distribution.

Additional prototypes of RLF are being developed by Customs to determine the systemic and operational design of the final RLF program which will allow all filers to participate in this type of entry process at a national level. Prototype participants must recognize that these prototypes test the benefits and potential problems of RLF for Customs, the trade community, and other parties impacted by this program.

Description of RLF Program

The RLF program will be determined by the experiences of the planned remote prototypes and with other Customs initiatives such as the Reorganization, Automated Commercial Environment (ACE), and Trade Compliance Redesign. The Customs RLF team's objectives are:

(1) To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct and evaluation of a second prototype test of RLF;

(2) To obtain experience through prototype tests of RLF for use in the design of operational procedures, automated systems, and regulations and

(3) To implement RLF on a national level in conjunction with the Trade Compliance Redesign, and the Automated Commercial Environment.

Description of Proposed Test

The second remote prototype test (Prototype Two) is scheduled to commence no sooner than January 1, 1997, and will run until December 31, 1997, unless Customs exercises its option to extend the test an additional year. Prototype Two will evaluate the operational impact and procedures for a larger participant base, testing filing from a remote location, and alternate location examinations. Prototype Two will not offer the entry summary workload distribution part of RLF as tested in Prototype One.

Regulatory Provisions Suspended

Certain provisions in Part 111 and Part 141 of the Customs Regulations will be suspended during this prototype test to allow remote filing by brokers in ports (broker districts per 60 FR 187, pages 49971–49974), where they currently do not hold permits, and to allow for the movement of cargo from its port of arrival to a designated examination site.

Eligibility Criteria

Note that participation in RLF Prototype Two is not confidential, and that lists of participants will be made available to the public.

To qualify, a participant must have proven capability to provide electronically, on an entry-by-entry basis, the following: entry; entry summary; invoice information using the Electronic Invoice Program (EIP); and payment of duties, fees, and taxes through the Automated Clearing House (ACH).

The following additional requirements and conditions apply:

1. The requested Customs locations must have operational experience with the Customs Electronic Invoice Program (EIP), and have received RLF training.

RLF Trained Locations

The following are locations currently operational under the RLF Prototype One test: (POA indicates port of arrival, and DES indicates designated examination site).

DDPP location	RLF status
0712 Champlain-Rouses Point	POA, DES
0901 Buffalo	POA, DES
0903 Rochester	DES
090# Utica/Syracuse	POA, DES
1001 NY Seaport	POA, DES

DDPP location	RLF status
1303 Baltimore	POA, DES
230# Laredo/Eagle Pass	POA, DES
2704 Los Angeles	POA, DES
3801 Detroit	POA, DES
3802 Port Huron	POA, DES
4601 Newark	POA, DES
4701 JFK	POA, DES
5501 Dallas	DES

After the prototype begins, additional ports that are operational with EIP release and summary processing will be trained in RLF processing if there is significant interest.

EIP Locations

The following locations are currently operational with EIP, and would require appropriate RLF training to become eligible for participation as a POA, DES, or both.

S/P indicates an entry summary processing location which could be eligible as a POA. R/P indicates a release processing location, which could be eligible as a DES.

DDPP location	EIP status
0101 Portland ME	S/P
0106 Houlton ME	R/P
0115 Calais ME	R/P
0401 Boston	R/P, S/P
0901 Buffalo	R/P, S/P
0903 Rochester	R/P
1001 New York Seaport	R/P, S/P
1101 Philadelphia	R/P, S/P
1102 Chester PA	R/P
1103 Wilmington DE	R/P
1108 Philadelphia Arprt	R/P
1303 Baltimore Seaport	R/P, S/P
1401 Norfolk	R/P, S/P
1601 Charleston	R/P
1703 Savannah	R/P
1803 Jacksonville	R/P
2002 New Orleans	R/P
2304 Laredo	R/P, S/P
2704 Los Angeles	R/P, S/P
2720 Los Angeles Arprt	R/P, S/P
2809 San Francisco	R/P
3001 Seattle	R/P
3701 Milwaukee	R/P
3801 Detroit	R/P S/P
3901 Chicago	R/P
4101 Cleveland	S/P
4102 Cincinnati	R/P
4115 Louisville	R/P
4601 Newark	R/P, S/P
4701 JFK	R/P, S/P
5201 Miami	R/P, S/P
5203 Port Everglades	R/P
5206 Miami Airport	R/P
5301 Houston	R/P

2. Participants must be operational on the Automated Clearing House (ACH) 30 days before applying for Prototype Two.

3. Only entry types 01 (consumption) and 11 (informal) will be accepted.

4. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery explained in #5.

5. Participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). This must be done in accordance with 19 CFR 142.21(a). Submission of all line items at the time of release will be required of Northern Border filers if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival using paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (EI transaction) with electronic invoice must be transmitted.

6. Participants will not be allowed to file an RLF involving cargo that has already been moved using in-bond procedures.

7. Participants will be required to use other government agency (OGA) interfaces where available.

8. When necessary, cargo will be examined at the Customs port of arrival, or, at Customs discretion, a filer's requested designated examination site (DES), which must be the Customs port nearest the final destination. The scheduling (approval) of merchandise for examination at a DES that is not at the port of arrival will be considered a conditional release under permit that automatically obligates the importer's bond pursuant to 19 CFR 113.62 for an immediate redelivery to the DES. This Federal Register Notice advises the importer of record for such merchandise that this movement is a redelivery and he/she will not receive an individual notice of redelivery, Customs Form 4647, and that the redelivery clause of the importers bond is automatically triggered whenever Customs examines the merchandise at a DES that is not at the port of arrival.

9. If a notice of redelivery is not complied with, or delivery to unauthorized locations, or delivery to the consignee without Customs permission occurs, the obligors agree to pay liquidated damages in the amount specified pursuant to the bond in 19 CFR 113.62 (f).

Customs will work with all participants to ensure that:

(1) Customs contacts and problem solving teams are established, and

(2) Procedures for remote entry and entry summary processing are prepared.

Prototype Two Applications

This notice solicits applications for participation in Remote Location Filing Prototype Two. There are two distinct application procedures, which depend upon the status of the applicant. One process applies to importers and to brokers acting on behalf of their clients. The other process is for brokers applying on their own behalf.

All applications must initially be submitted to the U.S. Customs Service, 1301 Constitution Avenue, N.W. Room 1322, Washington, D.C. 20229–0001. Applications will be accepted up to 30 days before the close of Prototype Two.

Importers/Brokers on Behalf of Clients

These applications must be submitted to the U.S. Customs Headquarters (address cited above) with the following information:

1. Importer name and, if applicable, broker name, address, and filer code;

2. Supplier name, address, and manufacturer's number;

3. Types of commodities to be imported;

4. Other agency requirements;

5. Port(s) of arrival;

6. Designated examination site(s) (location nearest the final destination);

7. Monthly volume anticipated;

8. Electronic Invoicing Program status and starting date;

9. Electronic Payment (ACH) status and starting date;

10. Main contact person and telephone number.

Brokers as Applicants

This application process will be done in two steps. During the first step the broker must submit the following information to the U.S. Customs Headquarters (address cited above):

1. Broker name, address, filer code and IRS#;

2. Experience with EIP;

3. Sites from which the broker will be transmitting the electronic information;

4. Type of protocol: AII, EDIFACT or both;

5. Point of contact.

Once a broker has received written approval from U.S. Customs Headquarters to proceed with the second step of the application process, the broker will submit the following information to the Port Director(s) overseeing each requested POA and DES location for each client (importer):

1. Participating client name and Importer Number;

2. Supplier name, address, and manufacturer's number;

3. Types of commodities to be imported;

4. Other agency requirements;
5. Port(s) of arrival;
6. Designated examination site(s) located nearest the final destination(s);
7. Monthly entry volume anticipated;
8. Electronic Invoicing Program status and starting date;
9. Electronic Payment (ACH) status and starting date;
10. Main contact person and telephone number of filer.

Basis for Participant Selection

The basis for applications approved by Customs Headquarters will be EIP operational experience, electronic abilities, available electronic interfaces with other agency's import requirements, and operational limitations. The basis for applications being approved or denied by the Port Director(s) will involve issues such as impact on available resources, commodity requirements and if the port has been trained in EIP/RLF.

For brokers applying on their own behalf, the Port Director has 10 working days after the receipt of the second step in the application process to approve or deny the application. Written approval or denial of the second step of the broker application process will be sent to the applicant from the Port Director. If the Port Director denies the second step of the broker application, that denial is effective for 10 working days. After that, a new request may be submitted to the Port Director at the Port of Arrival and the Designated Examination Site. If the applicant does not receive a reply from the Port Director within 10 working days from the date of submission, the application should be considered denied. Those applicants not selected for participation by U.S. Customs Headquarters will be sent a letter of denial. They will, however, be invited to comment on the design, conduct, and evaluation of this prototype.

Current Remote Prototype One participants who wish to apply are required to submit a letter requesting the continuation of their participation under Prototype Two. Participants selected will be notified by means of the Customs Electronic Bulletin Board, the Customs Administrative Message System and in writing.

Dismissal from Prototype Two

If a filer attempts to submit data relating to restricted merchandise or merchandise subject to quota, anti-dumping duties, countervailing duties, or other non-eligible data through the Electronic Invoice Program, the filer may be expelled from the program, prevented from participation in future RLF prototypes, and may be subject to penalties under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

III. Test evaluation criteria

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, and establish baseline measures and evaluation methods and criteria. Evaluations of the prototype will be conducted and the final results will be published in the Federal Register as required by § 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been identified.

1. Baseline measurements will be established through data queries and questionnaires.

2. Reports will be run through use of data query throughout the prototype.

3. Questionnaires will be distributed during and after the prototype period. Participants are required to complete the questionnaires in full and return them within 30 days of receipt.

Customs may evaluate any or all of the following items:

- Workload impact (workload shifts, volume, etc.);
- Policy and procedural accommodation;
- Trade compliance impact;
- Alternate exam site issues (workload shift, coordination/communication, etc.);
- Problem solving;
- System efficiency;
- The collection of statistics.

The trade will be responsible for evaluating the following items:

- Service in cargo clearance;
- Problem resolution;
- Cost benefits;
- System efficiency;
- Operational efficiency;
- Other items identified by the participant group.

In conclusion, it is emphasized that if a company is interested in filing remotely, it must first be operational with the Electronic Invoicing Program (EIP). For information on the Electronic Invoicing Program (EIP), please contact your ABI Client Representative.

Dated: November 25, 1996.

Robert S. Trotter,

Acting Assistant Commissioner Office of Field Operations.

[FR Doc. 96–30501 Filed 11–27–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 2290

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2290, Heavy Vehicle Use Tax Return.

DATES: Written comments should be received on or before January 28, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, T:FP, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Heavy Vehicle Use Tax Return.
OMB Number: 1545–0143.
Form Number: Form 2290.
Abstract: Form 2290 is used to compute and report the tax imposed by Internal Revenue Code section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

Current Actions: Form 2290 is revised annually to reflect the taxable period which begins July 1 and ends June 30 of the following year. Question B on page 1 of Form 2290 is deleted because the information is no longer needed by the IRS. The over-the-counter Form 2290–V, Payment Voucher, has a new entry for the tax period, box 4. Instructions are given on page 8 to complete this entry. Also, instructions for box 2 (the name control) have been expanded to assist taxpayers in making the correct entry.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500,625.

Estimated Time Per Respondent: 36 hr., 7 min.

Estimated Total Annual Burden Hours: 18,084,763.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 20, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–30465 Filed 11–27–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Revenue Procedure 96–53

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–53, Allocations Between Related Parties.

DATES: Written comments should be received on or before January 28, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocations Between Related Parties.

OMB Number: 1545–1503.

Revenue Procedure Number: Revenue Procedure 96–53.

Abstract: The information requested is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time Per Respondent: 32 hours, 49 minutes.

Estimated Total Annual Burden Hours: 5,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 21, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–30490 Filed 11–27–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''The Legacy of Peter the Great: St. Petersburg: A Cultural Celebration'' (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at New York City's World Financial Center, from on or about January 14, 1997, through on or about March 9, 1997 is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: November 25, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–30595 Filed 11–27–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Jacqueline Caldwell, Assistant General Counsel, at 202/619–6982; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547.

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0133.

Titles and Form Numbers: Application for Amounts on Deposit for Deceased Veteran, VA Form 21–6898.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to gather the necessary information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries. Without this information, the VA could not determine the proper individual(s) to receive any accrued benefits.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 175 hours.

Estimated Total Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 700.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 12, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–30426 Filed 11–27–96; 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: 2900–0092.

Title and Form Number: Counseling Record—Personal Information, VA Form 28–1902.

Type of Review: Extension of a currently approved collection.

Need and Uses: A counseling psychologist uses the form to evaluate veteran claimants and assist eligible veterans to plan a suitable program of vocational rehabilitation. If needed, the VA must develop a program of assistance and services to improve the veteran's potential to participate in vocational rehabilitation. The VA must also provide counseling services to help a veteran or other beneficiary to select an educational, training, or employment objective.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this 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 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 12, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–30427 Filed 11–27–96; 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: 2900–0016.

Title and Form Number: Claim for Disability Insurance Benefits, VA Form 29–357.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by the policyholder to claim disability insurance benefits on National Service Life Insurance and United States Government Life Insurance policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this 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 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 12, 1996.

By direction of the Secretary:

William T. Morgan,

Management Analyst.

[FR Doc. 96–30428 Filed 11–27–96; 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: 2900–0321.

Titles and Form Numbers: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

Type of Review: Revision of a currently approved collection.

Need and Uses: The form is used by VA beneficiaries to appoint any one of a number of recognized service organizations to represent them in the prosecution of their VA claims. The information is used to determine who has access to the beneficiary's claim file. In addition, it determines who has the right to receive copies of correspondence from the VA to the beneficiary.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 27,083 hours.

Estimated Total Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 325,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this 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 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 12, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–30429 Filed 11–27–96; 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: 2900–0139.

Title and Form Number: Notice—Payment Not Applied, VA Form 29–4499a.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by veterans to reinstate their Government Life Insurance. The information collected is used by the VBA to determine eligibility of the applicant for reinstatement of his/her life insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this 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 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 12, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–30430 Filed 11–27–96; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the Advisory committee on Structural Safety of Department of Veterans Affairs Facilities will be held on:

Monday, December 9, 1996, at 8:30 a.m.–4:30 p.m.

Tuesday, December 10, 1996, at 10:00 a.m.–12:30 p.m.

The location of the meetings will be 811 Vermont Avenue, NW; Washington, DC; in Room 438 on December 9, 1996, and Room 442 on December 10, 1996.

The all day meeting of Monday, December 9, 1996, is primarily designed as a work session to go over the developments in the field of structural design, as a result of lessons learned from the damages caused by recent earthquakes around the world, and fire safety issues. The Tuesday, December 10, 1996, meeting is of a formal nature, where structural safety issues from natural disasters and fire will be voted upon.

Both meetings will be open to the public. It will be necessary for those wishing to attend to contact Krisna K. Banga, Senior Structural Engineer, Standards Service, Facilities Quality Office, Office of Facilities Management, Department of Veterans Affairs Central Office (phone 202–565–9370) prior to December 2, 1996.

Dated: November 18, 1996.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–30431 Filed 11–27–96; 8:45 am]

BILLING CODE 8320–01–M

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Federal Register

Vol. 61, No. 231

Friday, November 29, 1996

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For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1910.....59762
1922.....59762
1944.....59762
1951.....59762
1955.....59762
1956.....59762
1965.....59762
3550.....59762

Proposed Rules:

20.....58343
58.....58345
400.....57595
403.....58786
433.....60049
457.....48786, 60049
729.....59840
735.....60637
932.....57782
944.....57782
1005.....59843
1007.....59843
1011.....59843
1046.....59843
1124.....60639
1135.....60639
1446.....59840
1728.....57788

8 CFR

3.....59305
103.....57583
212.....59824
245.....59825

9 CFR

53.....56877
71.....56877
78.....58625
82.....56877
92.....56877
94.....56877
97.....58626
161.....56877
318.....58780

Proposed Rules:

Ch. III.....58664
304.....57790
308.....57790
310.....57790
318.....57791
320.....57790
325.....59372
327.....57790
381.....57790, 59372
416.....57790
417.....57790

10 CFR

2.....56623
13.....56623

Proposed Rules:

2.....59031
33.....58346
70.....60057
430.....56918, 57794

11 CFR

104.....58460

12 CFR

3.....60342
5.....60342
7.....60342
16.....60342
28.....60342
204.....60171
207.....60166
215.....57769, 58782
218.....57287
219.....58974
220.....60166
221.....60166
225.....56404
250.....57287
261.....60013
263.....56407
308.....57987
545.....60173
556.....60173
560.....60173, 60179
563.....60173. 60179
571.....60173
574.....60179
575.....60179
583.....60179
584.....60179
701.....59305
745.....60185
747.....57290
950.....59311
1806.....59827

Proposed Rules:

207.....60168
215.....57797
220.....60168
221.....60168
226.....60223
936.....60229
960.....57799

13 CFR

Proposed Rules:

120.....60649
121.....59382

14 CFR

21.....57002
25.....56408, 57946
39 .....57291, 57295, 57296, 57298, 57299, 57300, 57301, 57304, 57311, 57313, 57315, 57317, 57319, 57322, 57232, 57993, 57994, 58315, 58316, 58318, 58323, 58326, 58975, 58978, 58980, 58981, 58983, 58985, 58987, 58989, 59315, 59317, 59319, 59321, 59322, 59323, 59325, 59326, 59828, 60015, 60016, 60018
67.....59282
71 .....56623, 56624, 57324, 57771, 57772, 58131, 58782, 58783, 58784, 59180, 59181, 59328, 59329, 60186, 60187, 60188, 60189, 60524, 60525, 60526
97 .....57003, 57998, 57999, 58000, 60527, 60528, 60530
121.....57585, 58924
382.....56409

Proposed Rules:

25.....58665, 59202
39 .....56640, 56642, 56919, 56921, 56923, 56925, 57342, 57830, 57832, 58012, 58014, 58016, 58145, 58147, 58148, 58353, 58355, 58356, 58667, 58669, 59033, 59034, 59036, 59038, 59203, 60650, 60653
71 .....56479, 56480, 56644, 58150, 59040, 59041, 59042, 59206, 59207, 59208, 59383, 59384, 59385, 60238, 60239, 60240, 60241, 60242, 60655, 60656, 60657, 60658, 60659, 60660
73.....56927
382.....56481
91.....59209
121.....59209
127.....59209
135.....59209

15 CFR

30.....60531
902.....56425
990.....58131
2301.....57966

Proposed Rules:

303.....60154

16 CFR

21.....59181

Proposed Rules:

1700.....59043

17 CFR

3.....58627
200.....56891
201.....57773, 59930

Proposed Rules:

1.....59386
5.....59386
232.....59046
240.....59046
300.....56485

18 CFR

11.....58461
365.....57325
375.....57325

Proposed Rules:

284.....58790
1301.....58018

19 CFR

Proposed Rules:

10.....56645
18.....56645
114.....56645

21 CFR

50.....57278
101.....58991
110.....59372
131.....58991
133.....58991
176.....58628
177.....60533
178.....56892
312.....57278
328.....58629
333.....58471
510 .....58630, 58631, 59002
520 .....56892, 59002, 59003
522.....59002
530.....57732
556.....56892
558.....58631
610.....57328
810.....59004
812.....57278
1308.....56893

Proposed Rules:

101.....58151, 60661
177.....59330
511.....59209
514.....59209
564.....59845

22 CFR

40.....59182
41.....56438
121.....56894
601.....58327

23 CFR

640.....57330

24 CFR

5.....60535
200.....60158
213.....60158
220.....60158
221.....60158
233.....60158
234.....60158
245.....57960
3500.....56624, 58472

25 CFR

250.....59331
309.....57002

26 CFR

1.....60540
20.....60551
40.....58004
48.....58004
49.....58004
301.....58004
601.....58004
602 .....58004, 60540, 60551

Proposed Rules:

1 .....56647, 58020, 58152, 58798

27 CFR

Proposed Rules:

4.....56928
5.....56928, 57597
7.....56928, 57597
19.....56928
20.....56928
22.....56928
24.....56928
25.....56928
27.....56928
70.....56928
250.....56928
251.....56928

28 CFR

0.....59305
45.....59811
345.....59168
540.....57568

Proposed Rules:

100.....58799

29 CFR

0.....57281
1910.....56746
1915.....56746
1926.....56746, 59831
4044.....58479

Proposed Rules:

1952.....58358
2510.....59845

30 CFR

250.....60019

Proposed Rules:
202.....59849
206.....59849
906.....58800, 59332
943.....56648

31 CFR

1.....60559
560.....58480

Proposed Rules:
203.....59211
225.....58493

32 CFR

69.....60562
92.....56896
176.....56896
199.....59337
644.....58133
706.....58009, 60027

Proposed Rules:
199.....56929
202.....58803

33 CFR

100 .....59022, 59024, 60027, 60028
117.....57585, 59025
157.....60189
165 .....59026, 60028, 60030

Proposed Rules:
117 .....57599, 59047, 59394
155.....58804
159.....58804
165.....57599
187.....58359
404.....58496
407.....58496

34 CFR

99.....59292
600.....60565
668 .....58926, 60390, 60565, 60578
673.....60390
674 .....58926, 60390, 60578
675 .....58926, 60390, 60578
676 .....58926, 60390, 60578
682.....58926, 60578
685.....58926, 60578
690 .....58926, 60390, 60578

35 CFR

133.....60610
135.....60610

36 CFR

Proposed Rules:
7.....59393
223.....58281

37 CFR

1.....56439
2.....56439
5.....56439
10.....56439
253.....60613

Proposed Rules:
202.....58497

38 CFR

2.....56448
3.....56626, 57586
17.....56897
36.....56449
42.....56449

Proposed Rules:
17.....56486

39 CFR

111.....60190
233.....56450

40 CFR

52 .....56461, 56470, 56472, 56474, 56627, 56629, 56897, 57331, 57775, 58133, 58281, 58481, 58482, 60191, 60613
60.....59832
69.....58158
70 .....56631, 57589, 60032
75.....59142
79.....58744
80.....58304, 58744
81 .....58482, 58487, 60615
86.....58102, 58618
89.....58102
90.....58296
131.....60616
147.....58932
180 .....58135, 58331, 60617, 60622, 60628
258.....60328
261.....57334, 59932
262.....59932
264.....59932
265.....59932
266.....56631
270.....59932
271.....59932
300 .....56477, 57594, 58332, 59184, 60197
455.....57518

Proposed Rules:
Ch. I.....59211
51.....58497
52 .....56491, 56492, 56649, 56650, 56930, 57343, 57834, 58498, 58671, 60242, 60253, 60671
63.....57602, 59849
69.....58158
70.....60061
81.....58498
82.....56493
85.....58022
86.....58028
89.....58028
131.....60672
132.....58444
152.....57356
156.....57356
180.....57356
194.....58499
247.....57748
300.....56931
437.....56650

41 CFR

101–49.....60034
105–735.....56399
Ch. 301.....59185

42 CFR

50.....56631
410.....59490
413.....58631
415.....59490
431.....58140
440.....59198

Proposed Rules:
121.....58158

43 CFR

Proposed Rules:
1300.....58843
1600.....58160, 58843
1780.....58843
1810.....58843
1820.....58160
1840.....58160
1850.....58160
1860.....58160, 58843
1880.....58160, 58843
2090 .....56496, 58160, 58843
2200.....58160, 58843
2300.....58160, 58843
2360.....58843
2400.....58843
2520.....58160, 58843
2540.....58160
2560.....58160
2610.....58843
2620.....58160, 58500
2640.....58843
2650.....58843
2710.....58843
2720.....58160, 58843
2740.....58843
2800 .....57605, 58160, 58843
2810.....58160, 58843
2880.....58160, 58843
2910.....58160, 58843
2920 .....57605, 58160, 58843
3000.....58160, 58843
3100 .....56651, 58160, 58843
3120.....58160
3130.....58843
3150.....58160, 58843
3160.....58160, 58843
3180.....58160
3200.....58160, 58843
3240.....58160
3250.....58160, 58843
3260.....58160, 58843
3280.....58160
3410.....58160
3420.....58160, 58843
3430.....58160
3450.....58160
3460.....58843
3470.....58160
3480.....58160, 58843
3500.....58160, 58843
3510.....58160
3520.....58160
3530.....58160
3540.....58160
3550.....58160
3560.....58160
3590.....58160, 58843
3600.....58843
3710.....58160
3730.....58160
3740.....58160
3800.....58160, 58843
3810.....58160
3820.....57837
3830.....58160, 58843
3870.....58160
4100 .....57605, 58843, 59834
4200.....58160, 58843
4300 .....56497, 57605, 58160, 58843
4700 .....57605, 58160, 58843
5000.....58160
5040.....58501
5400.....58843
5460.....57605
5470.....58160
5510.....57605, 58160
6400.....56651
8200.....57605, 58843
8340.....57605, 58843
8350.....57605
8360.....57605, 58843
8370.....58160
8560.....58843
8570.....57605
9180.....58160
9210.....57605, 58843
9230.....58160
9260.....57605

44 CFR

64.....57572, 59339
65.....60034, 60037
67.....60041

Proposed Rules:
67.....60062

45 CFR

205.....58140
672.....59027
680.....59835
681.....59835
682.....59835
683.....59835
684.....59835
1301.....57186
1303.....57186
1304.....57186
1305.....57186
1306.....57186
1308.....57186
1355.....58632
1356.....58632
1357.....58632

46 CFR

Proposed Rules:
2.....58804
3.....58804
4.....58804
6.....58804
7.....58804
10.....58804
12.....58804
14.....56632
15.....58804
16.....58804
24.....58804
25.....58804
26.....58804
28.....57268, 58804
30.....58804
31.....58804
32.....58804
34.....58804
35.....58804
39.....58804
50.....58804
56.....58804
58.....58804
61.....58804
63.....58804
67.....58359
68.....58804
69.....58804
70.....58804
71.....58804
72.....58804
76.....58804
77.....58804
78.....58804

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Popcorn promotion, research, and consumer information order; published 9-30-96

DEFENSE DEPARTMENT

Domestic Dependent Elementary and Secondary Schools:

Elected school boards; establishment and operation policies and procedures; published 11-29-96

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Montana; published 9-30-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Indiana; published 11-29-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Imidacloprid; published 11-29-96

Metolachlor; published 11-29-96

Tebufenozide; published 11-29-96

Toxic and hazardous substances:

Health and safety data reporting rule--

List additions; published 10-29-96

Water pollution control:

Water quality standards--

Idaho human health criteria; withdrawn; published 11-29-96

FEDERAL COMMUNICATIONS COMMISSION

Commuications equipment:

Radio frequency devices--

Spectrum below 5 Ghz transferred from Federal Government; use; published 10-30-96

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:

Budgets approval; Federal regulatory reform; published 10-30-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

New drug applications--

Tylosin; published 11-18-96

Food additives:

Polymers--

1,2-benzisothiazolin-3; published 11-29-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Noncitizens; financial assistance restrictions; published 11-29-96

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Leases; continuance beyond primary term; published 10-30-96

Leases; drilling requirements; published 10-30-96

JUSTICE DEPARTMENT

Drug Enforcement Administration

Precursor and essential chemical import/export declaration; distribution requirements; published 9-30-96

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

Voting quorums; published 10-29-96

LABOR DEPARTMENT

Occupational Safety and Health Administration

Construction safety and health standards:

Scaffolds; published 8-30-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 10-24-96

British Aerospace; published 10-24-96

Fairchild; published 10-21-96

Pratt & Whitney; published 9-30-96

Short Brothers plc; published 10-24-96

TREASURY DEPARTMENT

Customs Service

Privacy Act; implementation; published 11-29-96

TREASURY DEPARTMENT

Internal Revenue Service

Estate taxes:

Qualified domestic trusts; requirements to ensure estate tax collection; published 11-29-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit research, promotion, and consumer information order; comments due by 12-2-96; published 10-2-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Ports designation--

Atlanta, GA; comments due by 12-6-96; published 10-7-96

Federal Seed Act:

Imported seed and screenings; comments due by 12-3-96; published 10-4-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Peanuts; comments due by 12-3-96; published 11-25-96

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

Commerce control list--

Commercial communications satellites; enhanced national and foreign policy controls; comments due by 12-5-96; published 10-21-96

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:

Nucleotide and/or amino acid sequence listings; changes; comments due by 12-3-96; published 10-4-96

Patent practitioners; registration examination, continuing education requirement, and annual fee; comments due by 12-6-96; published 9-30-96

EDUCATION DEPARTMENT

Elementary and secondary education:

Impact aid program; comments due by 12-6-96; published 10-7-96

Postsecondary education:

Strengthening institutions program, strengthening historically black colleges and universities program, etc.; Federal regulatory review; comments due by 12-6-96; published 10-7-96

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection--

Refrigerant recycling; reclamation requirements extension; comments due by 12-2-96; published 11-1-96

Air quality implementation plans:

Preparation, adoption, and submittal--

Prevention of significant deterioration and nonattainment new source review; Federal regulatory review; comments due by 12-5-96; published 10-25-96

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-2-96; published 11-1-96

Colorado; comments due by 12-2-96; published 10-3-96

Maryland; comments due by 12-2-96; published 10-31-96

New Jersey; comments due by 12-2-96; published 10-31-96

New York et al.; comments due by 12-5-96; published 11-5-96

Virginia; comments due by 12-6-96; published 11-6-96

Hazardous waste:

State underground storage tank program approvals--

Massachusetts; comments due by 12-2-96; published 10-31-96