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Friday
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WHEN: December 10, 1996 at 9:00 a.m.
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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

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AE97

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.
ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds that were recently appropriated.

The DIPP indemnifies dairy farmers and manufacturers for losses suffered with respect to milk and milk products, through no fault of their own.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, P.O. Box 2415, Washington, D.C. 20013–2415, at (202) 720–7320.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

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 Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR part 760 set forth in this final rule do not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35. Existing information collections were approved by OMB and assigned OMB Control Number 0560–0116.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program was extended several times. Most recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 1997, (the Act) Public Law 104–180, 110 Stat. 1569, which authorizes the program to be carried out until the funds appropriated under the Act are expended. The objective of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR 760.1–760.34. This final rule makes no changes in the provisions of the regulations. Since the only purpose of this final rule is to make a technical amendment by adding a new authority pursuant to the Act, it has been determined that no further public rulemaking is required. Therefore, this final rule shall become effective upon date of publication in the Federal Register.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Programs

The authority citation for Subpart Dairy Indemnity Payment Programs is revised to read as follows:

Authority: Pub. L. 104–37, 109 Stat. 310; Pub. L. 104–180, 110 Stat. 1569.

Signed in Washington, DC, on November 21, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–31072 Filed 12–5–96; 8:45 am]
BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV96–981–4FR]

Almonds Grown in California; Interest and Late Payment Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements interest and late payment charges on past due assessments owed under the almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule implements authority contained in the marketing order to allow the Board to collect late payment and interest charges for past due assessments owed the Board by handlers, and will contribute to the efficient administration of the program.

EFFECTIVE DATE: This final rule becomes effective December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, Fax # (202) 720–5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' This 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after 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 action 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 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 95 handlers and approximately 8,000 producers of almonds in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This final rule implements regulations concerning collection of assessments under the California almond marketing order. This rule allows the Board to impose interest and late payment charges on past due assessment accounts. Although the vast majority of handlers are timely in remitting their assessments, there are a few who are not. This rule provides incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It will not impose any costs on handlers who pay their assessments on time, and will contribute to the efficient administration of the program. Therefore, the AMS has determined that this action will not have a significant economic effect on a substantial number of small entities.

Section 981.81 of the almond marketing order provides authority for the Board to assess handlers of California almonds to fund authorized activities. This section was recently amended to authorize the Board, with the approval of the Secretary, to impose interest and late payment charges on past due assessments.

The Board met on July 24, 1996, and unanimously recommended implementing the order authority regarding interest and late payment charges. Although most handlers remit assessments in a timely manner, historically there have been a few who do not. Those handlers are able to reap the benefits of Board programs at the expense of others. In addition, they are able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. In effect, this provides handlers with an interest free loan.

Implementing interest and late payment charges will provide an incentive for handlers to pay assessments on time, which will improve compliance with the order. It will decrease the number of actions taken against handlers failing to pay assessments on time through administrative remedies or the Federal courts. These remedies can be costly and time consuming and often add to an already overburdened legal system. This rule removes any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

For 1996–97 crop year assessments, interest charges of one and one half percent per month will be charged for assessments 30 days or more late. In addition, assessments remaining unpaid for 60 days will be charged a 10 percent late payment charge. For prior crop year assessments past due, the Board recommended an interest rate of one and one half percent per month and a late payment charge of 20 percent, after handlers are provided an initial grace period to come into compliance.

While the Board's recommendation contemplated calculating interest and late payment charges from the original invoice date, the Department has determined that no interest or late payment charges will accrue prior to the effective date of this rule. Interest or late payment charges will only be applicable to assessments accrued and billed after the effective date of this rule.

The proposed rule concerning this action was published in the September 13, 1996, Federal Register (61 FR 48428), with a 30-day comment period

ending October 15, 1996. Two comments were received.

The Board commented that it supports the rule, in part, but it requested that the Department reconsider allowing the application of interest and late payment charges on assessments delinquent prior to the effective date of the final rule. The Board commented that the proposed rule ignored the industry's recommendations with regard to assessments which are delinquent prior to the effective date of the final rule and no one should be allowed to benefit from a ''free ride'' at the expense of other handlers. The Board believes that allowing handlers a short period of notice, such as 60 days, before imposing interest and late payment charges after the final rule is effective would give handlers ample opportunity to become current with all assessments past due. Those that do not become current during the notice period should be subject to interest and late payment charges, the Board believes. The Board further states that it believes this is consistent with the order language.

The Department does not believe that the Board's recommendation would be consistent with the order language. The amended order language states that assessments not paid within the prescribed period of time ''subsequent'' to approval by the Secretary shall be subject to interest or late payment charges. This language clearly indicates that only after the authority is implemented by a final rule should assessments be subject to interest and late payment charges. Although the Board may disagree with the Department's position that the order authorizes it to charge interest and late payment charges only on handlers who fail to pay assessments accrued and billed after the effective date of the final rule, the Department believes that the clear language and the intent of the order amendment is being met with this action and the long term benefits of this final rule will be significant to the effective administration of the order. For the above stated reasons, no change is being made to the rule in response to the Board's comment.

The second comment was submitted by an attorney on behalf of an almond handler. This commenter requested clarification on the portion of the rule which states that no interest or late payment charges will accrue prior to the effective date of the rule and that interest and late payment charges will only be applicable to assessments accrued and billed after the effective date of the rule. As an example, he asked if a handler could be charged interest or late payment charges for assessments accrued in 1993. The commenter's interpretation of this language was that it would not. The commenter is correct. Only those assessments accrued and billed after the effective date of this final rule will be subject to interest and late payment charges.

The commenter also asked if a handler has filed a petition in good faith under section 608 15(a) of the Act, challenging the constitutionality of any or all portions of the almond marketing order, and withholds assessments pending the outcome of this action, is the handler subject to interest and late payment charges from the time the assessments were originally accrued and billed? The commenter stated that interest and late payment charges should not apply during the pendency of a 15(a) proceeding because the Department will not stipulate to a refund of assessments in the event the handler prevails. The commenter proposed an exemption from interest and late payment charges for those assessments owed for promotion and advertising programs if the handler has filed a 15(a) petition. The handler would maintain such assessments in an interest bearing account and the funds would ultimately be the property of the prevailing party.

It is the Department's position that filing a 15(a) petition does not relieve a handler from complying with marketing order requirements. If a handler prevails in a legal proceeding challenging the validity of marketing order provisions, the Department would comply with any final unappealable order granting relief to petitioners. Petitioners have the opportunity to argue relief remedies in the appropriate legal forum. For the foregoing reasons, no change is being made to the rule in response to this comment.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

After consideration of all relevant matter presented, including the information and recommendations 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should be implemented as soon as possible so that the Board will be in a position to implement an incentive for handlers to make timely assessment payments. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 981

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

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 981.481 is added to read as follows:

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.481, the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

Dated: December 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31027 Filed 12–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is amending its regulations governing compliance with the National Environmental Policy Act (NEPA). These amendments incorporate changes primarily related to DOE's power marketing activities, based on DOE's experience in applying the current NEPA regulations. The revised regulations are intended to improve DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time, while maintaining quality, consistent with the DOE Secretarial Policy Statement on NEPA issued in June 1994.

EFFECTIVE DATE: This rule will become effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (42 USC 4321 et seq.) requires that Federal agencies prepare environmental impact statements for major Federal actions that may ''significantly affect the quality of the human environment.'' NEPA also created the President's Council on Environmental Quality (CEQ), which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the CEQ NEPA regulations (40 CFR Parts 1500–1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's NEPA implementing regulations were promulgated in 1992 (57 FR 15122, April 24, 1992) and are codified at 10 CFR Part 1021.

On February 20, 1996, DOE published a proposed rulemaking to revise the 1992 NEPA implementing regulations (61 FR 6414). Publication of the Notice of Proposed Rulemaking began a 45-day public comment period that originally ended on April 5, 1996. In response to requests, the comment period was subsequently reopened on April 19, 1996 (61 FR 17257), and extended until May 10, 1996. As part of the notice and comment process and also in response to requests, DOE held a public hearing on the proposed amendments on May 6, 1996. The final rule on all of the proposed amendments, other than those that pertain to power marketing activities, was published on July 9, 1996 (61 FR 36222). Regarding the power marketing activities, DOE decided to solicit further input, especially from state and Federal agencies that have responsibility for environmental review of comparable non-federal utility projects in the Pacific Northwest. Therefore, in the same issue of the Federal Register as noted above (July 9, 1996), DOE published a notice of limited reopening of the comment period on the following proposed amendments to Subpart D—Typical Classes of Actions, which primarily affect power marketing activities: B4.1–B4.3, B4.6, B4.10–B4.13, C4, C7, and D7 (61 FR 35990). In response to a request, DOE also provided further clarification of the rationale for two of the proposed amendments: B4.1, Contracts/marketing plans/policies for excess electric power, and B4.3, Electric power marketing rate changes. The comment period was extended until August 8, 1996.

Copies of all written comments and the transcript of the public hearing held on May 6, 1996, have been provided to CEQ and are available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

The following amendments relating primarily to power marketing activities revise subpart D of the existing regulations by expanding or clarifying existing classes of actions. This final rule adopts the amendments proposed in the Notice of Proposed Rulemaking for the power marketing classes of actions listed above, with certain changes discussed below, and amends the existing regulations at 10 CFR Part 1021. Copies of the final amendments to the rule are available upon request from the information contact listed above.

In accordance with the CEQ NEPA regulations, 40 CFR 1507.3, DOE has consulted with CEQ regarding these final amendments to the DOE NEPA rule. CEQ has found that the amendments conform with NEPA and the CEQ regulations and has no objection to their promulgation.

II. Statement of Purpose

The amendments to the DOE NEPA regulations are intended to improve the efficiency of DOE's implementation of NEPA by expanding or clarifying certain classes of actions, primarily related to power marketing activities, thereby reducing implementation costs and time. This goal is consistent with the DOE Secretarial Policy Statement on NEPA (June 1994), which encourages actions to streamline the NEPA process without sacrificing quality and to make the process more useful to decision makers and the public. Full compliance with the letter and spirit of NEPA is an essential priority for DOE. In addition, DOE's experience in applying the DOE NEPA regulations since they were issued in 1992 suggested the need for DOE to make changes to its NEPA regulations.

III. Comments Received and DOE's Responses

DOE has considered and evaluated the comments on the proposed rulemaking concerning power marketing activities received during the public comment periods. Minor revisions suggested in these comments have been incorporated into the final amendments to the rule. The following discussion describes the comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposed amendments. Section references and headings below are identical to those in the proposed amendments.

A. Procedural Comments

One commenter requested that no action be taken to adopt any of the proposed power marketing administration amendments until additional information could be obtained from relevant state and Federal agencies (e.g., state environmental review procedures for comparable non-federal utility projects). In response, the final rule published on July 9, 1996 (61 FR 36222) excluded the proposed amendments pertaining primarily to power marketing activities, and the comment period for the proposed amendments pertaining to power marketing activities was reopened from July 9, 1996 through August 8, 1996 (61 FR 35990, July 9, 1996). As explained below, DOE received one set of new comments during this reopened comment period.

B. Comments on Appendices of Subpart D—Typical Classes of Actions

Two commenters objected to several categorical exclusions (B4.1, B4.10–B4.13) on the grounds of cumulative effects, connected actions, or extraordinary circumstances. Another commenter objected to a number of categorical exclusions (B4.1, B4.2, B4.6, B4.10–B4.13) on the grounds that they appear to expand substantially the universe of power marketing administration actions that would no longer require an environmental impact statement or perhaps an environmental assessment.

Under the current regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with § 1021.410(b) that: (1) The proposed action fits within a class of actions listed in appendix A or B to subpart D; (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the action; and (3) there are no connected or related actions with cumulatively significant impacts and, where appropriate, the proposed action is a permissible interim action. In addition, to fit within a class of actions that is normally categorically excluded under appendix B, a proposed action must include certain integral elements (appendix B, paragraphs B(1) through (4)). These conditions are intended to ensure that an excluded action will not threaten a violation of applicable requirements, require siting and construction of waste management facilities, disturb hazardous substances such that there would be uncontrolled or unpermitted releases, or adversely affect environmentally sensitive resources. DOE believes that the general restrictions on the application of categorical exclusions will provide adequate safeguards to ensure that they are not applied to activities that could result in significant effects. For actions that do not satisfy these conditions, an environmental impact statement or an environmental assessment would be prepared. DOE believes that it will serve environmental concerns and the public's interest best by focusing its efforts on the careful analysis of those actions that actually have the potential for significant impact.

Finally, after considering all public comments on the proposed amendments, DOE has determined that the final amendments to appendix B constitute classes of actions that do not individually or cumulatively have a significant effect on the human environment, and are covered by a finding to that effect in Section 1021.410(a). In making this finding, DOE has considered, among other things, its own experience with these classes of actions, other agencies' experience as reflected in their NEPA procedures, DOE's technical judgment, and the comments received on the proposed amendments.

Classes of Actions Listed in Appendix B

• Proposed Clarification B4.1—Contracts/marketing plans/policies for excess electric power.

One commenter requested explanation of the rationale for the proposed clarification of B4.1. The existing categorical exclusion is for the establishment and implementation of contracts, plans, and policies, the terms of which do not exceed five years, would not cause changes in normal operating limits, and any related transmission would occur over existing transmission systems. The existing five-year term limit was proposed for elimination from this categorical exclusion because experience has demonstrated that the mere length of a contract, policy, or plan does not have the potential for environmental impacts. Rather, the development or integration of new generating resources, changes in the operation of existing generation resources, or construction of transmission facilities, are the types of activities that have shown the potential for environmental impacts. By not including these changes in generation, operation or transmission, the categorical exclusion ensures that only those actions that have no potential for environmental impact would be categorically excluded. Those contracts, plans, and policies that do not fit within this categorical exclusion would require further NEPA analysis to ascertain the associated environmental impacts.

• Proposed Modification B4.2—Export of electric energy.

DOE proposed to modify the existing categorical exclusion for the export of electric energy over existing transmission systems to also apply to exports over transmission system changes that are themselves categorically excluded (e.g., short powerline segments, substations). One commenter stated that DOE should consider the social and economic impacts on U.S. utility ratepayers caused by selling power to foreign countries. DOE believes that the potential for physical impacts of such a proposed action are very slight and notes that socioeconomic impacts alone do not require the preparation of an environmental impact statement (40 CFR 1508.14).

• Proposed Modification B4.3—Electric power marketing rate changes.

The proposed modification would eliminate the existing restriction that, in order to be categorically excluded, a proposed rate change must not exceed the rate of inflation, a condition that DOE has found is not relevant to the action's potential for environmental impacts. Any environmental impacts resulting from rate changes would be caused only if the rate change involved associated changes in the operation of generation resources. Therefore, this categorical exclusion would only apply to those rate changes that would not affect the operation of generation projects. The term ''changes in rates,'' as in the proposed rule, was changed to ''rate changes'' to be consistent with C3.

One commenter expressed concern regarding the economic impact to domestic utility customers of allowing electric power marketing rate changes to be raised more than the rate of inflation, and of the unrestrained sale of electricity to the highest bidder, whether foreign or domestic. Federal Power Marketing Administrations market their power resources at cost. Existing law prevents Federal electric power from being sold at a profit, and further prohibits customers from reselling Federal power for profit. Federal Power Marketing Administrations are not allowed to sell power to the highest bidder, but rather must recover all costs associated with the power. DOE believes that there is no potential for environmental impacts from rate changes based on revenue requirements where, as the categorical exclusion requires, the operations of generation projects would remain within normal operating limits.

• Proposed Modification B4.10—Deactivation, dismantling and removal of electric powerlines and substations.

DOE proposed to add deactivation to the categorical exclusion for dismantling and removal of transmission lines and to add substations, switching stations and other transmission facilities. One commenter suggested that this categorical exclusion applies to deactivation of power plants and that such actions should include public participation. Deactivation under this categorical exclusion, however, would not apply to power plants, but only to transmission facilities.

• Proposed Modification B4.11—Construction or modification of electric power substations.

• Proposed Modification B4.12—Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources.

• Proposed Modification B4.13—Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length).

The proposed amendments include: (1) expanding categorically excluded modification activities to substations of any voltage, provided that the modification does not increase the existing voltage (B4.11); (2) expanding the construction of tap lines to include all electric powerlines not integrating major new sources (B4.12); and (3) increasing the length of powerlines that can be reconstructed from 10 miles to 20 miles (B4.13).

One commenter noted correctly that the word ''generally'' as applied to the

length of electric powerlines in proposed modifications to B4.11 could allow the class of actions to be applied to proposed actions that would otherwise not even approximately fit the definition. Second, commenters questioned the justification for the specific quantity values chosen and even whether any specific value could be justified.

DOE's intention with respect to both issues is better expressed by the concept of ''approximately'' rather than ''generally,'' and the class of actions in the final rule has been changed accordingly. By using ''approximately,'' DOE is indicating that the numerical values used in defining the class of actions are to be interpreted flexibly rather than with unwarranted precision. DOE has also changed the phrases in B4.11 and B4.12 to be consistent in wording. In addition, for consistency DOE has changed the phrase ''major new resource'' in B4.11 and ''major new sources of generation into a main transmission system'' in B4.12, as in the proposed rule, to read ''major new generation resources into a main transmission system'' in both B4.11 and B4.12.

Two commenters stated that the proposed modifications to these three categorical exclusions would exempt a wide array of power marketing administration electric power transmission line construction, reconstruction and/or relocation from the requirements of an environmental assessment or environmental impact statement, possibly resulting in a lower standard of environmental review than is imposed by relevant state agencies, on comparable projects undertaken by non-federal utilities, or those imposed by other Federal agencies on non-federal entities, or even those adopted by other Federal agencies for their own actions. In response to this concern, in conjunction with the second reopened comment period, DOE asked the appropriate state agencies for their views on the proposed modifications to the classes of actions primarily related to power marketing, and on how the environmental review that would result for Federal power marketing administration projects would compare with the review those state agencies require for comparable non-federal utility projects. Similarly, the Department solicited the views of other Federal agencies that may engage in comparable activities or issue permits to non-federal entities conducting comparable activities.

Of the states and Federal agencies that DOE contacted, one commenter responded to this initiative. The commenter was concerned about exempting facilities of this magnitude from meaningful environmental review given the level of controversy and the potential environmental consequences typically associated with the construction of new transmission lines. In response to this general concern regarding environmental review, DOE notes that the exemption could only be applied if there were no extraordinary circumstances, connected actions with cumulatively significant impacts, or violation of the integral elements, as discussed above under Section III.B. For example, any proposed action with potential impacts on a sensitive resource, or involving scientific controversy about the environmental effects of the proposal would constitute a violation of the integral elements or extraordinary circumstances and thus would not be categorically excluded. Similarly, if the electric powerline or substation was ''a connected action'' with regard to a facility not covered by a categorical exclusion (such as a power plant), the appropriate level of NEPA review would be conducted, i.e., environmental assessment or environmental impact statement. Therefore, the expansion of these categorical exclusions will not reduce the meaningful environmental review of Federal proposals with significant controversy or potential environmental consequences, as compared to non-federal proposals.

This commenter previously provided a similar comment regarding specific concerns about all three proposed modifications stemming, in part, from the nature of the transmission grid owned and operated by the Bonneville Power Administration (BPA) in the Pacific Northwest. The commenter noted that, unlike other Federal Power Marketing Administrations, BPA is the predominant owner and operator of major transmission lines in the Pacific Northwest. Because of the ubiquity of BPA's lines in this area, the commenter stated that the proposed categorical exclusions could permit BPA to build substantial facilities in the Northwest, including facilities in major metropolitan areas, without being subject to meaningful environmental scrutiny. For the reasons stated immediately above, DOE does not believe that the circumstance described in the comment could occur.

The commenter suggested that these proposed amendments to the 1992 DOE NEPA regulations would supplant a Memorandum of Understanding (MOU) between the commenter and BPA. The NEPA regulations have no effect on the MOU; it remains in effect as agreed upon by the two parties. The commenter also incorrectly implied that the proposed categorical exclusions are new. However, these categorical exclusions have existed since 1992. Under B4.11, the proposal would allow the modification of substations at any voltage, as opposed to those at a power delivery of 230 kV, as long as there is no voltage increase. Under B4.12, the proposal would allow the construction of any electric powerline, not just ''tap'' lines. Under B4.13, the length of existing electric powerlines that could be reconstructed would be increased from 10 to 20 miles. DOE notes, however, that this reconstruction and/or minor relocation under B4.13 is only for existing electric powerlines and only to enhance environmental and land use values.

Classes of Actions Listed in Appendix C

- Modification C3—Electric Power Marketing Rate Changes, not Within Normal Operating Limits.

As discussed above in reference to exclusion B4.3, DOE has determined that inflation is not relevant to an action's potential for environmental impact. Consistent with that determination, and as a necessary conforming change, DOE has modified paragraph C3 of Appendix C. This modification bases the application of the class of actions on the effect on the operation of generation projects, rather than on the rate of inflation.

- Proposed Modification C4—Upgrading and constructing electric power lines.

There were no comments on the proposed modification to this class of actions; however, to be consistent with language in categorical exclusions B4.11, B4.12, and B4.13, DOE is changing ''powerline'' to ''powerlines'' and ''upgrading (reconstructing)'' to ''reconstructing (upgrading and rebuilding).''

- Proposed Modification C7—Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads.

DOE proposed amending this class of actions to be consistent with B4.1 and D7 and to focus on market responses to the action rather than the duration of the contract. One commenter expressed concern that DOE was privatizing its energy resources. This class of actions does not address privatization or sale of facilities, but rather the marketing or allocation of power by the power marketing administrations and the associated changes in generation resources, operating limits, or new loads.

Classes of Actions Listed in Appendix D

• Proposed Modification D7—Allocation of electric power, major new generation resources/major changes in operation of power generation resources/major loads.

DOE proposed amending this class of actions to be consistent with B4.1 and C7 to focus on market responses to the change in allocation or operation rather than duration of the underlying contract. One commenter questioned the use of the word ''major,'' referencing ''Major Projects'' as used in the previous C1 class of action which was removed by the recent final rule (61 FR 36222). The word ''major'' in this class of actions is used as an adjective with its normal usage, in this case modifying the terms generation resources, changes, and loads.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These amendments to the DOE NEPA rule establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process. Implementation of this rule will not affect the substantive requirements imposed on DOE or on applicants for DOE licenses, permits, and financial assistance, and this rule will not result in environmental impacts. Therefore, DOE has determined that this rule is covered by the categorical exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR Part 1021, which applies to procedural rulemaking. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 USC 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 USC 603). The rule modifies existing policies and procedural requirements for DOE compliance with NEPA. The rule makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.''

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by these amendments. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987) requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. These amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The amendments will not have any substantial direct effects on states and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 12866

The final amendments were reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993), which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any ''significant regulatory action.'' The order defines ''significant regulatory action'' as any regulatory action that may have an annual effect on the economy of $100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

These amendments will modify already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a ''significant regulatory action.''

G. Review Under the Unfunded Mandates Reform Act

Under Section 205 of the Unfunded Mandates Reform Act of 1995 (2 USC 1533), Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Therefore, DOE has determined that further review under the Unfunded Mandates Reform Act is not required.

H. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of Small Business Regulatory Enforcement Fairness Act of 1996 (Act) (5 USC 801). The Office of Management and Budget has determined that the final regulations do not constitute a ''major rule'' under the Act (5 USC 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Issued in Washington, D.C., November 27, 1996.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR Part 1021 is amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for Part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

2. Appendix B to Subpart D, is amended to revise the Table of Contents entries for B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, and B4.13 to read as follows:

Appendix B to Subpart D to Part 1021—Categorical Exclusions Applicable to Specific Agency Actions

Table of Contents

* * * * *

B4.1 Contracts/marketing plans/policies for excess electric power.

B4.2 Export of electric energy.

B4.3 Electric power marketing rate changes, within normal operating limits.

* * * * *

B4.6 Additions/modifications to electric power transmission facilities within previously developed area.

* * * * *

B4.10 Deactivation, dismantling and removal of electric powerlines and substations.

B4.11 Construction or modification of electric power substations.

B4.12 Construction of electric powerlines approximately 10 miles in length or less, not integrating major new sources.

B4.13 Reconstruction and minor relocation of existing electric powerlines approximately 20 miles in length or less.

3. Appendix B to Subpart D, section B4, is amended to revise paragraphs B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12 and B4.13, to read as follows:

B4. Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE with Regard to Power Resources.

B4.1 Establishment and implementation of contracts, marketing plans, policies, allocation plans, or acquisition of excess electric power that does not involve: (1) the integration of a new generation resource, (2) physical changes in the transmission system beyond the previously developed facility area, unless the changes are themselves categorically excluded, or (3) changes in the normal operating limits of generation resources.

B4.2 Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically excluded.

B4.3 Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

* * * * *

B4.6 Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

* * * * *

B4.10 Deactivation, dismantling, and removal of electric powerlines, substations, switching stations, and other transmission facilities, and right-of-way abandonment.

B4.11 Construction of electric power substations (including switching stations and support facilities) with power delivery at 230 kV or below, or modification (other than voltage increases) of existing substations and support facilities, that could involve the construction of electric powerlines approximately 10 miles in length or less, or relocation of existing electric powerlines approximately 20 miles in length or less, but not the integration of major new generation resources into a main transmission system.

B4.12 Construction of electric powerlines approximately 10 miles in length or less that are not for the integration of major new generation resources into a main transmission system.

B4.13 Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric powerlines approximately 20 miles in length or less to enhance environmental and land use values. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

4. Appendix C to Subpart D is amended to revise the Table of Contents entries for C3, C4, and C7 to read as follows:

Appendix C to Subpart D to Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

Table of Contents

* * * * *

C3 Electric power marketing rate changes, not within normal operating limits.

C4 Reconstructing and constructing electric powerlines.

* * * * *

C7 Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads.

* * * * *

5. Appendix C to Subpart D to Part 1021 is amended to revise paragraphs C3, C4, and C7 to read as follows:

* * * * *

C3 Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements if the operations of generation projects would not remain within normal operating limits.

C4 Reconstructing (upgrading or rebuilding) existing electric powerlines more than approximately 20 miles in length or constructing new electric powerlines more than approximately 10 miles in length.

* * * * *

C7 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the allocation of electric power that do not involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting, construction, and operation of power generating facilities at DOE sites.

* * * * *

6. Appendix D to Subpart D is amended to revise the Table of Contents entry for D7 to read as follows:

Appendix D to Subpart D to Part 1021—Classes of Actions That Normally Require EISs

Table of Contents

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D7 Allocation of electric power, major new generation resources/major changes in operation of generation resources/major loads.

* * * * *

7. Appendix D to Subpart D to Part 1021 is amended to revise paragraph D7 to read as follows:

D7 Establishment and implementation of contracts, policies, marketing plans or allocation plans for the allocation of electric power that involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete

new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting construction, and operation of power generating facilities at DOE sites.

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[FR Doc. 96–31064 Filed 12–5–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

Assessments; Continuation of Adjusted Rate Schedule for BIF-Assessable Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Continuation of adjusted rate schedule.

SUMMARY: On November 26, 1996, the Board of Directors of the FDIC (Board) adopted a resolution to continue in effect the current downward adjustment to the assessment rate schedule applicable to deposits assessable by the Bank Insurance Fund (BIF). The continuation of the downward adjustment will apply to the semiannual assessment period beginning January 1, 1997. As a result, the BIF assessment rates will continue to range from 0 to 27 basis points. The only difference between the existing adjustment and the continuing adjustment adopted by the Board is that the continuing schedule will no longer include a reference to a minimum assessment amount. This change results from recent legislation that eliminates a statutorily-imposed minimum assessment amount. With this modification, the adjusted rate schedule will result in an estimated average annual assessment rate of approximately 0.17 basis points; the estimated annual revenue produced by this rate schedule will be $43 million. In connection with the elimination of the mandatory assessment amount, the Board has also decided to refund minimum assessment payments made to BIF with respect to that portion of the current semiannual assessment period remaining after enactment of the amending legislation.

EFFECTIVE DATE: January 1, 1997, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Steven Ledbetter, Chief, Assessment Evaluation Section, Division of Insurance, (202) 898–8658; James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898–7027; Martha Coulter, Counsel, Legal Division, (202) 898–7348; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

This announcement pertains to deposit insurance assessments to be paid for the semiannual assessment period beginning January 1, 1997, by insured depository institutions on deposits assessable by the Bank Insurance Fund (BIF). Invoices reflecting these assessments will be sent to BIF member institutions around December 11, 1996.[1]

These invoices will also bill for assessments to be paid to the Financing Corporation (FICO). As a result of recently-enacted legislation, BIF-assessable deposits are now also subject to assessment by FICO. As it has in the past, the FDIC will continue to collect FICO assessments on FICO's behalf.

In providing for the FICO-assessability of BIF-assessable deposits, section 2703 of the Deposit Insurance Funds Act of 1996 (DIFA)[2] further provided that the assessments imposed by FICO on insured depository institutions with respect to BIF-assessable deposits will be at a rate equal to one-fifth the assessment rate applicable to deposits assessable by the Savings Association Insurance Fund (SAIF). Thus, the upcoming FDIC assessment invoice is expected to reflect a FICO rate for BIF-assessable deposits of approximately 1.3 basis points, which is one-fifth the FICO rate of approximately 6.4 basis points anticipated for SAIF-assessable deposits.

The remainder of this announcement pertains solely to deposit insurance assessments and does not further address FICO assessments.

II. Continuation of Adjustment to BIF Rate Schedule 2

Section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), provides that the Board shall set semiannual deposit insurance assessments for insured depository institutions. On August 8, 1995, the Board adopted a new assessment rate schedule for deposits subject to assessment by BIF. 60 FR 42680 (August 16, 1995). The new schedule was codified as Rate Schedule 2 at 12 CFR 327.9(a). This schedule provided for an assessment-rate range of 4 to 31 basis points and became effective retroactively on June 1, 1995, the beginning of the month following the month in which the BIF reached its designated reserve ratio (DRR) of 1.25 percent of total estimated insured deposits.

In adopting Rate Schedule 2, the Board also amended the FDIC's assessment regulations to permit the Board to make limited adjustments to the schedule without notice-and-comment rulemaking. Any such adjustments can be made as the Board deems necessary to maintain the BIF reserve ratio at the DRR and can be accomplished by Board resolution. Under this provision, codified at 12 CFR 327.9(b), any such adjustment must not exceed an increase or decrease of 5 basis points and must be uniform across the rate schedule.

The amount of an adjustment adopted by the Board under 12 CFR 327.9(b) is to be determined by the following considerations: (1) The amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members. In determining the relevant amount of assessment revenue, the Board is to consider BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on BIF members' earnings and capital, and any other factors the Board may deem appropriate.

Having considered all of these factors, the Board decided on November 14, 1995, to adopt an adjustment factor of 4 basis points for the semiannual assessment period beginning January 1, 1996, with a resulting adjusted schedule ranging from 0 to 27 basis points. 60 FR 63400 (December 11, 1995). The Board continued the same adjustment for the semiannual period beginning July 1, 1996. 61 FR 26078 (May 24, 1996).

Until now, the adjusted schedule has included a reference to a statutory requirement in section 7(b)(2)(A)(iii) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(A)(iii), that each insured depository institution pay a minimum assessment amount of $2,000 annually. However, that requirement

[1] Normally, invoices are sent approximately one month prior to collection date, which would be December 3 for the January 2 collection date. However, in this instance the invoices are being delayed approximately one week in order to permit the FDIC to include any reduction in Savings Association Insurance Fund (SAIF) rates adopted by the Board in early December for the upcoming semiannual assessment period. The Board has decided to delay all invoices, not just invoices for SAIF-member institutions, because of the large number of BIF members with SAIF-assessable deposits and SAIF members with BIF-assessable deposits. The Board is concerned that sending bifurcated invoices approximately one week apart would result in significant confusion and additional burden for such institutions that can be avoided by a delayed, combined invoice.

[2] DIFA is Subtitle G of Title II of Pub. L. 104–208, which was enacted on September 30, 1996.

recently has been eliminated by section 2708 of DIFA, which replaced it with a new section 7(b)(2)(A)(iii). The new provision requires that, with respect to institutions posing the least risk to the deposit insurance fund,[3] semiannual assessments not be set to exceed the amount needed to maintain the reserve ratio of BIF at the designated reserve ratio, which is currently set at 1.25 percent of total estimated insured deposits.

In light of this change, and for the reasons discussed below, the Board has decided to continue the same adjustments to Rate Schedule 2 for the upcoming semiannual period beginning January 1, 1997, with the exception that the reference in the adjusted rate schedule to a minimum assessment amount has been eliminated. The adjusted rate schedule is set forth below.

BIF RATE SCHEDULE AS ADJUSTED FOR THE FIRST SEMIANNUAL PERIOD OF 1997

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

In addition to continuing the adjusted rate schedule, the Board has also decided to refund to BIF member institutions any minimum assessment amount they paid to BIF for the September 30, 1996, quarterly assessment collection. Although the Board believes that it has the authority to retain these payments and to implement the elimination of the minimum assessment requirement beginning with the upcoming semiannual period, it has decided on a different approach.

The Board has decided that the more appropriate action is to refund that portion of the minimum assessment that corresponds with the portion of the current semiannual period remaining after the September 30, 1996, enactment of the statute—that is, the quarter beginning October 1, 1996. The Board believes that this approach promotes the intent reflected in new section 7(b)(2)(A)(iii) to assess the least risky institutions no more than necessary to maintain the BIF designated reserve ratio.

Affected institutions will be contacted with further information regarding the refund, which is expected to occur by means of an ACH credit on or about January 2, 1997. The majority of BIF members can expect to receive a refund of $500 plus interest.

III. Basis for the Adjustment

A. Maintaining at the Designated Reserve Ratio

In adopting a rate adjustment under 12 CFR 327.9(b), as mentioned above, the Board must consider the following: (1) The amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members.

The BIF reserve ratio stood at 1.30 percent as of June 30, 1996, the latest date for which complete data are available. The recent strong performance of the industry and consequent growth of the BIF reserve ratio, and the outlook for the reserve ratio over the near term, have persuaded the Board to continue the existing adjusted rate schedule for the first semiannual period of 1997. Following is an analysis of the potential effect of changes in the fund balance and the rate of insured deposit growth on the reserve ratio through June 30, 1997.

1. Fund Balance

The adjusted BIF balance was $25.888 billion on June 30, 1996 (Table 2, see note 4). Changes in the balance are largely determined by changes in insurance losses and interest income.

Insurance Losses. Insurance losses are comprised of two components: A contingent liability for future failures and an allowance for losses on institutions that have already failed. Using current staff estimates of failed assets through June 30, 1997, and a 20 percent loss rate on assets, the change in the contingent liability for future failures is estimated to be between $100 million (lower bound) and $300 million (upper bound) for the twelve months ending June 30, 1997[4].

The estimated recovery value of closed banks was $4.26 billion as of September 30, 1996. While annual changes in the allowance for losses as a percentage of the estimated net recovery value of closed banks have been as high as 13 percent and as low as −16 percent over the last five years, the change in 1994 was −5.75 percent and +10.2 percent in 1995. Proforma statements for December 31, 1996, project an increase in the allowance for losses for closed banks of $195 million from June 30, 1996. This is a +5 percent variance for the second semiannual period of 1996, which is consistent with the range of −5 percent to +10 percent assumed for purposes of this analysis. Table 1 elaborates on these two components.

Interest Income. Interest income on BIF's investment portfolio averaged $103 million a month for the first six months of 1996. Assuming relatively stable interest rates (i.e. between 5.7 percent and 6.2 percent) through the first semiannual period of 1997, interest income is projected to be between $1.210 billion and $1.316 billion for the twelve months ending June 30, 1997. Table 2 summarizes the effects on the fund balance of the lower bound and upper bound ranges assumed for interest income and insurance losses.

2. Insured Deposits

Recent experience with respect to insured deposit growth has been mixed. While the total amount of BIF-insured deposits has remained essentially unchanged since 1991, there has been substantial volatility historically. Since 1985, annual growth has been as high as 8.7 percent and annual shrinkage as much as 2 percent (see Figure 1). The recent trend has been towards growth; over the last two years there have been only two quarters when insured deposits have shrunk and then only slightly (.01 percent and .03 percent). It should also be noted that the amount of BIF-insured deposits reported for the third quarter may reflect extraordinary growth due to the results of deposit-shifting strategies implemented by

[3] New section 7(b)(2)(A)(iii) provides that the FDIC may set assessments in excess of the amount needed to maintain or achieve the DRR with respect to insured depository institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well capitalized as that term in defined in section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. The Board has determined that, for purposes of the existing rate structure comprised of the current nine risk classifications, this language should be read as permitting the FDIC to set assessments in excess of the amount needed to maintain or achieve the DRR with respect to institutions other than those with an assessment risk classification of 1A.

This reading of new section 7(b)(2)(A)(iii) was proposed by the Board and published for public comment in the pending SAIF- rate rulemaking proceeding, 61 FR 53867, 53872 (October 16, 1996). The comment period for that rulemaking has now closed, with no opposing comments having been received as to this interpretation. A discussion of the Board's determination to adopt regulations reflecting this interpretation will be included in the Federal Register notice announcing the Board's decision regarding SAIF rates.

[4] In internal discussions, the FDIC staff has recently projected assets of failed BIF institutions to be between $200–$1,050 million through the first half of 1997. Table 1 assumes a 20% loss rate on these assets (staff assumption for institutions with less than $500 million in assets), rounded to the nearest $100 million, and assumes that all of these losses are in addition to the amount of the current reserve.

SAIF-insured institutions prior to enactment of DIFA. In light of this evidence and the experience over the last five years, the FDIC believes that BIF-insured deposits are likely to experience a growth rate in the range of −2 percent to +5 percent between June 1996 and June 1997.

3. BIF Reserve Ratio

Based on the projected BIF balance and the growth of the insured deposit base, the FDIC projects that the BIF reserve ratio will be within the range of 1.25 to 1.38 at June 30, 1997 (Table 3). The lower bound estimate, which produces a 5 basis point decrease below the June 30, 1996, ratio, reflects an assumed increase in the insured deposit base (−6 basis points) with a small offset from an increase in the fund balance (+1 basis point). The large increase in interest income and the effect on the fund balance were mitigated by increased insurance losses. The upper bound estimate, which produces an 8 basis point increase above the June 30, 1996, ratio, reflects an assumed shrinkage of the insured deposit base (+3 basis points) and a large increase in the BIF balance (+5 basis points). In this projection, the impact of the increase in interest income was accentuated by the decrease in insurance losses.

In light of recent trends and current conditions in the banking industry, the FDIC's view is that the lower-bound scenario is not likely to be realized. If this were to occur, however, the current rate schedule still would be sufficient to maintain the target DRR through midyear 1997.

B. Other Considerations

1. Risk-Based Assessment System

The adjusted rate schedule retains the current spread of 27 basis points between the highest- and lowest-rated institutions, as well as the rate spreads among other cells in the assessment rate matrix. The Board has previously determined that, relative to the rate spreads in the assessment rate schedule in effect prior to June 1, 1995—which ranged from 23 to 31 basis points, with a resulting maximum spread of 8 basis points—the current rate spreads provide greater incentives for weaker institutions to improve their condition and for all institutions to avoid excessive risk-taking, consistent with the goals of risk-based assessments. The current rate spreads also provide greater consistency with the historical variation in bank failure rates across cells of the assessment rate matrix.

The continued adjusted rate schedule, which ranges from 0 to 27 basis points, appears in Table 4 along with supplemental data. Table 5 summarizes the distribution of institutions across the risk-based assessment matrix. Estimated annual assessment revenue from this schedule is expected to be $43 million, and the average annual assessment rate is estimated to be 0.17 basis points.

2. Impact on Bank Earnings and Capital

The estimated annual revenue from the existing rate schedule is $43 million. In deciding to continue this schedule, the Board has considered the impact on bank earnings and capital and found no unwarranted adverse effects.

3. Long-Term Outlook

In the past, the Board has expressed the view that an important consideration in setting rates is the long-term revenue needs of BIF. The Board has previously indicated a belief that a balance should exist between long-term BIF revenues and long-term BIF expenses (where expenses include monies needed to prevent dilution due to deposit growth). In August of 1995, the FDIC determined that an effective average BIF assessment rate of 4 to 5 basis points would be appropriate to achieve such a balance. This determination was based on a thorough historical analysis of FDIC experience and consideration of statutory changes in the past few years that may moderate deposit insurance losses going forward. 60 FR 42680 (August 16, 1995).

While the latest available data indicate the continuation of slow growth rates for BIF-insured deposits and minimal BIF insurance losses, there is no clear indication that these developments represent long-term trends. Thus, it could be concluded that an effective average assessment rate of 4 to 5 basis points is still needed to achieve long-term balance.

However, under the existing statutory scheme, the current balance in the BIF also is directly relevant to determining the appropriate assessment schedule for the first semiannual assessment period of 1997. Moreover, in light of the favorable current conditions and the outlook for the next several months, it is anticipated that continuation of the existing rate structure will provide adequate assessment revenue over the near term to prevent BIF from falling below a reserve ratio of 1.25 percent.

For the reasons discussed above, the Board has decided to continue in effect the current adjustment to the BIF assessment rate schedule with a range of 0 to 27 basis points for the semiannual period beginning January 1, 1997.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of November, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

TABLE 1.—CHANGES IN CONTINGENT LIABILITIES AND ALLOWANCE FOR LOSSES [1]

[$ in millions]

	Lower bound	Upper bound
Contingent Liability for Future Cases [2]	$100	$300
Allowance for Losses: Closed Banks [3]	($200)	$400
Total Provision for Losses	($100)	$700

[1] Both projections assume a continuation of current economic conditions during 1997.

[2] The June 30, 1996 BIF balance includes a $100 million reserve for institutions already identified as anticipated failures.

[3] Assumes a range of −5% to 10% of the net recovery value of closed banks ($4.26 billion as of 9/30/96).

TABLE 2.—FUND BALANCE

[$ in millions]

	Lower bound	Upper bound
Revenue:		
Assessments [1]	$43	$43
Interest Income [2]	1,210	1,316
Total revenue	1,253	1,359
Expenses & Losses:		
Operating Expenses [3]	450	450
Provision for Losses	700	(100)
Total Expenses & Losses	1,150	350
Net Income	103	1,009
Fund Balance—6/30/96 [4]	25,888	25,888
Fund Balance—6/30/97	25,991	26,897

[1] Assuming the current assessment rate schedule through June 30, 1997, assessment income is expected to be $43 million for the twelve months from June 30, 1996 to June 30, 1997.

[2] Interest rates are 5.7% (lower bound) and 6.2% (upper bound).

[3] Operating expenses were approximately $38 million a month for the first six months of 1996. Operating expenses are expected to remain the same through June 30, 1997. The savings from corporate downsizing is offset by a higher allocation of overhead expenses to corporate, a result of fewer receiverships.

[4] BIF balance increased by $60 million to reflect the fact that two institutions are no longer likely failures; FDIC expects to reverse the related reserves in the 4th quarter, 1996.

BILLING CODE 6714–01–P

Figure 1

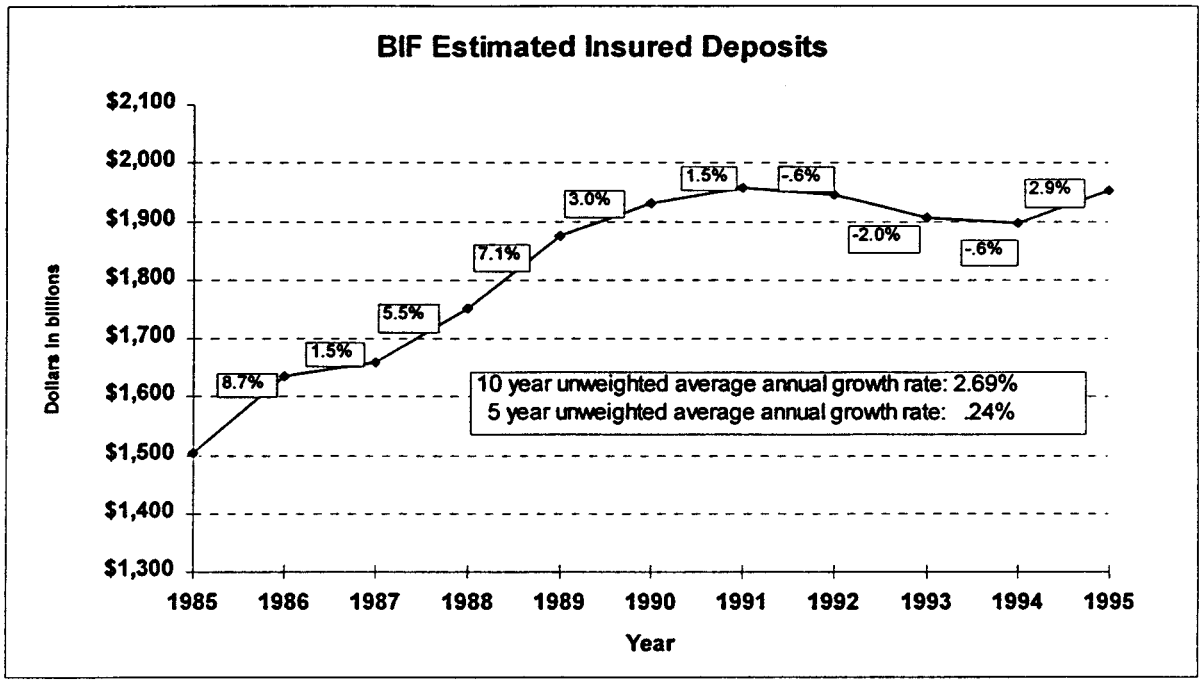

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TABLE 3.—PROJECTED BIF RATIOS

[$ in millions]

		June 30, 1996
Adjusted Fund Balance [1]		$25,888
Estimated Insured Deposits [2]		1,986,578
Adjusted BIF Ratio [1]		1.30
	Lower bound [3] June 30, 1997	Upper bound [4] June 30, 1997
Projected Fund Balance	$25,991	$26,897
Estimated Insured Deposits	2,085,907	1,946,846
Estimated BIF Ratio	1.25	1.38

[1] The BIF balance includes the $60 million reserve reversal for two institutions.

[2] As a result of the DIFA, the SAIF insured deposits of certain Oakar institutions have been decreased by $28.2 billion and their BIF insured deposits have been increased by the same amount. Estimated insured deposits as of 6/30/96 have thus been adjusted by this amount.

[3] The lower bound refers to the scenario of lower interest income (interest rate: 5.7%), higher insurance losses ($700 million) and a higher insured deposit growth rate (+5%).

[4] The upper bound refers to the scenario of higher interest income (interest rate: 6.2%), a reduction in insurance losses (−$100 million) and a shrinkage of the insured deposit base (−2%).

TABLE 4.—ASSESSMENT RATE SCHEDULE FIRST SEMIANNUAL 1997 ASSESSMENT PERIOD BIF-INSURED INSTITUTIONS

Capital group	Supervisory risk subgroups		
	Group A (bp)	Group B (bp)	Group C (bp)
Well	0	3	17
Adequate	3	10	24
Under	10	24	27

TABLE 5.—BIF ASSESSMENT BASE DISTRIBUTION [1]; DEPOSITS AS OF JUNE 30, 1996 [2]; SUPERVISORY AND CAPITAL RATINGS IN EFFECT JULY 1, 1996

Capital group	Supervisory risk subgroups					
	A		B		C	
Well:		(percent)		(percent)		(percent)
Number	9,538	94.4	368	3.6	59	0.6
Base ($ billion)	2,415.7	96.8	35.9	1.4	3.8	0.2
Adequate:						
Number	73	0.7	19	0.2	17	0.2
Base ($ billion)	32.6	1.3	2.4	0.1	1.5	0.1
Under:						
Number	6	0.1	1	0.0	18	0.2
Base ($ billion)	0.5	0.0	0.3	0.0	1.7	0.1

Estimated annual assessment revenue [3]: $43 million.
Assessment Base: $2,494 billion.
Average annual assessment rate (bp) [3]: 0.17 basis points.

[1] ''Number'' reflects the number of BIF members and SAIF-member Oakar institutions; ''Base'' reflects the BIF-assessable deposits of BIF members and SAIF-member Oakar institutions.
[2] Figures do not reflect the adjusted attributable deposit amount reduction for certain BIF-member Oakars, effective 9/30/96.
[3] Assumes a refund of $500 with interest, for BIF 1A institutions and no $1,000 minimum semiannual BIF assessment in 1997.

[FR Doc. 96–30906 Filed 12–5–96; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 902

[No. 96–81]

Procedure for Consideration of Regulatory Waivers

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting a final rule amending its agency operations regulation to include a provision setting forth guidelines for requesting waivers of Finance Board regulatory provisions not required by statute in appropriate circumstances. This final rule is being published in compliance with the Freedom of Information Act, which requires publication of agency rules of procedure.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel (202) 408–2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Analysis

Although, as a general rule, an agency may not grant exceptions to its rules in individual cases, even to achieve what the agency believes to be justice in an individual case, courts have held that an agency may, in particular cases of hardship, exercise its discretion and waive regulatory provisions that are not required by statute, where the agency has established a rational process for the granting of waivers. In order to establish guidelines for such a process and to inform interested parties of such guidelines, the Finance Board is amending part 902 of its regulations, 12 CFR part 902, to add a provision governing Finance Board consideration of requests for waivers of provisions of its regulations, 12 CFR ch. IX, that do not implement mandatory statutory requirements.

Any decision to suspend, waive, or grant an exception to a consistently applied general rule is subject to close and careful scrutiny by a reviewing court, although a waiver of a rule that affects the substantive rights or interests of a party is typically subject to a higher

degree of judicial scrutiny than a waiver of a procedural rule. Therefore, the burden is on the party seeking the waiver to plead with particularity the facts and circumstances that warrant granting the request. In particular, the waiver application must demonstrate that the arguments in support of the request are substantially different from those that were considered during the rulemaking process. Further, because an agency's decision to grant an exception in a certain case could create a precedent that other similarly situated waiver applicants may seek to rely on, the reasons supporting the decision to grant a waiver must be stated clearly on the record.

Although the Finance Board places the highest priority upon the consistent application of its regulations, the agency also believes that its regulations are intended to further the purposes of the Federal Home Loan Bank Act (Bank Act) and that, to the extent that the application of any regulatory provision to a particular person or entity might be inconsistent with these purposes, waiver of the provision with respect to that person or entity should be considered. For this reason, paragraph (a) of new § 902.6 provides that the Finance Board, in its discretion and in connection with a particular transaction, may waive any of its regulatory requirements or any required submission of information not otherwise mandated by statute if it determines, based on the facts presented, that application of the provision to the party requesting the waiver would contravene the goals of the Bank Act.

In addition, § 902.6(a) permits waiver of a regulatory provision if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, where the Finance Board determines that the person or entity requesting the waiver has otherwise made an adequate showing of good cause. Such ''good cause'' should be based upon factors that have not already been thoroughly addressed during the regulatory process that preceded adoption or amendment of the provision and may include a showing that the requirement is unnecessary or that the requirement would impose unnecessary burden or hardship on the requestor. In accordance with existing case law, the burden upon the party requesting waiver of a rule that affects substantive rights or interests will be greater than that upon a party seeking waiver of a procedural rule.

For purposes of recordkeeping, notice and efficient processing, § 902.6(b)(1) requires that any waiver request be filed with the Finance Board's Executive Secretary and, where a Federal Home Loan Bank member institution is making the request, with the Bank of which the institution is a member. Finally, in order to ensure that there is an adequate record upon which to make a determination, § 902.6(b)(2) requires that the waiver request clearly and specifically set forth all pertinent facts and analyze all legal issues relevant to the waiver determination.

II. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the waiver request collection of information contained in § 902.6. The Finance Board will use the information collection to determine whether a party that requests a waiver of Finance Board regulatory provisions with respect to a particular transaction has satisfied the regulatory requirements for granting such a waiver. Individuals or entities must meet the regulatory standards in order for the Finance Board to consider a waiver request. Responses are required to obtain or retain a benefit. The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy.

Likely respondents and/or recordkeepers will be Federal Home Loan Banks, institutions that are members of a Bank and the Finance Board. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. See 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents	12
b. Total annual responses	12
Percentage of these responses collected electronically	0%
c. Total annual hours requested	928
d. Current OMB inventory	0
e. Difference	928

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/ startup costs	0
b. Total annual costs (O&M)	0
c. Total annualized cost requested	$35,732.32
d. Current OMB inventory	0
e. Difference	$35,732.32

Mail comments concerning the accuracy of the burden estimates and suggestions for reducing the burden to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address. The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507(c) of the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507(c), and 5 CFR 1320.10. Comments regarding the collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503 by January 6, 1997.

III. Other Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866.

The notice and comment procedures requirements of the Administrative Procedures Act are inapplicable to this rule of agency procedure, pursuant to 5 U.S.C. 553(b)(3)(A).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 12 CFR Part 902

Assessments, Federal home loan banks, Government contracts, Minority businesses, Mortgages, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX, part 902, Code of Federal Regulations, is hereby amended as follows:

PART 902—OPERATIONS

1. The authority citation for part 902 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1438(b), 1833e.

2. Section 902.6 is added to read as follows:

§ 902.6 Procedure for consideration of waiver of regulatory provisions.

(a) *Authority.* The Finance Board reserves the right, in its discretion and in connection with a particular transaction, to waive any provision, restriction, or requirement of this chapter, or any required submission of information, not otherwise required by law, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination by the Finance Board that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Federal Home Loan Bank Act, or upon a showing of good cause.

(b) *Waiver requests.* Any person or entity may file a written waiver request with the Finance Board.

(1) *Procedure.* Any request for a waiver shall be filed with the Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, and, if from a Bank member institution, with the appropriate Bank.

(2) *Documentation.* A waiver request shall include the following:

(i) A detailed statement of facts, including the provisions of this chapter to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(ii) An analysis of each legal issue raised.

Dated: November 7, 1996.

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

Bruce A. Morrison,

Chairman.

[FR Doc. 96–31039 Filed 12–5–96; 8:45 am]

BILLING CODE 6725–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE60

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Growth Impairment Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) adjudicates claims at the third step of its sequential process for evaluating disability using the Listings of Impairments under the Social Security and supplemental security income (SSI) programs. This rule extends until December 7, 1998 the date on which the growth impairment listings contained in Part B of the listings will no longer be effective. We have made no revisions to the medical criteria in the growth impairment listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on growth impairments in individuals under age 18 at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register document—Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On December 6, 1985, we published revised listings, including the growth impairment listings (50 FR 50068), in appendix 1 (Listing of Impairments) to subpart P of part 404. We use the listings at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The listings are divided into part A and part B. We use the criteria in part A to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used. The growth impairment listings apply only to individuals under age 18 and are contained in Part B of the listings.

When we published the revised listings in 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established a date of December 6, 1993, for the growth impairment listings in part B, on which those listings would no longer be effective unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. Subsequently, the Secretary issued a final rule on December 6, 1993 (58 FR 64121), extending the date on which the growth impairment listings in part B would no longer be effective to December 6, 1996. Section 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296 transferred the responsibility for administering the Social Security and SSI programs from the Secretary to the Commissioner of Social Security (the Commissioner).

In this final rule, we are extending for two years, to December 7, 1998, the date on which the growth impairment listings will no longer be effective. We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is medically or functionally equivalent in severity to an impairment in the listings, we will find that the individual is disabled at the third step of the sequential process for evaluating disability.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which the growth impairment listings will no longer be effective. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the growth impairment listings. However, without an extension of the expiration date for the growth impairment listings, we will lack regulatory guidelines for assessing growth impairments at the third step of the sequential evaluation processes after the current expiration date of the listings. In order to ensure that we continue to have regulatory criteria for assessing these impairments under the listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: December 2, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)).

2. Appendix 1 to subpart P of part 404 is amended by revising item 1 of the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): December 7, 1998.

* * * * *

[FR Doc. 96–31037 Filed 12–5–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket Number 94P–0443]

Medical Devices; Reclassification of Acupuncture Needles for the Practice of Acupuncture

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is reclassifying acupuncture needles for the practice of acupuncture and substantially equivalent devices of this generic type from class III (premarket approval) into class II (special controls). FDA is also announcing it has issued an order in the form of a letter to the Acupuncture Coalition reclassifiying acupuncture needles. This action is in response to petitions filed by the Acupuncture Coalition and in keeping with, but not dependent upon, the recommendation of FDA's Anesthesiology Devices Advisory Panel (the Panel). This action is being taken because the agency believes that there is sufficient information to establish that special controls will provide reasonable assurance of the safety and effectiveness of acupuncture needles.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Timothy A. Ulatowski, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION: On December 6, 1995, FDA filed reclassification petitions from the Acupuncture Coalition, which includes representatives of the following manufacturers: Carbo (Mfg.), China; Hwa-To, China; Chung Wha, South Korea; Taki, South Korea; Dong Bang, South Korea; Tseng Shyh Co., Taiwan; HCD, France; Sedatelec, France; Seirin-Kasei (Mfg.), Japan; Ito Co., Japan; and Ido-No-Nippon-Sha, Japan, requesting reclassification of acupuncture needles from class III to class II. On March 29, 1996, FDA issued an order (Ref. 1) in the form of a letter, to the petitioners reclassifying acupuncture needles for the practice of acupuncture and substantially equivalent devices of this generic type from class III to class II. Section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)) and § 860.134 (21 CFR 860.134) provide for the reclassification by order of devices not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments.

Under section 513(f)(2) of the act and § 860.134, FDA may refer a reclassification petition to an appropriate panel. Although FDA did not refer the reclassification petitions submitted by the Acupuncture Coalition to a panel, the Anesthesiology Devices Advisory Panel (the Panel) had previously considered the classification of acupuncture needles and other acupuncture devices and recommended that acupuncture needles be placed into class II, as reported in the Federal Register of November 2, 1979 (44 FR 63292 at 63299) (Ref. 2). The supplemental data sheet completed by the Panel on November 30, 1976 (Ref. 3), listed sepsis, excessive trauma, and perforation of blood vessels and organs as specific risks, and recommended restricting the device to prescription use. FDA's decision to reclassify acupuncture needles as class II is in keeping with, but not dependent upon, the recommendation of the Panel.

FDA determined that acupuncture needles could safely be reclassified from class III to class II with the implementation of special controls. Acupuncture needles are devices intended to pierce the skin in the practice of acupuncture. The device consists of a solid, stainless steel needle and may have a handle attached to the needle to facilitate the delivery of acupuncture treatment.

The order identified the special controls needed to provide reasonable assurance of the safety and effectiveness of acupuncture needles. Those special controls are in compliance with: (1) Labeling provisions for single use only and the prescription statement in § 801.109 (21 CFR 801.109) (restriction to use by or on the order of qualified practitioners as determined by the States), (2) device material biocompatibility, and (3) device sterility. FDA believes that information for use, including: Indications, effects, routes, methods, and frequency and duration of administration; and any hazards, contraindications, side effects, and precautions are commonly known to qualified practitioners of acupuncture. Therefore, under § 801.109(c), such indications do not need to be on the dispensing packaging, but sale must be clearly restricted to qualified practitioners of acupuncture as determined by the States. Guidance on the type of information needed to support biocompatibility and sterility of

acupuncture needles is available in the General Hospital Branch guidance document entitled ''Guidance on the Content of Premarket Notification (510(k)) Submissions for Hypodermic Single Lumen Needles'' (draft), April 1993 (Ref. 4). A copy of this guidance document is available from the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850–4307, 301–443–6597 or 800–638–2041 and FAX 301–443–8818.

Consistent with the act and the regulations, after thorough review of the clinical data submitted in the petitions, and after FDA's own literature search, on March 29, 1996, FDA sent the Acupuncture Coalition a letter (order) reclassifying acupuncture needles for general acupuncture use, and substantially equivalent devices of this generic type, from class III to class II (special controls). As required by § 860.134(b)(7), FDA is announcing the reclassification of the generic type of device. Additionally, FDA is amending part 880 (21 CFR part 880) to include the classification of acupuncture needles for the practice of acupuncture by adding new § 880.5580.

Environmental Impact

The agency has determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Under 21 CFR 25.24(e)(2), the reclassification of a device is categorically exempt from environmental assessment and environmental impact statement requirements. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of devices from class III to class II will relieve some manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Rather, the proposed warning statements are ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA letter (order) to the Acupuncture Coalition dated March 29, 1996.

2. Classification of anesthesiology devices, development of general provisions; 44 FR 63292 at 63299, November 2, 1979.

3. Anesthesiology Devices Advisory Panel's supplemental data sheet, November 30, 1976.

4. Guidance on the Content of Premarket (510(k)) Submissions for Hypodermic Single Lumen Needles (draft), April 1993.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 880.5580 is added to subpart F to read as follows:

§ 880.5580 Acupuncture needle.

(a) *Identification*. An acupuncture needle is a device intended to pierce the skin in the practice of acupuncture. The device consists of a solid, stainless steel needle. The device may have a handle attached to the needle to facilitate the delivery of acupuncture treatment.

(b) *Classification*. Class II (special controls). Acupuncture needles must comply with the following special controls:

(1) Labeling for single use only and conformance to the requirements for prescription devices set out in 21 CFR 801.109,

(2) Device material biocompatibility, and

(3) Device sterility.

Dated: November 20, 1996.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 96–31047 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4154–C–02]

RIN 2501–AC36

Revised Restrictions on Assistance to Noncitizens; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule, correction.

SUMMARY: On November 29, 1996 (61 FR 60535), HUD published an interim rule implementing the changes made to Section 214 of the Housing and Community Development Act of 1980 by the Use of Assisted Housing by Aliens Act of 1996. Section 214 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens. The November 29, 1996 interim rule incorrectly provided for a public comment due date of November 29, 1996. The public comment due date should have been January 28, 1997, 60 days after publication of the November 29, 1996 interim rule. The purpose of this document is to correct the due date for public comments in the November 29, 1996 rule.

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 96–30498, Revised Restrictions on Assistance to Noncitizens, published in the Federal Register on November 29, 1996 (61 FR 60535) is corrected as follows:

On page 60535, in column 3, the **DATES** section is corrected to provide that comments are due on January 28, 1997.

Dated: December 2, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–31034 Filed 12–5–96; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

46 CFR Parts 31 and 35

[CGD 91–045]

RIN 2115–AEO1

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

AGENCY: Notice of approval.

SUMMARY: On July 30, 1996, the Coast Guard issued regulations that will require owners, masters, or operators of tank vessels of 5,000 gross tons or more that do not have double hulls and that carry oil in bulk as cargo to comply with certain operational measures. Many requirements contained in the final rule include collection-of-information provisions. This notice of approval intends to notify the public of the collection-of-information approval by the Office of Management and Budget.

DATES: This notice of approval is effective December 6, 1996. The final rule, published at 61 FR 39769, July 30, 1996, and the collection-of-information contained therein, is effective on November 27, 1996, except for §§ 157.415 and 157.420 of 33 CFR part 157, which are effective on February 1, 1997; and § 157.445 of 33 CFR part 157, which is effective on July 29, 1997. The collection-of-information contained in § 157.455(a) (5) and (6) is suspended until further notice as discussed in the partial suspension notice published on November 27, 1996 (61 FR 60189).

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–045), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Office of Standards Evaluation and Development, at (202) 267–1492.

SUPPLEMENTARY INFORMATION: The final rule entitled ''Operation Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls'' was published on July 30, 1996, in the Federal Register (61 FR 39769). The final rule contained requirements for bridge resource management and vessel policy and procedures, enhanced survey programs, maneuvering performance capability, and other measures aimed at reducing oil discharges from single-hull vessels.

Under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), the Coast Guard submitted the collection-of-information requirements to the Office of Management and Budget (OMB), who reviewed the operational measures final rule to determine whether the practical value of the information is worth the burden imposed by its collection. The Office of Management and Budget approved the collection-of-information requirements contained in the final rule entitled ''Operational Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls'' through August 31, 1999. The recently assigned, valid control number is 2115–0629 for the collection-of-information requirements.

Dated: December 2, 1996.

Howard L. Hime,

Acting Director of Standards.

[FR Doc. 96–31033 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 51 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. These amendments reflect changes in mail preparation requirements and miscellaneous other rules and regulations.

EFFECTIVE DATE: January 1, 1997.

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

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

DMM Issue 51, the next edition of the DMM, is scheduled for release on January 1, 1997. That issue will contain substantive changes to mail preparation standards and mail classification for nonprofit rate categories for Periodicals and Nonprofit Standard Mail. These standards were published on August 15, 1996, in the Federal Register (61 FR 42478–42489), as approved on August 6, 1996, by the USPS to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC96–2, Classification Reform II. Those standards took effect at 12:01 a.m., October 6, 1996, aligning the preparation rules adopted on July 1 for commercial mail with those for nonprofit mail.

The following excerpt from section I010, Summary of Changes, of the transmittal for DMM Issue 51 covers the minor changes not previously described in that final rule or in other interim or final rules published in the Federal Register. In addition, the revised contents of DMM Issue 51 are also presented.

Domestic Mail Manual Issue 51 Summary of Changes

Address Adjustments

F010.2.0 clarifies the policy for delivery and address list correction services provided to mailers who send mail to addresses converted by the USPS. Such mail is delivered to the correct locations for 1 year from the date when the converted addresses appear in the bimonthly USPS Address Information System (AIS) products. For up to 3 years after the conversion date, postmasters must provide manual galley list corrections. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Automation Flats Length

C820.2.3b(2) decreases from 6 to 5⅜ inches the required length for pieces claimed at automation rates for flats if the pieces are not more than 7½ inches

high. *Effective July 1, 1996* (PB 21922 (6–20–96)). The expiration date for this exception is extended through June 30, 1997. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Bound Printed Matter

M630.2.6d shows that the ADC sortation for Bound Printed Matter is required, not optional as printed in DMM Issue 50. *Effective July 1, 1996* (PB 21923 (7–4–96)).

Carrier Route Mail—Hard Copy CRIS Files

E230.2.1 and E630.2.4 provide an option for assigning carrier route codes to nonautomation carrier route mail by using hard copy Carrier Route Information System (CRIS) files for assigning these codes within 90 days before the mailing date. Additional matching against the USPS ZIP+4 database with software certified by the Coding Accuracy Support System (CASS) is not required when this optional method is used for assigning carrier codes. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Carrier Route Mail—Simplified Addressing

E140.1.4, E231.2.1 (renumbered as 230.2.1), E632.1.4 (E630.2.4), and E641.2.3 (E640.2.3) clarify that mailings prepared with a simplified address under A040 are exempt from the standard for use of CASS-certified software for carrier route coding. *Effective July 1, 1996* (PB 21923 (7–4–96)).

Collect on Delivery (COD)

S921.1.2 specifies the availability of COD service for single-piece Standard Mail (A) and for all Standard Mail (B). *Effective October 1, 1996* (PB 21929 (9–26–96)).

Content Identifier Codes

Exhibit M032.1.3c adds content identified codes and corresponding content identifier names (CINs) for Periodicals and Standard Letters. *Effective July 1, 1996; mandatory August 17, 1996* (PB 21922 (6–20–96)).

Domestic Mail Definition

G011.2.0 and S921.1.3 amend the definitions of domestic and international mail and update the places to which U.S. domestic mail service extends. *Effective July 1, 1996* (PB 21922 (6–20–96)).

Editorial Amendments

A010, A040, A920, A930, C010, C023, C100, C500, C600, C810, D010, D020, D042, D072, D100, D910, D920, E060, E110, F010, M072, M500, P023, and S020 reflect changes that combine and renumber certain sections. Exhibits A010.1.2, A010.2.3, A010.5.1, A920.2.5, A920.2.6, C600.1.2b, C810.7.2b, P023.1.8, P023.1.11a, P023.1.11b, and P023.1.12 are removed. *Effective October 1, 1996* (PB 21928 (9–12–96)).

Express Mail—Adult Fowl

C022.3.3 and C022.3.4 permit the mailing of adult fowl by Express Mail without the condition of available next-day delivery as a requirement. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Label Dimensions

M031.2.1c corrects the shortest permitted length for sack labels to 3.250 inches. M032.2.3d corrects the maximum length for barcoded sack labels to 3.375 inches. *Effective November 1, 1996* (PB 21931 (10–24–96)).

Labeling Lists

L004 includes instructions for ordering labels from the USPS Label Printing Center. *Effective July 1, 1996* (PB 21922 (6–20–96)). L002, L003, L004, L005, L102, L801, L802, and L803 reflect changes in mail processing operations. *Effective August 1, 1996; mandatory October 6, 1996* (PB 21925 (8–1–96)). L002, L003, L004, L005, L102, L604, and L801 reflect changes in mail processing operations. *Effective November 21, 1996; mandatory January 18, 1997* (PB 21933 (11–21–96)).

Marking Standards

M012.2.1. M130.1.1, M610.2.1e, M620.1.1e, M810.1.3, and M820.1.4 revise the marking standards for non-carrier route automation rate First-Class Mail and Standard Mail (A), nonautomation rate Enhanced Carrier Route Standard Mail, and all bulk rate First-Class Mail and Standard Mail (A). *Effective July 1, 1996* (PB 21922 (6–20–96)).

Metered Mail Preparation

E130.2.0, E620.1.4, and P030.5.2 remove the packaging requirement for letter-size metered mail paid at the single-piece rate for First-Class Mail or Standard Mail (A) if the mail is placed in a 1-foot or 2-foot letter tray and can fill at least three-fourths of the tray. For single-piece rate metered mail not placed in trays, five or more pieces must be faced and prepared as packages. *Effective November 1, 1996* (PB 21931 (10–24–96)).

Military Mail

E010.2.6 reflects the use of customs forms and acceptance procedures for certain military mail. *Effective August 16, 1996* (PB 21920 (5–23–96) and PB 21926 (8–15–96)).

Nonstandard Surcharge

C100.4.0 and E140.1.6 clarify that the surcharge for nonstandard-size mail applies to flats weighing 1 ounce or less that are mailed at First-Class automation rates and come within the range of dimensions specified in C100.4.0. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Optional Package Labeling

M130.2.1a, M200.2.4c, and M610.3.1a clarify that labeling nonautomation presorted First-Class Mail, Periodicals, and Standard Mail (A) is optional for mail placed in full 5-digit trays. *Effective November 1, 1996* (PB 21931 (10–24–96)).

Overflow Tray

M033.2.1j is added to clarify that an overflow tray is permitted when the minimum number of pieces required for rate or presort eligibility is available but exceeds the capacity of a 2-foot tray. *Effective July 1, 1996* (PB 21923 (7–4–96)).

Pallets and Manifesting

M013.1.0, M014.2.0, M031.4.0, M031.5.0, M033.1.0, M033.2.0, M041.1.0, M041.3.0, M041.5.0, M041.6.0, M045.4.0, M045.5.0, M630.2.0, M630.3.0, P710.2.0, P710.3.0, and P710.4.0 clarify and correct standards for palletized and manifested mail. *Effective October 1, 1996* (PB 21928 (9–12–96)).

Parcel Restrictions

D100.2.1 and D100.2.3 are revised and D100.2.6 is added to restrict the mailing of single-piece rate Priority Mail parcels weighing 16 ounces or more that are paid with adhesive stamps. E010.1.7 is added to reflect restrictions on the mailing of all single-piece rate packages weighing 16 ounces or more that are addressed to overseas military installations, regardless of postage payment method. The affected military mail is single-piece rate Parcel Post, Bound Printed Matter, and Special Standard Mail; single-piece rate Priority Mail; and all Library Mail. The classes and subclasses of mail affected by D100.2.6 and E010.1.7 must be presented at a post office or handed to a USPS delivery employee known to the employee and at the sender's residence or place of business. *Effective August 16, 1996* (PB 21930 (10–10–96)).

Periodicals—Additional Entry

D210.2.2 (redesignated as D210.2.0), D210.4.0, D230.1.0, D230.2.0, D230.3.2, D230.3.5, D230.4.2, D230.4.3, D230.4.4, D230.4.7, P200.3.0, P750.1.0, P750.2.4, and P750.2.6 amend the additional entry standards for Periodicals. *Effective August 1, 1996* (PB 21925 (8–1–96)).

Periodicals—Enclosures

E070.3.2c is removed from E070.3.2 to reconcile the standards in that section with DMM C200.3.0 for the dimension of enclosures inserted in Periodicals publications. *Effective August 1, 1996* (PB 21925 (8–1–96)).

Periodicals—In-County Rates

E212.2.0, E270.1.0, and E270.4.0, clarify the advertising standards for publications of institutions and societies and the eligibility standards for In-County and Nonprofit Preferred periodicals. *Effective October 1, 1996* (PB 21928 (9–12–96)).

Periodicals—Original Entry

E213.1.7 removes the requirement to submit two copies each of at least four issues of a publication distributed primarily through news agents. *Effective October 1, 1996* (PB 21928 (9–12–96)).

Periodicals—Previous Issues

P200.1.8 clarifies how to determine the advertising percentage for a mailing consisting in whole or in part of copies of back issues. The advertising and nonadvertising percentages of the edition making up the bulk of the current issue are to be used for all copies in the combined mailing. *Effective November 1, 1996* (PB 21930 (10–10–96)).

Periodicals—Sacking

M200.1.4 clarifies that the exception for preparing packages with fewer than six pieces and sacks with as few as one package is an option available only for nonletter-size mail. *Effective November 1, 1996* (PB 21931 (10–24–96)).

Plants and Animals

C022.6.0 and C022.7.0 clarify and add provisions about certain statutes (39 U.S.C. 3015 and 18 U.S.C. 1716D) on nonmailable plants, plant products, and plant pests; injurious animals; and illegally taken fish, wildlife, and plants. D500.1.0, P014.2.0, P014.5.0, and S500.2.0 clarify that an Express Mail postage refund is not made for a proper detention of mail for law enforcement purposes. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Reply Pieces

C810.8.1, E140.1.5, E241.1.2 (renumbered as E240.1.2), (E641.1.2) (E640.1.2), and (E641.2.4 (E640.2.4) clarify that the standards for letter-size cards and letters enclosed in automation rate mail apply only if those reply pieces are returned to a domestic address. *Effective July 1, 1996* (PB 21923 (7–4–96)).

Scheme Designation

M810.2.3c and M810.3.2a clarify that ''SCHEME'' is replaced on Line 2 of tray labels with the information shown for the destination in L002, Column B. *Effective July 1, 1996* (PB 21923 (7–4–96)).

Sharps

C023.10.0 adds the terms *etiologic agents and sharps* to the heading of C023.10.0, which provides standards for mailable medical and biological matter. *Effective October 1, 1996* (PB 21929 (9–26–96) and PB 21930 (10–10–96)).

Sortation Levels

M011.1.2h clarifies that the presort term *origin 3-digit(s)* can include as an option the 3-digit ZIP Code area where the mail is entered but not necessarily verified. M011.1.2i clarifies that mail prepared on pallets as an SCF sort may include mail for only a single 3-digit ZIP Code area for the SCF and still be considered an SCF sort. *Effective November 1, 1996* (PB 21931 (10–24–96)).

Upgradable Mail

M011.1.4, M130.3.1, M130.3.2a, M610.4.1, M610.4.2a clarify that upgradable letter-size pieces prepared under the applicable option for First-Class Mail or Standard Mail (A) may not be combined (sorted) with nonupgradable pieces or automation rate pieces in the same mailing. *Effective October 1, 1996* (PB 21929 (9–26–96)).

Zebra Code

M033.1.4 permits mailers to print the zebra code either as a series of vertical marks or as a series of diagonal marks. The zebra code is required on all barcoded tray labels used for trays that contain automation rate mail. *Effective November 1, 1996* (PB 21931 (10–24–96)).

List of Subjects in 39 CFR Part 111

Postal Service.

In consideration of the foregoing, 39 CFR part 111 is amended as set forth below:

PART 111—[AMENDED]

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

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

2. The table at the end of § 111.3(e) is amended by adding at the end thereof a new entry to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

(e) * * *

Transmittal letter for issue	Dated	Federal Register publication
* * * * *		
51	January 1, 1997.	61 FR [INSERT PAGE NUMBER]

3. Section 111.5 is revised to read as follows:

§ 111.5 Contents of the Domestic Mail Manual.

A000 Basic Addressing

A010 General Addressing Standards
A040 Alternative Addressing Formats
A060 Detached Address Labels (DALs)

A800 Addressing for Automation

A900 Customer Support

A910 Mailing List Services
A920 Addressing Sequencing Services
A930 Other Services
A950 Coding Accuracy Support System (CASS)

C000 General Information

C010 General Mailability Standards
C020 Restricted or Nonmailable Articles and Substances
  C021 Articles and Substances Generally
  C022 Perishables
  C023 Hazardous Matter
  C024 Other Restricted or Nonmailable Matter
C030 Nonmailable Written, Printed, and Graphic Matter
  C031 Written, Printed, and Graphic Matter Generally
  C032 Sexually Oriented Advertisements
  C033 Pandering Advertisements
C050 Mail Processing Categories

C100 First-Class Mail

C200 Periodicals

C500 Express Mail

C600 Standard Mail

C800 Automation-Compatible Mail

C810 Letters and Cards
C820 Flats
C830 OCR Standards
C840 Barcoding Standards

D000 Basic Information

D010 Pickup Service
D020 Plant Load
D030 Recall of Mail
D040 Delivery of Mail
  D041 Customer Mail Receptacles
  D042 Conditions of Delivery
D070 Drop Shipment
  D071 Express Mail and Priority Mail
  D072 Metered Mail

D100 First-Class Mail

D200 Periodicals

  D210 Basic Information
  D230 Additional Entry

D500 Express Mail

D600 Standard Mail

D900 Other Delivery Services

  D910 Post Office Box Service
  D920 Caller Service
  D930 General Delivery and Firm Holdout

E000 Special Eligibility Standards

  E010 Overseas Military Mail
  E020 Department of State Mail
  E030 Mail Sent by U.S. Armed Forces
  E040 Free Matter for the Blind and Other Handicapped Persons
  E050 Official Mail (Franked)
  E060 Official Mail (Penalty)
  E070 Mixed Classes
  E080 Absentee Balloting Materials

E100 First-Class Mail

  E110 Basic Standards
  E120 Priority Mail
  E130 Nonautomation Rates
  E140 Automation Rates

E200 Periodicals

E210 Basic Standards
E211 All Periodicals
  E212 Qualification Categories
  E213 Periodicals Mailing Privileges
  E214 Reentry
  E215 Copies Not Paid or Requested by Addressee
  E216 Publisher Records
E230 Nonautomation Rates
E240 Automation Rates
E250 Destination Entry
E270 Preferred Periodicals

E500 Express Mail

E600 Standard Mail

E610 Basic Standards
  E611 All Standard Mail
  E612 Additional Standards for Standard Mail (A)
  E613 Additional Standards for Standard Mail (B)
E620 Nonautomation Nonpresort Rates
E630 Nonautomation Presort Rates
E640 Automation Rates
E650 Destination Entry
  E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail
  E652 Parcel Post
E670 Nonprofit Standard Mail

F000 Basic Services

F010 Basic Information
F020 Forwarding
F030 Address Correction, Address Change, and Return Services

G000 The USPS and Mailing Standards

G010 Basic Business Information
  G011 Post Offices and Postal Services
  G013 Trademarks and Copyrights
G020 Mailing Standards
G030 Postal Zones
G040 Information Resources
  G041 Postal Business Centers
  G042 Rates and Classification Service Centers
  G043 Address List for Correspondence
G090 Experimental Classifications and Rates
  G091 Barcoded Small Parcels

G900 Philatelic Services

L000 General Use

  L002 3-Digit ZIP Code Prefix Matrix
  L003 3-Digit ZIP Code Prefix Groups for 3-Digit Scheme Sortation
  L004 3-Digit ZIP Code Prefix Groups for ADC Sortation
  L005 3-Digit ZIP Code Prefix Groups for SCF Sortation

L100 First-Class Mail

  L102 ADCs—Presorted Priority Mail

L600 Standard Mail

  L601 BMCs—Machinable Parcels
  L602 BMCs—DBMC Rates
  L603 ADCs—Irregular Parcels
  L604 Originating ADCs—Irregular Parcels

L800 Automation Rate Mailings

  L801 AADCs—Letter-Size Mailings
  L802 BMC/ASF Entry—Periodicals and Standard Mail (A)
  L803 Non-BMC/ASF Entry—Periodicals and Standard Mail (A)

M000 General Preparation Standards

M010 Mailpieces
  M011 Basic Standards
  M012 Markings and Endorsements
  M013 Optional Endorsement Lines
  M014 Carrier Route Information Lines
M020 Packages and Bundles
M030 Containers
  M031 Labels
  M032 Barcoded Labels
  M033 Sacks and Trays
M040 Pallets
  M041 General Standards
  M045 Palletized Mailings
M050 Delivery Sequence
M070 Mixed Classes
  M071 Basic Information
  M072 Express Mail and Priority Mail Drop Shipment
  M073 Combined Mailings of Standard Mail Machinable Parcels
  M074 Plant Load Mailings

M100 First-Class Mail (Nonautomation)

  M120 Priority Mail
  M130 Presorted First-Class Mail

M200 Periodicals (Nonautomation)

M500 Express Mail

M600 Standard Mail (Nonautomation)

  M610 Single-Piece and Nonautomation Standard Mail (A)
  M620 Enhanced Carrier Route Standard Mail
  M630 Standard Mail (B)

M800 All Automation Mail

  M810 Letter-Size Mail
  M820 Flat-Size Mail

P000 Basic Information

P010 General Standards
  P011 Payment
  P012 Documentation
  P013 Rate Application and Computation
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Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5657–5]

Clean Air Act Final Interim Approval of Operating Permits Program, State of Idaho; Clean Air Act Proposed Delegation of National Emission Standards for Hazardous Air Pollutants as They Apply to Title V Sources and Approval of Streamlined Mechanism for Future Delegations, State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval and delegation.

SUMMARY: EPA is promulgating final interim approval of the Operating Permits Program submitted by the Idaho Division of Environmental Quality (IDEQ) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources. EPA is also promulgating final interim approval of IDEQ's request for delegation of authority to implement and enforce State-adopted hazardous air pollutant regulations, which adopt by reference the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR parts 61 and 63 as in effect on April 1, 1994, as these regulations apply to sources that are required to obtain a Federal operating permit. EPA is also approving a mechanism for Idaho to receive delegation of future NESHAP standards that the State adopts by reference into State law.

EFFECTIVE DATE: January 6, 1997.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, 1200 Sixth Avenue, OAQ–107, Seattle, WA 98101, (206) 553–4303.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

1. Title V

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On October 27, 1995, EPA proposed disapproval of Idaho's title V operating permits program because of deficiencies in the State's provisions for excess emissions and administrative amendments. In the alternative, EPA proposed interim approval of Idaho's program provided Idaho revised its regulations to address these deficiencies and submitted the revisions to EPA before final action on Idaho's submittal. See 60 FR 54990. EPA received a single letter of public comment which addressed sources located on Tribal lands and Idaho's insignificant activities list. On January 12, 1996, Idaho submitted program revisions addressing EPA's two proposed grounds for disapproving Idaho's program.

On June 17, 1996, EPA reproposed action on two aspects of Idaho's title V program. 61 FR 30570. First, EPA proposed that one of the four deficiencies EPA initially noted in the October 27, 1996, Federal Register in Idaho's general permitting regulations be eliminated as an interim approval issue. 61 FR 30571. Second, EPA identified additional reasons it believed that the audit immunity provisions of the Idaho Environmental Audit Protection Act [1], Idaho Code 9–801 to 9–811, required interim rather than full approval and proposed that Idaho also be required to revise or address the audit privilege provisions of the Idaho Audit Act as a condition of full approval. 61 FR 30571–30573. EPA did not address the single comment it received on the October 27, 1995, proposal or the effect of the State's revisions to its title V program on the two disapproval issues because neither the comment nor the State's program revisions involved the two title V issues on which EPA reproposed action in the June 17, 1996, Federal Register document.

2. Section 112

Section 112(l) of the Clean Air Act authorizes EPA to approve State air toxic programs or rules that operate in place of the Federal air toxic program or rules. The Federal air toxic program implements the requirements found in section 112 of the Act pertaining to the regulation of hazardous air pollutants. Approval of an air toxic program is granted by EPA if the Agency finds that: (1) The State program is ''no less stringent'' than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxic program can be implemented and enforced by State or local agencies, as well as EPA.

On September 15, 1995, Idaho requested delegation of authority to implement and enforce specific NESHAP regulations in 40 CFR parts 61 and 63 that Idaho had adopted as a matter of Idaho law on April 1, 1994. On December 14, 1995, Idaho also requested approval of its mechanism for receiving automatic delegation of future NESHAP standards as promulgated. In the June 17, 1996, limited reproposal on Idaho's title V submittal, EPA also proposed interim approval of Idaho's request for delegation under section 112(l) and requested public comment on this action. Additionally, EPA proposed approval of a mechanism for Idaho to receive delegation of the NESHAP standard which the State may adopt by reference into State law in the future. See 61 FR 30570.

Idaho received numerous comments on the June 17, 1996, reproposal, all addressing Idaho's title V submittal and all except for one addressing the Idaho

[1] In the October 27, 1995, and June 17, 1996, Federal Register notices, EPA referred to the legislation as the ''Idaho Environmental Audit Statute.'' The comments submitted by IDEQ and the Idaho Attorney General refer to the legislation as the ''Idaho Environmental Audit Protection Act,'' shortened to the ''Idaho Audit Act.'' EPA will refer to this legislation by the latter title in this notice.

Audit Act. None of the comments addressed EPA's proposed action under section 112(l). In this document, EPA is taking final action to promulgate interim approval of the operating permits program for the State of Idaho, to delegate the NESHAPs as adopted by Idaho as they apply to title V sources and as in effect on April 1, 1994[2], and to approve a streamlined mechanism for future NESHAP delegations. EPA is also responding to comments received on the October 27, 1995, proposal and the June 17, 1996, reproposal.

II. Final Action and Implications

A. Analysis of Idaho's Title V Submission and Response to Public Comments

1. Changes to Idaho's Regulations

Through an emergency rulemaking effective November 20, 1995, the Idaho Division of Environmental Quality (IDEQ) repealed all of the excess emission provisions in its title V regulations (IDAPA 16.01.01.326 through .332) except for IDAPA 16.01.01.332, which provides an affirmative defense comparable to that provided in part 70 for violations of technology-based emission limits due to an ''emergency.'' See 40 CFR 70.6(g). These revisions adequately address EPA's concerns that Idaho's excess emissions program for title V sources did not assure compliance with all applicable requirements. Idaho also made revisions to the excess emissions provisions that apply to all sources in Idaho. See IDAPA 16.01.01.130 through .136. EPA will review these changes as a revision to Idaho's State Implementation Plan, which has been submitted to EPA for approval.

The emergency rulemaking also made revisions to Idaho's permit to construct procedures applicable to title V sources. See IDAPA 16.01.01.209. These revisions ensure that the terms of preconstruction permits incorporated into title V permits by administrative amendment will contain compliance requirements substantially equivalent to the requirements of a title V permit and adequately address the proposed grounds for disapproval identified by EPA in the October 27, 1995, Federal Register document.

IDEQ has made two other revisions to its title V permitting regulations, neither of which affect the approvability of Idaho's title V program. First, Idaho extended the deadline for the submission of title V permit applications for sources existing on May 1, 1994, from January 1, 1996, to June 1, 1996. See IDAPA 16.01.01.313.01.a. This date will still ensure that all permit applications are submitted within 12 months of when a source becomes subject to Idaho's title V program, as required by 40 CFR 70.5(a)(1). Second, Idaho has made minor revisions to the regulation specifying the information required in a permit application. See IDAPA 16.01.01.314. These changes do not affect the approvability of Idaho's permit application requirements.

2. Response to Public Comment

EPA received a single public comment on the October 27, 1995, Federal Register document. The commenter disagreed with EPA's proposed decisions regarding the geographic scope of the proposed approval and insignificant activities. EPA received numerous comments on the June 17, 1996, reproposal. One commenter stated generally that it supports full approval of the Idaho title V program, but did not explain why it believed Idaho was entitled to full rather than interim approval. EPA continues to believe that interim approval is appropriate for the reasons set forth in the October 27, 1995, proposal (60 FR 54990), the June 17, 1996, reproposal (61 FR 30570) and this document. All other comments on the June 17, 1996, reproposal addressed the Idaho Audit Act.

a. Geographic Scope of Idaho Program—Tribal Lands. EPA proposed to exclude from the Idaho title V program title V sources located within the exterior boundaries of Indian Reservations in Idaho[3] because the State did not establish that it had authority to issue permits to and enforce permits against such sources. The commenter expressed concern over the complexity of the jurisdiction issue and that EPA's proposal might cause hardships to sources on Indian Reservations, but did not elaborate on what these hardships might be. EPA continues to believe that the State of Idaho has not made a sufficient showing to obtain title V approval for sources located within Indian Country in Idaho and, therefore, is taking final action to exclude such sources from the scope of this interim approval.

To obtain title V program approval, a State must demonstrate that it has adequate authority to issue permits and to assure compliance by all sources required to have permits under title V with each applicable requirement under the Act. See Section 502(b)(5) of the Act; 40 CFR 70.4(b)(3)(i). The authority must include:

> A legal opinion from the Attorney General from the State or the attorney for those State, local, or interstate air pollution control agencies that have independent counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific sta[tut]es, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority.

40 CFR 70.4(b)(3). Thus, the Act requires States to support their title V program submittals with a specific showing of adequate legal authority over all regulated sources, including sources located on lands within Indian Country.

In its title V program submittal, Idaho made no attempt either to claim or to show authority over sources located within Indian Country. Indeed, the State clarified on April 5, 1995, that its submittal ''was not an attempt to address jurisdictional issues over tribal lands.'' Furthermore, the Shoshone-Bannock Tribes and the Kootenai Tribe of Idaho wrote to EPA on April 11, 1995, and March 22, 1995, respectively, asserting that the State had ''not demonstrate[d] authority to institute an air permitting program on reservations as is required under title V of the Act.'' Accordingly, EPA concludes that Idaho has not demonstrated authority to regulate title V sources in Indian Country and, therefore, does not grant program approval to the State for these sources.

b. Insignificant activities. The commenter also disagreed with EPA's proposal to grant interim rather than full approval to Idaho's insignificant activities list. The commenter referred to the EPA guidance document entitled White Paper for Streamlined Development of Part 70 Permit Applications, from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to the Air Division Directors (July 10, 1995), as supporting the development of insignificant activities lists. The commenter believes that EPA should encourage IDEQ to develop the proper regulatory guidance to go with Idaho's list and that such guidance would give Idaho and the regulated community further time to evaluate the list and to propose any changes that may be warranted.

EPA agrees with the commenter and fully intended this outcome by granting

[2] With the exception of the radionuclide NESHAP regulations in 40 CFR part 61, subparts B, H, I, Q, R, T, and W.

[3] Although the October 27, 1995, Federal Register notice used the term ''within the exterior boundaries of Indian Reservations,'' EPA's position is that State's generally do not have civil jurisdiction within ''Indian Country,'' as defined in 18 USC 1151.

Idaho interim approval of its program for insignificant activities. By granting Idaho interim approval on this issue, Idaho will have 18 months to submit changes that address EPA's concerns. In the interim, IDEQ and the regulated community may use the lists as currently promulgated by the State. This time period will allow Idaho and the regulated community the time that the commenter requests to develop guidance and evaluate and revise the list as required by EPA as a condition of full approval. Accordingly, EPA will continue to require that Idaho address the issues identified in Section II.A.6. below as a condition of full approval.

c. Idaho Audit Act. In the June 17, 1996, Federal Register document reproposing action on Idaho's title V program, EPA explained in great detail why EPA believed that the Idaho Audit Act impermissibly interfered with the enforcement requirements of title V and part 70 and thus posed a bar to full approval. EPA received four comment letters strongly opposing EPA's proposal with respect to the Idaho Audit Act. These included comments jointly submitted by IDEQ and the Idaho Attorney General's Office; comments submitted by the Idaho Association of Commerce & Industry, which represents members of the Idaho business community; and comments from two law firms representing nationwide trade organizations and industries. EPA also received three comment letters from environmental and public interest organizations agreeing with EPA that the Idaho Audit Act was inconsistent with the enforcement requirements of title V and part 70 and urged interim approval or disapproval.[4]

i. Comments that the Idaho Audit Act does not pose a bar to full title V approval. (A) Effect of the Idaho Audit Act on Idaho's enforcement authority. The commenters opposing EPA's action with respect to the Idaho Audit Act raise numerous issues. As an initial matter, several of the commenters stated that nothing in the Clean Air Act or part 70 contains a prohibition against State audit protection and/or immunity laws or precludes a State from determining that criminal or civil prosecution is inappropriate in certain defined situations, such as those specified in the Idaho Audit Act.

Section 502(b)(5)(E) of the Clean Air Act lays out the minimum enforcement authorities which Congress required a State to have in order to secure Federal approval to implement and enforce a title V operating permits program. That section requires, as a condition of Federal approval, that a State have adequate authority to issue permits and assure compliance; to terminate or revoke such permits for cause; and to enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties of at least $10,000 per day for each violation and to provide appropriate criminal penalties. The part 70 implementing regulations, at 40 CFR 70.11, elaborate upon those authorities. Part 70 requires a State to have authority to issue emergency orders and seek injunctive relief (40 CFR 70.11(a) (1) and (2)) and to assess civil and criminal penalties in a maximum amount of not less than $10,000 per day per violation (40 CFR 70.11(a)(3)). Although neither title V nor part 70 expressly prohibits State audit privilege and/or immunity laws, the analysis in the June 17, 1996, Federal Register document shows how the Idaho Audit Act interferes with the requirements for civil and criminal penalty authority set forth in title V and the part 70 implementing regulations so as to preclude full approval of Idaho's operating permits program. For example, as EPA explained in the June 17, 1996, Federal Register document, the immunity provisions of the Idaho Audit Act alter and in fact eliminate the State's authority to recover *any* civil or criminal penalties under the circumstances identified in the Idaho Audit Act. See 61 FR 30571–30573. The immunity provision of the Idaho Audit Act bars prosecution of intentional and knowing violations that would otherwise be a basis for criminal liability unless the source has previously and repeatedly violated the same requirements within the past three years. Moreover, the provisions of the Idaho Audit Act preventing the compelled disclosure of environmental audit reports prevents the State from obtaining potentially important information on whether a violation was knowing or whether a violation has been corrected. If the State, by virtue of such laws, surrenders its ability to thoroughly investigate potential violations or its discretion to take appropriate enforcement action in the face of violations, then the State's fundamental enforcement authority is compromised. EPA believes that this is the case with the Idaho Audit Act.

In a similar vein, the commenters argue that the State of Idaho has the general authorities enumerated in section 502(b)(5)(E) of the Clean Air Act and 40 CFR 70.11 to enforce permits, permit fee requirements and the requirement to obtain a permit and to recover civil and criminal penalties in a maximum amount of not less than $10,000 per day of violation, and that nothing in the text of section 502(b)(5)(E) of the Act or the part 70 regulations authorizes EPA to consider the effect of State laws of general applicability on a State's title V civil and criminal enforcement authorities. The commenters further argue that the logical corollary of EPA's proposed action with respect to the Idaho Audit Act is that every State procedural and evidentiary rule must be evaluated and amended whenever EPA believes that it could in some fashion, directly or indirectly, interfere with environmental enforcement.

Laws of general applicability are an appropriate subject for EPA review as is evident from the language of the part 70 regulations themselves. The regulations require that a State applying for a title V operating permits program include copies of ''all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program *or restrict its implementation*.'' 40 CFR 70.4(b)(2) (emphasis added). The regulations also require a legal opinion from the State Attorney General asserting that the laws of the State provide adequate authority to carry out ''all aspects of the program.'' 40 CFR 70.4(b)(3). It is certainly EPA's expectation that, in issuing such a legal opinion, the Attorney General is certifying that no State laws, even laws of general applicability or laws of evidence, interfere with the State's authority to administer and enforce the title V program. See 59 FR 47105, 47108 (September 14, 1994) (requiring Oregon to revise or clarify meaning of criminal statute appearing to limit criminal liability of corporations as a condition of full title V approval); 59 FR 61820, 61825 (December 2, 1994) (accepting Oregon Attorney General's opinion regarding effect of statute).[5]

[4] EPA has recently received a copy of rules promulgated by IDEQ under the Idaho Audit Act. See IDAPA 16.01.10.000–018. EPA does not believe that these rules remedy the problems identified with the Idaho Audit Act in the June 17, 1996, Federal Register notice and this notice. EPA notes with concern, however, the provision of IDAPA 16.01.10.015.03(b) which defines a violation disclosed within 60 days after discovery through an environmental audit as a violation disclosed in a ''timely manner'' and thus entitled to immunity. EPA is concerned that this lengthy time period would not require prompt reporting of violations involving a potential of imminent and substantial endangerment as a condition of immunity.

[5] One commenter argues that section 116 of the Clean Air Act bars EPA from seeking to preempt State audit privilege and/or immunity laws. Section 116 states that, subject to limited exceptions, nothing in the Clean Air Act shall preclude or deny the right of any State to adopt or enforce emissions

Several commenters also argued that the Idaho Audit Act does not interfere with the enforcement requirements of title V because it is qualified in a number of important respects. The commenters note in particular that the Idaho Audit Act, like most other State audit privilege and/or immunity legislation, does not offer immunity or protection from disclosure for information required by law to be collected, developed, reported or otherwise made available to a government agency. See Idaho Code 9–805, 9–807, 9–809(5). One commenter stated that the Idaho Audit Act covers ''almost every conceivable disclosure affected by a Title V Clean Air Act permit * * * In fact, it is difficult to conceive of a situation under a Title V program in which there was not a specific permit condition to make the disclosure voluntary.''

EPA noted in the June 17, 1996, Federal Register document that the Idaho Audit Act does contain provisions which narrow its scope, and noted particularly the provisions which exclude from the scope of the immunity and protection from disclosure information that is required to be collected, developed, or reported under State or Federal law. 61 FR 60572–73. Therefore, EPA agrees with the commenters that in many cases disclosure of a violation discovered during an audit would not be considered ''voluntary'' and thus would not be entitled to immunity under the Idaho Audit Act. Similarly, EPA agrees that in many cases the information necessary to bring an enforcement action will be information that a facility is required to collect, develop, report, or otherwise make available to the government and therefore not subject to the protection from disclosure provided by the Idaho Audit Act. At least one other State has issued an opinion stating that its audit immunity statute does not apply to title V sources because the statute does not apply to violations that are required to be reported by the source and because of the extensive monitoring, recordkeeping, and reporting requirements of that State's title V operating program. See 61 FR 42224–42225 (August 14, 1996) (proposed interim approval of New Hampshire title V program); 61 FR 51370 (October 2, 1996) (final interim approval of New Hampshire title V program). It is not clear, however, as a matter of Idaho law, that all evidence of violations of title V permits and permit requirements would be required to be reported to the State of Idaho under its title V regulations, thus excluding such violations from the immunity of Idaho Code 9–809 and from the prohibition against compelled disclosure of Idaho Code 9–804. The Idaho Attorney General's Office has not provided EPA with such an opinion, and EPA must therefore infer that there could be violations at a title V source discovered through an environmental audit that would be entitled to immunity or protection against compelled disclosure under the Idaho Audit Act. Therefore, the concerns raised by EPA in the June 17, 1996, Federal Register document remain.

The commenters also take issue with EPA's interpretation of the title V and part 70 requirements for enforcement authority, as evidenced in the April 5, 1996, memorandum entitled ''Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce Title V Requirements'' (hereinafter, the ''April 5 Title V Memorandum'') and the June 17, 1996, Federal Register document reproposing action on the Idaho title V program. The commenters argue that EPA's interpretation and application of the title V enforcement requirements improperly interferes with the States' role as independent sovereigns, improperly divests States of their primary responsibility for implementing and enforcing the Clean Air Act, and conflicts with the Clinton Administration's stated policy to allow States to experiment with alternative approaches to achieve environmental protection. The commenters further argue that the determination of the Idaho legislature that criminal or civil penalties are inappropriate under the circumstances set forth in the Idaho Audit Act is within the statutory boundaries and flexibility provided by the Clean Air Act. The commenters continue that the immunity provisions of the Idaho Audit Act reflect the Idaho legislature's judgment as to the ''appropriate'' penalty for companies that voluntarily disclose and correct instances of environmental noncompliance and reflect a reasonable allocation of the State's enforcement resources.

EPA agrees that, in enacting the Clean Air Act, Congress believed that States and local governments should have the primary responsibility for controlling air pollution at its source. *See* Section 101(a)(3) of the Clean Air Act. EPA also agrees with the commenters that the States are to be given broad flexibility to select alternative means to achieve the minimum Federal requirements established in the Act by Congress and by EPA in the part 70 regulations and fully supports State experimentation to achieve greater compliance with environmental laws. Such flexibility and experimentation, however, must be, as the commenters' acknowledge, *within* the bounds of the statutes enacted by Congress and the implementing regulations promulgated by EPA. It cannot cancel out the requirement that States must meet some minimum Federal requirements as a condition of Federal approval of their programs.

In the case of the Clean Air Act operating permits program, those minimum Federal requirements are set forth in title V and the part 70 regulations. It is these requirements that EPA is insisting that the State of Idaho meet as a condition of full approval of its title V program. In short, EPA does not believe that the Idaho title V program is within the statutory boundaries established by Congress or the flexibility provided by the Clean Air Act because the Idaho Audit Act would limit the enforcement authority Congress and EPA required States to have as a condition of Federal approval.

Moreover, the commenters' argument that the Idaho Audit Act governs areas of law traditionally committed to States in their role as independent sovereigns—if taken to its logical conclusion—would mean that a State could not be required to have any civil or criminal penalty authority to get full title V approval. It is an argument that goes to the validity of section 502(b)(5)(E) and 40 CFR 70.11 themselves and therefore is untimely in this context. As stated above, Congress through title V, and EPA through the part 70 implementing regulations, required States to satisfy certain minimum requirements for enforcement authority as a condition of Federal approval of a Clean Air Act operating permits program. By conditioning full approval of the Idaho title V program on changes to the Idaho Audit Act or a demonstration by the State satisfactory to EPA that the Idaho Audit Act does not interfere with the enforcement requirements of title V, EPA is simply seeking to assure that Idaho has the required enforcement authorities before receiving Federal approval of its program. *Cf. Commonwealth of Virginia* v. *Browner*, 80 F.3d 869, 880 (4th Cir. 1996) (in rejecting Virginia's argument that requiring State to change its judicial standing rules as a condition of title V

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standards or limitations or requirements respecting the control or abatement of air pollution ''except where such emission standard or limitation is less stringent than required by the Clean Air Act.'' Such an interpretation would mean that EPA has no authority to disapprove any State enforcement provisions as a condition of title V approval. Section 502(b)(5)(E), which requires EPA to promulgate minimum enforcement authorities required for approval of a State title V program, clearly belies such an argument.

approval violated State's sovereignty, the Court stated: ''Even assuming *arguendo* the accuracy of Virginia's assertion that its standing rules are within the core of its sovereignty, we find no constitutional violation because federal law 'may, indeed, be designed to induce state action in areas that would otherwise be beyond Congress' regulatory authority,' '' citing *FERC* v. *Mississippi*, 456 U.S. 742, 766 (1982)).

The commenters also assert that EPA's use of its title V program approval authority to ''force'' States to modify their audit privilege and/or immunity legislation is contrary to Congress' general expression of intent against the automatic use of audit reports for enforcement of the Clean Air Act, as expressed in the Joint Explanatory Statement of the Conference Committee Report for the 1990 Amendments. S. Conf. Rep. 101–952, 101st Cong. 2d Sess. 335, 348 (Oct. 26, 1990), reprinted in Legislative History at 941–42, 955, 1798. The commenters further assert that Idaho's decision to provide qualified audit immunity is consistent with that Congressional intent.

As an initial matter, EPA disagrees that it is using the title V approval process to ''force'' States to modify their audit legislation. Instead, as stated above, EPA is simply analyzing to what extent the audit privilege and/or immunity laws of a particular State compromise the enforcement authorities required by Congress in title V, as interpreted by EPA through the part 70 regulations, as a condition of Federal approval of the State's operating permits program.

With respect to the issue of Congress' intent, the language from the Conference Report cited by the commenters does not clearly express a desire that audit reports not be used for enforcement of the Clean Air Act requirements. Rather, the text expresses some general support for the concept of auditing and a desire that the *criminal penalties* of section 113(c) ''should not be applied in a situation where a person, acting in good faith, promptly reports the results of an audit and promptly acts to correct any deviation. Knowledge gained by an individual solely in conducting an audit or while attempting to correct deficiencies identified in an audit or the audit report *should not ordinarily form the basis for intent which results in criminal penalties.*'' (emphasis added). The legislative history merely indicates that the circumstances involving violations discovered through an audit report and voluntarily disclosed by a company will generally not meet the requirements for criminal liability. Importantly, Congress did not in any way suggest that a company which self-disclosed violations discovered through an environmental audit should be immune from civil penalties. In any case, when Congress amended the Clean Air Act in 1990, there were no audit privilege and/or immunity laws on the books in any State. Any legislative history on auditing and enforcement from that period must be read in light of that reality. EPA does not believe Congress intended that the growth of environmental auditing—in itself a laudable goal fully supported by EPA—come at the expense of the enforcement of environmental laws.[6] If Congress had wished to give special status to self-disclosed violations detected during an environmental compliance audit or to prohibit the use for general enforcement purposes of audits conducted under the Clean Air Act and EPA approved programs, Congress could have done so in the language of the 1990 amendments. If anything, the legislative history of the Act is evidence of Congress' intent that such incentives for audits should be a basis for the exercise of prosecutorial discretion, and not a legislative grant of immunity or protection from disclosure.

The commenters also argue that Congress intended to vest the States with discretion in enforcing title V permit requirements and that the part 70 regulations merely provide that penalties assessed under a title V program must be ''appropriate'' to the violation. Nothing requires a State to obtain a penalty for every violation or prohibits a State from rewarding good actors who identify, disclose, and correct violations, the commenters continue.

EPA agrees that a State is not required to collect a penalty for every violation and is not precluded from using its discretion to reward companies that conduct environmental audits and disclose and correct any violations discovered through such an audit. EPA disagrees, however, that the only inquiry for title V approval is whether a State has authority to assess ''appropriate'' penalties. The part 70 regulations first state that civil and criminal fines must be recoverable ''in a maximum amount of *not less than $10,000 per day per violation*.'' 40 CFR 70.11(a)(3)(i)–(iii) (emphasis added).[7] Section 70.11(c) then provides that ''[a] civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate *to the violation*.'' (emphasis added). By interpreting title V and part 70 to require only that States have authority to assess ''appropriate'' penalties, the commenters are reading out of the regulations the independent requirement that States have the authority to assess civil and criminal penalties in a maximum amount of not less than $10,000 per day per violation. Read together, 40 CFR 70.11(a)(3) and 70.11(c) require that a State have authority to assess a civil or criminal penalty of up to $10,000 per day per violation and that, in addition, the penalty assessed in any particular case be ''appropriate'' to the violation at issue. Thus, EPA agrees with the commenters that it is within Idaho's discretion to impose a penalty less than the statutory maximum if a lesser penalty is appropriate under the facts and circumstances of a particular case or to determine that criminal or civil prosecution is inappropriate under the facts and circumstances of a particular case so long as the State has the *authority* to assess penalties for each day of violation. The legislative history cited by the commenters in support of their position is, in fact, consistent with EPA's position on this issue. See Legislative History at 5815 (''states are not going to be required to impose these minimum fines of $10,000 for permit violations. Instead, the bill is revised to make clear that states shall ensure that they have the *authority* to impose this. It is not mandated, it is authority.'') (emphasis added).

Several commenters stated that section 113(e) of the Clean Air Act only sets forth penalty factors that EPA or a Federal court must consider in imposing

[6] That distinction is also reflected in ''Incentives for Self-Policing; Discovery, Disclosure, Correction and Preventions of Violations,'' 60 FR 66706 (December 22, 1995) (hereinafter, ''EPA's Self-Disclosure Policy''), which offers significant incentives for businesses to audit and self-disclose violations, while at the same time retaining safeguards to ensure the protection of public health and the environment.

[7] One commenter appears to assert that a State need only have the authority to assess ''appropriate'' criminal penalties. In doing so, the commenter ignores the clear language of the part 70 regulations. Section 502(b)(5)(E) requires States to have authority to ''recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties.'' In promulgating part 70, EPA determined that to provide ''appropriate criminal penalties'' for purposes of title V approval, a State must have authority to issue criminal penalties in a maximum amount of not less than $10,000 per day per violation. *See* 40 CFR 70.11(a)(3) (ii) and (iii). If the commenter believes that the enforcement authorities enumerated in the part 70 regulations, including the requirement for criminal penalty authority of up to $10,000 per day per violation, are excessive or in any way inconsistent with the statutory authorities, the commenter should have challenged the part 70 regulations at the time of promulgation in 1992.

civil penalties for noncompliance with the Act, that it has no bearing on EPA's authority to approve or disapprove State title V programs, and that nothing in section 113, title V, or part 70 authorizes EPA to condition approval of a State's title V permit program on the State's ability to consider penalty factors comparable to those set out in section 113(e). The commenters further assert that, although section 113(e) is inapplicable, section 113(a) authorizes EPA in certain defined circumstances to take appropriate action, namely, filing an action against a facility where EPA believes the State's response was inadequate. This back-up authority, and not wholesale invalidation of a State's title V permits program, the commenters continue, is EPA's tool for ensuring to its own satisfaction that State audit legislation does not allow egregious Clean Air Act violations to go unsanctioned. In any event, the commenters assert, the Idaho Audit Act does take the section 113(e) factors into account.

EPA agrees that the purpose of section 113(e) is, as the commenters assert, to set forth factors which EPA and the Federal courts must consider in assessing civil penalties under the Clean Air Act. EPA believes, however, that the section 113(e) factors can also serve as guidance in determining what civil penalty authority is minimally necessary in a State title V program.

In order for a State to have the authority to assess penalties that are ''appropriate'' to the violation in any particular case as required by 40 CFR 70.11(c), a State must have, in addition to the authority to assess a penalty of at least $10,000 per day per violation, the authority to consider mitigating or aggravating factors. In enacting section 113(e), Congress set forth factors it believed EPA and Federal judicial and administrative courts should consider in determining an appropriate penalty under the specific facts and circumstances before it. Although EPA believes that the factors enumerated by Congress in section 113(e) are the most fundamental, EPA believes that States may consider other factors as well. To the extent that a State has surrendered its ability to consider factors such as those set forth in section 113(e), EPA believes that a State does not have adequate authority, on a case-by-case basis, to collect penalties that are ''appropriate'' to the violation, as required by 40 CFR 70.11(c).

Industry commenters argue that, because the section 113(e) factors do not apply to State programs, it must follow that Congress did not prescribe factors a State must apply in assessing ''appropriate'' penalties under title V, and that a State must therefore be given full approval as long as it possesses ''appropriate'' enforcement authority. There are two flaws in this reasoning. The commenters misunderstand the purpose of EPA's reference to section 113(e). As explained above, the question for EPA at the program approval stage is not how the State will exercise its enforcement discretion to assess penalties in any particular case. Rather, it is whether the State has sufficient authority to assess appropriate penalties in every case. Before granting full approval to a title V program, EPA must ensure, first, that the State has the general authority to assess penalties up to the amounts specified in section 70.11. EPA must also ensure that the State has authority to consider factors similar to those in section 113(e) such that the penalty actually assessed in any case may be appropriate to the violation. Because the immunity provisions of the Idaho Audit Act preclude the State from considering the factors set forth in section 113(e) or any other factors in determining an ''appropriate'' penalty in cases in which the source has disclosed and corrected violations discovered in an environmental audit, Idaho lacks this authority.

EPA also disagrees with the commenters' assertion that EPA's sole remedy where EPA believes a State does not have adequate enforcement authority is to take its own enforcement actions to address violations in that State. Although EPA does file Federal actions where the State fails to take enforcement action or where State action is inadequate to address a particular violation, before approving a State title V program EPA must also ensure that the State has demonstrated the capacity to administer and fully enforce a delegated program as required by law and regulation. If Federal action were the only remedy for situations in which a State does not possess adequate enforcement authority, there would have been no need for Congress to direct EPA to promulgate rules setting forth minimum enforcement requirements for Federal approval of a State operating permits program. See 59 FR 61825 (rejecting similar comment in acting on Oregon's title V program).

Finally, EPA disagrees with the commenters' contention that the Idaho Audit Act does give consideration to the penalty factors set forth in section 113(e). As EPA stated in the June 17, 1996, Federal Register document and has reiterated above, the immunity provisions of the Idaho Audit Act prevent the State from considering all but one of the factors set forth in section 113(e) of the Clean Air Act. For example, the Idaho Audit Act precludes the assessment of civil penalties for violations voluntarily disclosed in an environmental audit even if the violations resulted in serious harm or risk of harm to the public or the environment or resulted in substantial economic benefit to the violator. To the extent the Idaho Audit Act prevents consideration of these factors, EPA believes that Idaho has surrendered its authority to assess appropriate penalties as required by section 502(b)(5)(E) of the Clean Air Act and 40 CFR 70.11. See 61 FR 30572.

Several commenters stated that EPA's approach on State audit privilege and/or immunity laws is bad policy and not supported by empirical evidence. The commenters expressed strong support for environmental auditing as a means of obtaining compliance with increasingly complex environmental requirements. These commenters argue that EPA's reaction against such audit statutes is a ''knee-jerk'' reaction that ignores the potentially huge benefits that these laws offer. EPA has wrongly concluded, the commenters continue, that the existence of a limited and qualified affirmative defense to penalties for violations discovered through environmental audits and protection for information in audit reports weakens Idaho's authority to enforce the law or to ensure compliance and that the evidence to date, both in Idaho and in other States with such laws, shows in fact that audit privilege and/or immunity legislation encourages self-correction and increased compliance. At the same time, the commenters argue, EPA has not cited any specific instance in which the Idaho Audit Act or some other State audit privilege and/or immunity law has compromised or inhibited enforcement of the Clean Air Act or a title V permit program.[8]

EPA has expressed strong support for incentives which encourage responsible companies to audit to prevent noncompliance and to disclose and correct any violations that do occur. *See, e.g.,* EPA's Self-Disclosure Policy.

[8] One commenter noted that private industry has been in the forefront of environmental auditing, and that governmental agencies that are also subject to environmental regulation have in some instances lagged behind in implementing auditing programs. This commenter went on to express concern that EPA has used the title V approval process as a mechanism to limit environmental auditing when Federal and State agencies are not conducting environmental audits. EPA agrees that private industry has played an important role in the development and implementation of environmental auditing programs and that government entities should follow the example of many private industries in conducting environmental audits.

The issue involved in this Federal Register action, however, is not whether environmental auditing is good or bad policy. Rather, the issue is whether the Idaho Audit Act, in offering immunity and protection against compelled disclosure to companies conducting environmental audits, so deprives the State of its authority to take enforcement action for violations of title V requirements that the State does not have the necessary authority required for full title V approval.

Moreover, EPA believes that it is premature at this point to expect significant empirical evidence to document whether environmental audit privilege and/or immunity laws enhance or impede environmental compliance. Most of the State audit statutes, such as Idaho Audit Act, are little more than one year old and only a few States have issued permits under approved title V programs. In any event, EPA is aware of at least one on-going environmental enforcement action in a State with an audit privilege and/or immunity law in which the audit privilege appears to be interfering with prosecutors' efforts to obtain and utilize certain evidence.[9]

The commenters go on to argue that the reasoning set forth in the April 5 Title V Memorandum and the June 17, 1996, Federal Register document could have far-reaching and unintended effects on the relationship between EPA and States in the implementation of the Clean Air Act and other environmental laws such as approvals of State Implementation Plans and State programs under the Clean Water Act and Resource Conservation and Recovery Act.

EPA agrees that the rationale behind the April 5 Title V Memorandum and EPA's action on the Idaho title V program has implications for other Federal programs delegated to the States. Because of that, the Agency has for some months been analyzing the effects of State audit privilege and/or immunity laws on enforcement authorities under the Clean Water Act, the Resource Conservation and Recovery Act, and other statutes. The rationale behind the April 5 Title V Memorandum and EPA's action on the Idaho title V program as it relates to the Idaho Audit Act, however, is dictated not by political or policy considerations, but rather by statutes and regulations that were finalized after public notice and comment.

[9] The confidentiality prerequisites that attach to all on-going enforcement actions prevent the Agency from revealing additional details at this time.

Several commenters also stated that EPA's proposed interim approval of Idaho's program based on the Idaho Audit Act is inconsistent with existing EPA and Department of Justice enforcement policies, which reflect the appropriateness of limiting enforcement discretion. The commenters point to ''Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator,'' DOJ, July 1, 1991; ''The Exercise of Investigative Discretion,'' EPA, January 12, 1994; ''Policy on Flexible State Enforcement Responses to Small Community Violations'' EPA, November 1995 (''EPA Policy on Small Communities'') [10]; ''Policy on Compliance Incentives for Small Businesses,'' EPA, May 1996; and EPA's Self-Disclosure Policy.

There is an important distinction between the policies cited by the commenters, which adopt an ''enforcement discretion'' approach, and the Idaho Audit Act. EPA and the Department of Justice have announced policies guiding the exercise of their enforcement discretion under certain narrowly defined circumstances, while preserving the underlying statutory and regulatory authority. State audit privilege and/or immunity laws, such as the Idaho Audit Act, by contrast, constrain enforcement discretion as a matter of law, impermissibly surrendering the underlying statutory and regulatory enforcement authorities required for Federal approval of State programs.

Several commenters stated that EPA's proposed action on the Idaho program is inconsistent with several previous title V approvals where audit privilege and/or immunity legislation has not posed a bar to full approval. As examples of previous title V approvals which the commenters believe are inconsistent with EPA's proposed action on the Idaho program, as it relates to the Idaho Audit Act, the commenters point to EPA's action on the Oregon, Kansas, and Colorado title V programs. Relying on the recent Ninth Circuit decision in *Western States Petroleum Association* v. *EPA*, 87 F.3d 280 (9th Cir. 1996) (''WSPA''), the commenters state that, where EPA is departing from a prior course of action, more is required of the Agency than conclusory statements concerning the potential impact of the Idaho Audit Act on the State's title V enforcement authority. Instead, the commenters argue that EPA must provide a basis for deviating from its earlier approaches in Oregon, Kansas, and Colorado.

As an initial matter, EPA notes its action on Idaho's title V program is consistent with its approach with respect to the Texas title V program, 61 FR 32693, 32696–32699 (June 25, 1996) (final interim approval), and the Michigan title V program. 61 FR 32391, 32394–32395 (June 24, 1996) (proposed interim approval). Moreover, EPA has notified the States of Arizona, Florida and Ohio that audit privilege and/or immunity laws that these States have enacted, or were contemplating enacting, could interfere with the enforcement requirements of title V and part 70.

With respect to the three programs cited by the commenters as inconsistent with EPA's proposed action on the Idaho program, EPA is still in the process of reviewing the audit privilege and/or immunity statutes in Oregon, Kansas, and Colorado, and their effects on the title V enforcement requirements in those States, in order to determine whether EPA acted inconsistently in approving those programs. If EPA determines that it acted inconsistently in acting on those programs, EPA intends to take appropriate action to follow the *WSPA* Court's mandate that EPA act consistently or explain any departures.

Finally, the commenters challenge the April 5 Title V Memorandum itself arguing that the memorandum imposes requirements on EPA approval of a State

[10] One commenter describes EPA's ''Policy on Flexible State Enforcement Responses to Small Community Violations'' (hereinafter, ''EPA's Policy on Small Community Violations'') as one that ''encourages states to give small communities an unqualified waiver of civil penalties—regardless of any economic benefit or the seriousness of the violation—as an incentive to compliance.'' EPA disagrees with this characterization. Although the policy does encourage States to provide small communities an incentive to request compliance assistance by waiving all or part of a penalty under certain circumstances, it does not encourage States to give small communities ''an unqualified waiver of civil penalties,'' as the commenter asserts. For example, the EPA Policy on Small Community Violations is directed at a very narrowly defined class of potential violators—non profit, government entities with fewer than 2,500 residents that are unable to satisfy all applicable environmental mandates without the State's compliance assistance. The policy directs States to assess a small community's good faith and compliance status before granting any relief from penalties and identifies a number of factors that a State should consider in determining whether relief from civil penalties is appropriate in the particular circumstances. Contrary to the commenter's assertion, EPA's Policy on Small Community Violations does direct a State to consider the seriousness of the violation. *See* EPA's Policy on Small Community Violations, page 4. Although the policy does not direct the State to consider economic benefit in determining the appropriate enforcement response, the policy is available only to those small communities that are financially unable to satisfy all applicable environmental mandates without the State's compliance assistance.

operating permits program in addition to those required by section 502(b)(5)(E) of the Act and the part 70 rules. Because the April 5 Title V Memorandum sets additional substantive and binding standards for approval of State title V operating permits programs not included in the part 70 regulations, the commenters continue, the memorandum is a rule disguised as guidance and must be promulgated in accordance with the Administrative Procedures Act. This requires, among other things, public notice and comment.

EPA disagrees. The April 5 Title V Memorandum does not, as the commenters assert, ''purport to change fundamentally the requirements in section 70.11 by adding provisions that (1) effectively prohibit a state from adopting an audit protection or immunity law and (2) impose at least four new penalty criteria.'' Rather, the memorandum simply recounts and reiterates existing statutory and regulatory requirements for enforcement authority under the title V program and shows how audit privilege and/or immunity laws may prevent a State from meeting those requirements. It creates no new ''substantive and binding standards'' for approval of title V programs, and therefore is not subject to notice and comment rulemaking of the Administrative Procedures Act.[11] Moreover, in explaining why the Idaho Audit Act precludes full approval, EPA is relying on the requirements of title V and part 70 themselves, and not the April 5 Title V Memorandum. Moreover, EPA's application of the title V and part 70 enforcement requirements to the specific circumstances before EPA in the case of the Idaho Audit Act is subject to notice and comment rulemaking.[12]

(B) Effect of the immunity provisions of the Idaho Audit Act on Idaho's ability to issue emergency orders and seek injunctive relief. In the June 17, 1996, Federal Register document, EPA expressed concern that the Idaho Audit Act could be interpreted to interfere with the State's authority to issue emergency orders and seek injunctive relief, as required by section 502(b)(5)(E) and 40 CFR 70.11(a) (1) and (2). First, EPA was concerned with the subsection of the immunity provision of the Idaho Audit Act stating:

> Except as specifically provided, this section does not affect any authority of an environmental agency to require remedial action through a consent order or action in district court or to abate an imminent hazard, associated with the information disclosed in any voluntary disclosure of an environmental violation.

Idaho Code 8–809(7). EPA queried what might be included within the ''Except as specifically provided'' clause of that provision and whether the provision specifically authorizing persons to enter into voluntary settlements (Idaho Code section 9–809(4)) could be interpreted to mean that Idaho would be prevented from issuing a unilateral order or seeking a court order requiring an owner or operator to correct a violation on a specified schedule, at least where the violation did not involve an imminent hazard. 61 FR 30570, 30572.

In the comments jointly submitted by IDEQ and the Idaho Attorney General, Idaho stated that no specific provision of the Idaho Audit Act affects the State's authority to issue emergency orders or seek injunctive relief and that these authorities are therefore uncompromised by the Idaho Audit Act. Several of the other commenters agreed with the Attorney General that the immunity provision of the Idaho Audit Act only prohibits the State from recovering civil and criminal penalties from an owner or operator who discovers violations during a voluntary audit and meets the other conditions of the law.

EPA remains concerned regarding why the Idaho legislature included the ''Except as specifically provided'' clause in the provision affirming the State's continued ability to issue emergency orders and seek injunctive relief. EPA is willing to defer, however, to the opinion of the Idaho Attorney General's office that no provision of the Idaho Audit Act does specifically create an exception to the State's ability to issue emergency orders and seek injunctive relief. If, however, during program implementation, EPA determines that the Idaho Audit Act does compromise the State's authority to issue emergency orders and seek injunctive relief as required by title V and part 70, EPA will consider this grounds for withdrawing program approval in accordance with 40 CFR 70.10(c).

Second, EPA expressed concern with the subsection of the immunity provision of the Idaho Audit Act stating that ''appropriate efforts to correct the noncompliance'' for purposes of immunity ''may be demonstrated by the submittal of a permit application or equivalent document within a reasonable time.'' Idaho Code 9–809(3). EPA was concerned that this subsection appeared to allow an owner or operator to continue an unlawful activity for which a permit was required without being subject to penalty or the State's emergency authority or injunctive relief.

The comments submitted by the Idaho Attorney General do not address the effect of Idaho Code 9–809(3) on the State's ability to assess penalties against an owner or operator for the failure to obtain a permit. EPA therefore continues to believe that this issue must be addressed as a condition of full approval. See Section II.A.2.c.i.A above. The Idaho Attorney General did, however, directly address EPA's concern that Idaho Code 9–809(3) might also preclude the State from seeking an emergency order or injunctive relief against an owner or operator who had failed to obtain a permit. The Attorney General unequivocally stated that the Idaho Audit Act does not under any

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[11] One commenter also stated that EPA expressly recognized in its earlier approval of the Oregon title V program that EPA would have to use rulemaking to modify its part 70 rules before EPA could prohibit States from adopting audit privilege and/or immunity laws. The commenter misstates the Agency's position. As an initial, the Oregon audit statute, Oregon Revised Statute 468.963, contains only an audit privilege and does not contain an immunity provision. In proposing interim approval of the Oregon title V program, EPA stated it was in the process of developing a national position regarding EPA approval of environmental programs in States that have environmental audit privileges, and that, therefore, EPA proposed to take no action on the Oregon audit provision in the context of the Oregon title V approval. EPA noted, moreover, that it might consider such a privilege grounds for withdrawing program approval under 40 CFR 70.10(c) in the future if EPA later determined that the Oregon audit provision interfered with Oregon's enforcement responsibilities under title V and part 70. 59 FR 47105, 47106 (September 14, 1994). During the public comment period on EPA's proposal, one commenter stated that EPA's suggestion that a State audit privilege could be grounds for interim approval or withdrawal was bad policy and that Oregon's audit privilege statute was consistent with the Clean Air Act. In addition to responding to the merits of the comment, EPA stated that the commenter's concerns were premature because, as the commenter acknowledged, EPA had not proposed to take any action on Oregon's environmental audit privilege statute in the context of final interim approval of the Oregon program. EPA further stated that any such concerns about EPA's position on the Oregon audit privilege statute would be properly made if EPA later proposed to withdraw Oregon's title V approval based on Oregon's audit privilege or if EPA ''revised part 70 to prohibit environmental audit provisions such as Oregon's.'' 59 FR 61820, 61824 (December 2, 1994). EPA did not say in that Federal Register document that a rulemaking would be required in order for the Agency to disapprove a title V program in a State with an environmental audit privilege and/or immunity statute.

[12] EPA also disagrees with one commenter's assertion that the Congressional review provisions of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104–121 (SBREFA), require EPA to submit the April 5 Title V Memorandum to Congress. EPA does not believe that the April 5 Title V Memorandum is subject to Congressional review under SBREFA because it is not a rule and it does not substantially affect the rights or obligations of a nonagency party. Even if the Memorandum were subject to review, EPA has not relied on that Memorandum as a basis for this action, but has instead relied on the requirements of title V and part 70. Therefore, any procedural defect with respect to the April 5 Title V Memorandum is irrelevant to the legal sufficiency of this action.

circumstances alleviate the owner's or operator's responsibility to correct any violations identified in an audit or restrict the State's ability to take an action to abate any noncompliance. Other commenters agreed with this interpretation. EPA is willing to defer to the opinion of the Idaho Attorney General on this issue, subject to the qualification discussed above that EPA will closely monitor the impact of the Idaho Audit Act on the State's ability to issue emergency orders and obtain injunctive relief during program implementation.

(C) Additional concerns regarding the effect of the disclosure provisions of the Idaho Audit Act on the State's enforcement authority. Several of the commenters, including IDEQ and the Idaho Attorney General, disagreed with EPA's statement that the Idaho Audit Act contains a privilege for environmental audit reports which impermissibly interferes with the enforcement requirements of title V and part 70. The commenters first take issue with EPA's characterization of Idaho Code 9–804 as a ''privilege'' for environmental audit reports arguing that in Idaho such a privilege on the disclosure of information in a judicial action can only be created by constitution, a statute implementing a constitutional right, or by rules of the Idaho Supreme Court. See Idaho Rules of Evidence, Rule 501; Idaho Code 9–808. EPA has again reviewed Idaho Code 9–804 and, on further reflection, agrees that the Idaho statute does not create a true evidentiary privilege—that is, a privilege to refuse to disclose an environmental audit report in a judicial action. Rather, the statute prohibits any State agency from requiring an owner or operator to disclose the contents of an environmental audit report to the State agency.[13] EPA accurately described the effect of the Idaho Audit Act in its June 17, 1996, Federal Register document, but incorrectly characterized it as a ''privilege.'' [14]

[13] One commenter interprets Idaho Code 9–804 as not preventing the State from obtaining environmental audit reports, but only preventing the State from disclosing to the public environmental audit reports that are voluntarily disclosed to the State. EPA disagrees. Idaho Code 9–804 clearly prevents the State from requiring an owner or operator to disclose an environmental audit report to the State. Section 9–340 additionally prevents the State from disclosing to the public an environmental audit report that has been voluntarily provided by an owner or operator to the State.

[14] EPA notes that the Idaho legislature also used the term ''privilege'' to describe the intent of the Idaho Audit Act. *See* Idaho Code 9–802(2) (''the legislature of the state of Idaho recognizes that an environmental audit privilege is necessary'').

The commenters next assert that the Idaho Audit Act does not interfere with IDEQ's authority to seek or use an environmental audit report as evidence in a judicial action because the Idaho Audit Act does not create an evidentiary privilege. Although the Idaho Audit Act is a prohibition on the compelled disclosure of information and not a true evidentiary privilege, EPA still believes that the disclosure provisions of the Idaho Audit Act impermissibly interfere with the enforcement requirements of title V and part 70. The commenters do not controvert the basic fact that the Idaho Audit Act prevents a State agency, such as IDEQ, from requiring an owner or operator to produce an environmental audit report to the State agency under the State's general information gathering authority. Where an audit report produces evidence of noncompliance, the Idaho Audit Act would prevent the State from reviewing that evidence, short of filing an enforcement action in court, to determine whether the violation will be corrected and compliance assured. When a case is far enough advanced that litigation is necessary, little flexibility remains for assuring that compliance is achieved in a timely and efficient manner. Similarly, where an environmental audit reveals evidence of criminal intent on the part of managers or employees, Idaho would be barred from obtaining and using such information unless Idaho otherwise has sufficient information to first file an enforcement action in State court. Although, as the Idaho Attorney General points out, a source must voluntarily disclose the relevant portions of the audit report in order to obtain immunity from civil or criminal penalties, an owner or operator can elect not to disclose violations in an audit report in the hopes that the violations will not otherwise come to the attention of the State agency. Similarly, a facility could elect to disclose the fact of a violation, but not the related evidence of whether the violation was intentional. The decision of whether to disclose all or any part of an environmental audit report to the State rests solely with the owner or operator. EPA therefore believes that, although the Idaho Audit Act does not create a true evidentiary privilege, it still so interferes with the State's information gathering authority as to deprive the State from obtaining appropriate criminal penalties and assuring compliance with the Clean Air Act, as required by section 502(b)(5)(E) of the Act and 40 CFR 70.11.

One commenter also stated that adequate title V enforcement authority cannot depend on access to voluntarily prepared audit reports. If such were the case, the commenter reasoned, State regulators would necessarily lack adequate enforcement authority over those entities which do not conduct audits voluntarily.

EPA agrees that access to voluntarily prepared audit reports is not *per se* a prerequisite for adequate enforcement authority for title V approval. However, such access is important if the report exists and it contains information on criminal intent or whether the violation has been promptly corrected. The lack of such access can adversely affect the adequacy of enforcement authority, at least with respect to the ability to enforce against criminal violations and to verify compliance.

One commenter also stated that State audit protection legislation does not inhibit whistle blowers but instead merely prohibits unauthorized disclosure of an audit report because whistle blowers are free to disclose any ''non-audit'' information to support their allegations without fear of violating the laws.

As an initial matter, EPA notes that this concern is irrelevant in EPA's action on Idaho's title V program. To EPA's knowledge, neither the Idaho Audit Act nor any other provision of Idaho law specifically restricts the information that a whistle blower may disclose to a State agency, and EPA therefore did not raise this as a concern in proposing action on Idaho's title V program.

The commenter appears to be responding to an issue discussed in the April 5 Title V Memorandum. In that memorandum, EPA expressed concern with State audit privilege and/or immunity statutes that impose special sanctions upon persons who disclose privileged information. See April 5 Title V Memorandum, pp. 5–6. Although irrelevant to action on Idaho's title V program, EPA believes, as stated in the memorandum, that the Clean Air Act provision which gives explicit protection to whistle blowers makes no distinctions with respect to the source of the information relied upon by the whistle blower. EPA believes that it is inconsistent with section 322 of the Clean Air Act for States to remove audit reports from the universe of information which employees may rely upon in reporting violations to local or State authorities.

ii. Comments that the Idaho Audit Act poses a bar to full title V approval. EPA received three comment letters from environmental and public interest groups agreeing with that the Idaho Audit Act is incompatible with the

enforcement requirements of title V and part 70. Several of these organizations also argued that the prohibition against the compelled disclosure of audit reports in the Idaho Audit Act ''is incompatible with the [Clean Air Act's] mandate for public participation in permitting.''

EPA agrees that the prohibition against compelled disclosure contained in the Idaho Audit Act is an unfortunate hindrance to public access to potentially useful and important information affecting public health and the environment. EPA does not believe, however, that the Idaho statute interferes with the public access requirements of title V and part 70 (as opposed to the enforcement requirements) because, by its terms, the Idaho statute does not allow documents and other information which must be collected, developed, and reported pursuant to Federal and State law to be withheld from the State or the public. See Idaho Code 9–805. As noted in the October 27, 1995, Federal Register document proposing action on Idaho's title V program, EPA believes that Idaho's general statutory and regulatory confidentiality provisions allow far more information to be kept confidential from the public than is authorized under part 70 and section 114 of the Clean Air Act. See 60 FR 54999. EPA has required, as a condition of full approval, that Idaho revise these provisions or demonstrate to EPA's satisfaction that they meet the requirements of title V and part 70. EPA does not believe, however, that the Idaho Audit Act independently interferes with the title V requirements for public access to information.

One commenter also stated that the Idaho Audit Act precludes interim approval and requires disapproval. Section 70.4(d)(3)(vii) states that to qualify for interim approval the State must have ''authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.'' EPA believes that to qualify for interim approval a State must have basic authority to enforce permits and the requirement to obtain a permit, including the authority to assess penalties, during the interim approval period. EPA has stated, however, that interim approval can be appropriate, for example, even though a permitting authority does not have the authority to assess civil penalties at the full $10,000 per day per violation required by section 70.11(a)(3)(i) or does not have any criminal authority. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled ''Interim Title V Approval Issues,'' dated August 2, 1993. Similarly, EPA has granted or proposed to grant interim approval to States that have affirmative defenses to liability that EPA believed exceeded the defenses allowed as a matter of Federal law, and thus must be revised as a condition of full approval, as long as the State has the general authority to assess civil penalties for violations. See 59 FR 61824–61825 (conditioning full approval of Oregon's title V program on changes to or clarifications regarding the effect of Oregon's criminal bypass statute)[15]; 61 FR 32394 (proposing to condition full approval of Michigan's title V program on revisions to or clarifications regarding the effect of its startup, shutdown, and malfunction provisions). EPA believes that the situation in Idaho is similar in that the State of Idaho does have authority to assess civil and criminal penalties for violations of title V permit requirements in many cases. The Idaho Audit Act creates a limited, although, EPA believes, impermissible, exception to that authority. If, during the interim approval period, Idaho's enforcement authority proves inadequate to address a particular violation, EPA always has concurrent authority to enforce permit terms and conditions and the requirement to obtain a permit. See section 113 of the Act (civil and criminal liability provisions under the Clean Air Act). EPA therefore does not believe that the Idaho Audit Act precludes interim approval.

Two commenters did not urge disapproval, but instead commented that, because the Idaho Audit Act contains a sunset provision by which it expires at the end of 1997, the Idaho legislature must address renewal of the law in its next regular session at the beginning of 1997. The commenters therefore argue that EPA should not grant Idaho the full two-year interim approval period in which to address this issue, but should instead give Idaho only until April 15, 1997, which is presumably the date by which the commenters believe the 1997 legislative session will have concluded. Although EPA does have the authority to allow States less than two years to correct interim approval issues, EPA has thus far allowed all States the full two years within which to address the initial interim approval issues. EPA believes that Idaho should receive the same benefits as other permitting authorities in having the full two years to respond to this initial interim approval issue. EPA has identified 27 other interim approval issues that the State of Idaho must address during the two year interim approval period and proposed to give Idaho the full two years to address these other issues. EPA received no other comments on this proposal. Even if Idaho could address the interim approval issue relating to the Idaho Audit Act in less than two years, EPA believes that having the same interim approval period for all of the 28 identified interim approval issues will lessen the administrative burden on the State.

iii. Summary. In summary, based on the opinion of the Idaho Attorney General, EPA is satisfied that the immunity provisions of the Idaho Audit Act do not compromise the State's ability to issue emergency orders and seek injunctive relief to assure compliance with title V requirements. EPA will closely monitor the Idaho title V program during implementation to assure that this is the case. If, during program implementation, EPA determines that the Idaho Audit Act does compromise the State's authority to issue emergency orders and seek injunctive relief as required by title V and part 70, EPA will consider this grounds for withdrawing program approval in accordance with 40 CFR 70.10(c).

EPA continues to believe, however, that the immunity provisions as well as the disclosure provisions of the Idaho Audit Act impermissibly interfere with the enforcement authorities required for full title V approval. Accordingly, Idaho must revise both the immunity and disclosure provisions of the Idaho Audit Act, Idaho Code title 9, chapter 8, to ensure that it does not interfere with the requirements of section 502(b)(E)(5) of the Clean Air Act and 40 CFR 70.11 identified in the June 17, 1996, Federal Register document and this notice for adequate authority to pursue civil and criminal penalties and otherwise assure compliance. Alternatively, Idaho must demonstrate to EPA's satisfaction, through an Attorney General's opinion that these required enforcement authorities are not impaired by the Idaho Audit Act.

B. Section 112(l) Submittal

There were no comments on EPA's proposed delegation of the NESHAPs as adopted by Idaho and as they apply to title V sources and EPA's proposed

[15] Oregon ultimately established to EPA's satisfaction that its affirmative defense to criminal liability for upsets and bypasses was consistent with Federal law and thus received full approval of its program. See 60 FR 50106, 50107 (September 28, 1995).

approval of a streamlined mechanism for future NESHAP delegations.

III. Final Action

A. Title V

EPA is promulgating final interim approval of the operating permits program submitted by Idaho on January 20, 1995, and supplemented on July 14, 1995, September 15, 1995, and January 12, 1996. The State must make the following changes to receive full approval:

1. Applicability

Idaho must demonstrate to EPA's satisfaction by the end of the interim approval period that its program covers all sources required to be permitted under part 70. EPA has proposed a change to the part 70 rules that would make the definition of ''major source'' in 40 CFR 70.2 consistent with the August 7, 1980, limitation in the Idaho rule. See 59 FR 44460, 44527 (August 29, 1994). However, EPA has not yet taken final action on that proposed change. If EPA finalizes its proposed revision to the definition of ''major source'' before the end of Idaho's interim approval period, Idaho will not be required to revise its definition of ''major facility'' to delete the ''August 7, 1980'' limitation. In any case, however, Idaho must revise the reference to ''fugitive emissions'' in IDAPA 16.01.01.008.14.h.iii to refer instead to any ''air pollutant'' and must otherwise make any changes needed to demonstrate that its program covers all required sources.

2. Temporarily Exempt Sources

Idaho must demonstrate to EPA's satisfaction that the application and permitting deadlines for Phase II sources and sources with solid waste incineration units meet the requirements of part 70.

3. New Sources

Idaho must demonstrate to EPA's satisfaction that all sources in Idaho applying for a title V permit for the first time are required to submit a permit application within 12 months after becoming subject to title V.

4. Option To Obtain Permit

Idaho must demonstrate to EPA's satisfaction that it has the authority required by 40 CFR 70.3(b)(3).

5. Fugitive Emissions

Idaho must address the requirement of 40 CFR 70.3(d) that fugitive emissions from title V sources be included in permit applications and permits in the same manner as stack emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

6. Insignificant Activities

Idaho must define by regulation or guidance the terms used in IDAPA 16.01.01.317, provide documentation that the units and activities are appropriate for inclusion as insignificant, assure that all activities that are insignificant based on size or production rate be listed in each permit, and remove any director's discretion provision that would allow the State to determine that an activity not previously reviewed by EPA is insignificant (except for clearly trivial activities).

7. Permit Content

Idaho must eliminate the qualification in IDAPA 16.01.01.322.01 and 16.01.01.322.03 that requires inclusion of only those requirements that are ''identified in the application'' at the time of permit issuance because this restriction impermissibly relieves the permitting authority from including in a permit applicable requirements that are not identified in a permit application. Alternatively, Idaho must otherwise demonstrate to EPA's satisfaction that it has the authority to include in a title V permit all applicable requirements consistent with 40 CFR 70.6.

8. Exemption From Applicable Requirements

Idaho must eliminate the provision in IDAPA 16.01.01.325.01.c that allows Idaho to exempt sources from otherwise applicable requirements or, alternatively, must demonstrate to EPA's satisfaction that this provision is consistent with the requirements of part 70.

9. Emissions Trading

Idaho must demonstrate that its emissions trading provisions meet the requirements of 40 CFR 70.4(b)(12)(iii) and 40 CFR 70.6(a)(8). EPA also recommends that the requirement of IDAPA 16.01.01.322.05 that a company contemporaneously record in a company log a change from one trading scenario to another should be specifically referred to in the list of requirements a source must meet in IDAPA 16.01.01.383.03 in order to make a ''Type II'' permit deviation.

10. Alternative Emission Limits

Idaho must demonstrate to EPA's satisfaction that its operating permit program meets the requirement of 40 CFR 70.6(a)(1)(iii) that a permit with an allowable alternative emission limit contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures.

11. Reporting of Permit Deviations

Consistent with 40 CFR 70.6(a)(3)(iii)(B), the Idaho program must be revised to require prompt reporting of deviations from all permit requirements, not just those deviations attributable to startup, shutdown, scheduled maintenance, upset, or breakdown.[16]

12. Acid Rain Provisions

Idaho must demonstrate to EPA's satisfaction that its program includes the provision of 40 CFR 70.6(a)(4)(i) that no permit revision is required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

13. State-Only Enforceable Requirements

Idaho must demonstrate to EPA's satisfaction that its regulations define ''State Only'' requirements in a manner consistent with the provisions of 40 CFR 70.6(b)(2), namely, that no requirement that is required under the Act or under any of its applicable requirements may be ''State Only.''

14. General Permits

Idaho must revise its regulations authorizing general permits to be consistent with 40 CFR 70.6(d), including provisions that: (a) Require the permitting authority to grant the conditions and terms of a general permit to sources that qualify; (b) require specialized general permit applications to meet the requirements of title V; and (c) govern enforcement actions for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. As discussed above, EPA now believes that IDAPA 16.01.01.335.05, which provides that the issuance of authorization to operate under a general operating permit is a final agency action for purposes of administrative and judicial review, is consistent with the requirements of 40 CFR 70.6(d)(2) and

[16] The Idaho regulations use the term ''permit deviation'' to refer to certain changes authorized by the permit flexibility provisions contained in 40 CFR 70.6(9) and (10) and section 502(b)(10) of the Act. See IDAPA 16.01.01.383. The part 70 regulations use the term ''permit deviation'' to refer to permit violations. See 40 CFR 70.6(a)(3)(iii)(B). This notice uses the term ''permit deviation'' in the same way as the part 70 regulations.

no revisions to this provision are required.

15. Operational Flexibility

Idaho must address to EPA's satisfaction the requirement in 40 CFR 70.4(b)(12) that the permitting authority attach a copy of the notice of a permitted operational change to the relevant permit.

16. Off-Permit Provisions

Idaho must revise its regulations to require a source to record an off-permit change in a log at the facility on the same day that the change is made.

17. Permit Renewals

Idaho must revise its regulations to ensure that an application for a permit renewal will not be considered timely if it is filed more than 18 months before permit expiration.

18. Completeness Determination

Idaho must revise its regulations to ensure that applications will be deemed complete within 60 days of receipt for all sources, or establish to EPA's satisfaction that no sources will in fact fall within the exception of IDAPA 16.01.01.361.02.a.ii.

19. Administrative Amendments

Idaho must delete from the list of changes in IDAPA 16.01.01.384.01.a that may be accomplished by administrative amendment the following categories: compliance orders (IDAPA 16.01.01.384.01.a.vi) and applicable consent orders, judicial consent decrees, judicial orders, administrative orders, settlement agreements, and judgments (IDAPA 16.01.01.384.01.a.vii).

20. Minor Permit Modifications

Idaho must revise its rules to prohibit the issuance of any permit until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification.

21. Group Processing of Minor Permit Modifications

Idaho must delete the ''director's discretion'' provision of IDAPA 16.01.01.385.07.b.iv or make a showing consistent with 40 CFR 70.7(e)(3)(i)(B) for alternative thresholds. In addition, as with Idaho's procedures for minor modifications, Idaho must revise its rules to prohibit the issuance of any permit until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification.

22. Reopenings

Idaho must revise its regulations to require that the EPA notice contain no more information than that specified by 40 CFR 70.7(g)(1).

23. Public Participation

Idaho must demonstrate to EPA's satisfaction that its restrictions on the release to the public of permits, permit applications, and other related information under its laws governing confidentiality do not exceed those allowed by 40 CFR 70.4.(b)(3)(viii) and section 114(c) of the Clean Air Act.

24. Permits for Solid Waste Incineration Units

Idaho must ensure that no permit for a solid waste incineration unit may be issued by an agency, instrumentality, or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

25. Maximum Criminal Penalties

Idaho must demonstrate to EPA's satisfaction that it has sufficient authority to recover criminal penalties in the maximum amount of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

26. False Statements and Tampering

Idaho must demonstrate to EPA's satisfaction that it has the criminal enforcement authorities required by 40 CFR 70.11(a)(3)(iii), which require that criminal fines be recoverable in a maximum amount of $10,000 per day per violation against any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method.

27. Environmental Audit Statute

Idaho must revise both the immunity and disclosure provisions of the Idaho Audit Act, Idaho Code title 9, chapter 8, to ensure that they do not interfere with the requirements of section 502(b)(E)(5) of the Clean Air Act and 40 CFR 70.11 that EPA identified in the June 17, 1996, Federal Register document and this notice for adequate authority to pursue civil and criminal penalties and otherwise assure compliance. Alternatively, Idaho must demonstrate to EPA's satisfaction through an Attorney General's opinion that these required enforcement authorities are not compromised by the Idaho Audit Act.

28. Correction of Typographical Errors and Cross-References

Idaho must correct the following typographical errors and erroneous cross references:

a. IDAPA 16.01.01.006.31: The reference in the definition of ''emissions unit'' should be to 42 U.S.C. sections 7561 through 7561*o* rather than to 42 U.S.C. sections 7561 through 7561.

b. IDAPA 16.01.01.008.05.f: The reference in subsection (f) to the definition of ''applicable requirement'' should be to 42 U.S.C. section 7661*c*(b), rather than to section 7661a(b) (ie., to section 504(b) of the Clean Air Act rather than to section 502(b)).

c. IDAPA 16.01.01.008.12: The reference to the general permit regulation in the definition of ''general permit'' should be to section 3*35* (ie., IDAPA 16.01.01.335), rather than to section 322.

d. IDAPA 16.01.01.008.14: The reference in the definition of ''major facility'' to the definition of ''facility'' should be to section 006.3*5* (i.e., IDAPA 16.01.01.006.35), rather than to 006.34.

e. IDAPA 16.01.01.322.10.1.i: The reference in the requirements for the initial compliance plan should be to ''a verifiable sequence of actions'' rather than to ''a variable sequence of actions.''

f. IDAPA 16.01.01.384.01.a.vi: The reference to compliance schedule in this subsection should be to section 322.12.d (i.e., IDAPA 16.01.01.322.12.d), rather than to section 322.13.d.

g. IDAPA 16.01.01.385.01.a.iv: The words ''of title I of the Clean Air Act'' or some other description of the type of provisions being referred to appears to have been omitted after the phrase ''as a modification under any provision.''

h. IDAPA 16.01.01.387.02.a.iii: The word ''least'' appears to have been omitted from the phrase ''shall be sent at one (1) day.''

The scope of the Idaho title V program approved in this notice applies to all title V sources (as defined in the approved program) within the State of Idaho except any sources within Indian Country.

This interim approval, which may not be renewed, extends until January 6, 1999. During this interim approval period, Idaho is protected from sanctions, and EPA is not obligated to promulgate, administer, and enforce a Federal operating permits program in Idaho. Permits issued under a program with interim approval have full standing with respect to title V and part 70. In addition, the 1-year time period under State law for submittal of permit applications by subject sources and the 3-year time period for processing the

initial permit applications begin upon the effective date of this interim approval.

If Idaho fails to submit a complete corrective program for full approval by July 6, 1998, EPA will start an 18-month clock for mandatory sanctions. If Idaho then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Idaho has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Idaho, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Idaho has come into compliance. In any case, if, six months after application of the first sanction, Idaho still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Idaho's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Idaho has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Idaho, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Idaho has come into compliance. In all cases, if, six months after EPA applies the first sanction, Idaho has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Idaho has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Idaho program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Idaho upon interim approval expiration.

B. Section 112(l)

With this interim approval EPA is delegating Idaho the authority to implement and enforce 40 CFR part 61, subparts A, C, D, E, F, J, L through P, V, Y, BB, and FF, and 40 CFR part 63, subparts A, D, L, and M, as these rules apply to title V sources.[17] EPA will retain implementation and enforcement authority for these rules as they apply to non-part 70 sources. EPA has reconsidered its proposed action to delegate the radionuclide NESHAP regulations found under 40 CFR part 61 and has determined that Idaho does not have adequate resources to implement and enforce these regulations at present. In this respect, EPA is retaining authority to implement and enforce 40 CFR part 61 subparts B, H, I, K, Q, R, T, and W as these regulations apply to all sources in Idaho.

EPA is also granting approval under the authority of section 112(l)(5) and 40 CFR 63.91 of a mechanism for receiving delegation of section 112 standards that are unchanged from the Federal standards, but only as these standards apply to title V sources (See section 5.1.2.b of EPA's ''Interim Enabling Guidance for the Implementation of 40 CFR Part 63,'' Subpart E, EPA–453/R–93–040, November 1993). Under this streamlined approach, once Idaho adopts a new or revised NESHAP standard into State law, Idaho will only need to send a letter of request to EPA requesting delegation for the NESHAP standard. EPA would in turn respond to this request by sending a letter back to the State delegating the appropriate NESHAP standards as requested. No further formal response from the State would be necessary at this point, and, if a negative response from the State is not received by EPA within 10 days of this letter of delegation, the delegation would then become final. Notice of such delegations will periodically be published in the Federal Register.

Because EPA has determined that Idaho's enforcement authorities do not meet the requirements of 40 CFR 70.11, EPA is promulgating interim, rather than full, approval of Idaho's request for delegation. In this respect, it is important to note that, although EPA is delegating authority to Idaho on an interim basis to enforce the NESHAP regulations as they apply to title V sources, EPA retains oversight authority for all sources subject to these Federal Clean Air Act requirements. EPA has the authority and responsibility to enforce the Federal regulations in those situations where the State is unable to do so or fails to do so.

[17] With the exception of the radionuclide NESHAP regulations found in part 61, subparts B, H, I, K, Q, R, T, and W.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including the letters of public comment received and reviewed by EPA on the proposal, are contained in the Idaho title V docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final action. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Similarly, NESHAP rule or program delegations approved under the authority of section 112(l) of the Act do not create any new requirements, but simply confer Federal authority for those requirements that Idaho is already imposing. Because this action does not impose any new requirements, EPA has determined it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

EPA has determined that the action promulgated today under section 502 and section 112(l) of the Act 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.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in

today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 21, 1996.

Chuck Clarke,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Idaho in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Idaho

(a) Idaho Division of Environmental Quality: submitted on January 20, 1995, and supplemented on July 14, 1995, September 15, 1995, and January 12, 1996; interim approval effective on January 6, 1997; interim approval expires January 6, 1999.

(b) Reserved.

* * * * *

[FR Doc. 96–31121 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 96–D334]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208) concerning the reimbursement of external restructuring costs associated with a business combination.

DATES: *Effective date:* December 6, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before February 4, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D334 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 231.205–70, External restructuring costs, to implement Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208). Section 8115 restricts DoD from using fiscal year 1997 funds to reimburse external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met. These conditions include either that (1) the audited savings for DoD resulting from the restructuring will be at least twice the costs; or (2) the savings for DoD will exceed the costs allowed and the Secretary of Defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to the Department.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208), which was effective upon enactment on September 30, 1996. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule. In addition, this rule only applies to those entities that incur restructuring costs associated with a business combination under contracts funded by fiscal year 1997 funds. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–D334 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is amended by revising paragraph (a), and by adding paragraphs (c) (3) and (d) (10) to read as follows:

231.205–70 External restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing contractor external restructuring costs when net savings would result for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208).

* * * * *

(c) * * *

(3) Additionally, for business combinations that occur after September 30, 1996, no fiscal year 1997 appropriated funds may be obligated or expended to reimburse a contractor for restructuring costs associated with external restructuring activities unless—

(i) The audited savings for DoD resulting from the restructuring will

exceed the costs allowed by a factor of at least two to one; or

(ii) The savings for DoD resulting from the restructuring will exceed the costs allowed, and the Secretary of defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(d) * * *

(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), when 231.205–70(c)(3)(ii) applies.

* * * * *

[FR Doc. 96–31100 Filed 12–5–96; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 249 and 252

[DFARS Case 96–D320]

Defense Federal Acquisition Regulation Supplement; Notice of Termination

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 824 of the National Defense Authorization Act for fiscal Year 1997 (Pub. L. 104–201). Section 824 streamlines the statutory requirements for providing notification to contractors regarding contract terminations or reductions that are expected to occur as a result of reduced funding levels under major defense programs.

EFFECTIVE DATE: December 6, 1996. Comments on the interim rule should be submitted in writing to the address shown below on or before February 4, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Richard G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

Please cite DFARS Case 96–D320 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201). Section 824 of Public Law 104–201 amends Section 4471 of Public Law 102–484 (10 U.S.C. 2501 note) to streamline requirements for providing notices to contractors and subcontractors that may be adversely affected by substantial reductions in funding levels under major defense programs. The changes include: (1) Elimination of the requirement for notices pertaining to funding reductions that may occur as a result of the submission of the President's budget; (2) elimination of the requirement for publication of notices of anticipated program termination or reduction in the Federal Register; and (3) an increase in the time period, from 45 to 60 days, within which contractors must provide notice of anticipated contract termination or reduction to affected subcontractors after receiving notice from the Government.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201). Section 824 became effective upon enactment on September 23, 1996. This interim rule is necessary to ensure that DoD contracting activities become aware of the amended statutory requirements for providing notification to contractors regarding anticipated contract termination or reduction. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule revises requirements for providing notification to contractors and subcontractors regarding contract terminations or reductions that are expected to occur under major defense programs. An initial regulatory flexibility analysis has been prepared and is summarized as follows: This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201). Section 824 streamlines the statutory requirements for providing notification to contractors and subcontractors regarding contract terminations or reductions that are expected to occur as a result of reduced funding levels under major defense programs. The rule will apply to all large and small entities that have, under a major defense program, a prime contract, a first-tier subcontract of $500,000 or more, or a lower-tier subcontract of $100,000 or more, that is expected to be terminated or substantially reduced as a result of reduced funding levels in an appropriations act. It is not feasible to predict the number of small entities that may be affected. However, according to statistics from the DD Form 350 data base maintained by Department of Defense (DoD) Washington Headquarters Services, DoD awarded approximately 35,400 prime contracts exceeding $100,000 to small entities during fiscal year 1995. This rule imposes no additional reporting, recordkeeping, or compliance requirements on offerors or contractors. This rule does not duplicate, overlap, or conflict with any other Federal rules. Consideration was given to delaying the notification requirements until the time of execution of the contract termination modification. However, this alternative would not ensure full compliance with the applicable statute, which requires DoD to notify its contractors of anticipated contract termination or reduction not later than 60 days after the enactment of an appropriations act. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and cite DFARS Case 96–D320 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 249 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 249 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 249 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 249—TERMINATION OF CONTRACTS

2. Section 249.7003 is revised to read as follows:

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to:

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act.

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts)

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) Use the clause at 25.249–7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.249–7002 is revised to read as follows:

252.249–7002 Notification of Anticipated Contract Termination or Reduction.

As prescribed in 249.7003(c), use the following clause:

NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION

(DEC 1996)

(a) *Definitions.*

Major defense program means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 2302(5)) (see also DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs).

Substantial reduction means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(1) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(2) If there is no such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) *Notice to subcontractors.* Not later than 60 days after the Contractor receives the Contracting Officer's notice of the anticipated termination or reduction, the Contractor shall—

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract of $500,000 or more; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract of $100,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of $100,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Contractor has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661c(b) and paragraphs (1) through (14), (16), and (18) of section 1661c(c)).

(End of clause)

[FR Doc. 96–31099 Filed 12–5–96; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 61, No. 236
Friday, December 6, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV–96–987–3 PR]

Domestic Dates Produced or Packed in Riverside County, California; Temporary Relaxation of Size Requirements for Deglet Noor Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on revisions to the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. The marketing order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (committee). This rule would increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent. The rule would be in effect through October 31, 1997. The relaxation is necessary because dates from the 1996–97 crop are smaller in size and weight than normal. The decrease in size and weight is due to extremely high temperatures experienced last spring in the production area. This relaxation was recommended by the committee to make a larger quantity of the 1996–97 crop available for sale domestically and in Canada and is expected to benefit producers, handlers, and consumers.

DATES: Comments must be received by December 23, 1996.

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

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Valerie Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 205–2829, 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 proposal is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This proposal invites comments on revisions to the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. This rule would increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent. The rule would be in effect through October 31, 1997, and was recommended by the committee.

Section 987.39 of the date marketing order provides authority for the establishment of minimum quality requirements for varieties of California dates to be handled in designated outlets. Section 987.40 of the order also provides authority for the committee to recommend to the Secretary additional grade or size requirements for any variety of dates to be handled in any designated outlet when it deems advisable. Pursuant to § 987.12, there are four designated outlet categories for California dates—''DAC'' dates, ''dates for further processing'' (FP dates), ''export'' dates, and ''product'' dates.

Section 987.112a of the order's administrative rules prescribes grade, size, and container requirements for each of the four outlet categories of dates. Paragraph (b)(2) of that section prescribes such requirements for DAC dates. DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and applicable identification requirements for handling in the United States and Canada. Currently, DAC dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (Standards) issued by the Department. In addition, with respect to whole dates of the Deglet Noor variety, the individual dates in a sample from a lot must weigh at least 6.5 grams, with a

tolerance of 10 percent per lot for dates weighing less than 6.5 grams.

Paragraph (c)(2) of § 987.112a provides similar requirements for FP dates. FP dates are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements for DAC dates, with the exception of moisture requirements and applicable identification requirements. Currently, FP dates must also meet the requirements for U.S. Grade B as specified in the Standards, except for moisture.

Section 987.112a also specifies requirements for the remaining two outlet categories of dates—export and product. Except for some minor differences stated in the section, export and product dates must meet the requirements for U.S. Grade C as specified in the Standards.

At its meeting on October 31, 1996, the committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams from 10 to 15 percent to be handled in the DAC and FP outlet categories. The committee also recommended that this relaxation be in effect through October 31, 1997. This would allow the rule to be in effect for the remainder of the 1996–97 season, which ends on September 30, plus an additional month. By the end of October 1997, as prescribed under the order, the committee is required to meet and review its marketing policy for the next season. Five committee members voted for this change, three voted against, and one abstained.

In its deliberations, the committee commented that the average fruit size for the 1996–97 crop is expected to be much smaller this season than in recent years, primarily due to the hot, dry spring. Increasing the tolerance from 10 to 15 percent for dates weighing less than 6.5 grams should allow a greater quantity of Deglet Noor dates which are of good quality but weigh less than 6.5 grams to meet the requirements for DAC and FP dates. Currently, the industry average of the number of dates packed per pound is 60. The additional five percent tolerance for undersize dates would allow handlers to include approximately two additional smaller dates per pound, bringing the average total number of dates packed per pound to 62. Thus, more of the crop would be utilized as whole dates domestically and in Canada.

The committee estimates total 1996–97 marketable date shipments at 33.5 million pounds. Of that amount, Deglet Noor shipments are estimated at approximately 32.4 million pounds, with about 15 million pounds likely to meet the current requirements for DAC and FP dates. According to the committee, increasing the tolerance from 10 to 15 percent should allow about three to five percent more Deglet Noor dates to meet the DAC and FP requirements, or between 450,000 and 750,000 pounds. Making more Deglet Noor dates of satisfactory quality available for sale domestically and in Canada would provide for maximum utilization of the 1996–97 crop, thereby benefiting producers, handlers, and consumers.

The three committee members who opposed the recommendation believe that the overall quality of dates packed would be decreased if smaller fruit is allowed to meet the requirements for DAC and FP dates. However, other committee members commented that the smaller size dates would still have to meet all of the other characteristics DAC and FP dates must already meet. Thus, consumers would continue to receive good quality whole dates with only a slight increase in the number of smaller size dates. In addition, the majority of committee members believe that this change would only affect about three to five percent of the Deglet Noor shipments that are expected to meet DAC and FP requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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 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 15 handlers of California dates who are subject to regulation under the marketing order and approximately 135 date producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Last year, as a percentage, about 75 percent of the handlers shipped under 4 million pounds of dates and 25 percent shipped over 4 million. Using an average f.o.b. price of $1.12 per pound, about 75 percent of date handlers could be considered small businesses under SBA's definition and about 25 percent of the handlers could be considered large businesses. The majority of handlers and producers of California dates may be classified as small entities.

This proposal would revise size requirements currently prescribed for the Deglet Noor variety of dates under § 987.112a of the California date marketing order. Deglet Noor dates from the 1996–97 crop are smaller in size and weight than normal, due to extremely high temperatures experienced last spring in the production area. The committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent, to make a larger quantity of the 1996–97 crop available for sale domestically and in Canada, and is expected to benefit producers, handlers, and consumers. This rule would be in effect through October 31, 1997.

At the meeting, the committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for dates that meet DAC and FP requirements. As previously mentioned, dates sold as DAC or FP must meet the requirements for U.S. Grade B dates (with the exception of moisture for FP dates) as specified in the Standards and dates sold in other outlet categories such as product and export must meet requirements specified for U.S. Grade C dates. According to industry members, handlers receive about $.50 per pound more for U.S. Grade B dates than U.S. Grade C, and growers receive about $.30 more per pound more for U.S. Grade B dates.

In addition, as previously mentioned, 1996–97 marketable Deglet Noor shipments are estimated to be approximately 32.4 million pounds, of which about 15 million pounds should meet DAC and FP requirements. If, as the committee anticipates, increasing the tolerance for smaller size fruit would impact about three to five percent of the crop, this change would allow between about 450,000 and 750,000 pounds more Deglet Noor dates to be sold as DAC and FP dates. With a net increase to handlers and producers of about $.50 per pound and $.30 per pound, respectively, for U.S. Grade B dates, the proposed change could mean an increase in total net returns of $225,000–$375,000 for all handlers and $135,000–$225,000 for all producers. The benefits for this rule are not

expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The committee discussed alternatives to this change, including not increasing the tolerance at all, as well as increasing the tolerance by 10 percent rather than five percent. While only a small amount of the crop is expected to be affected by increasing the tolerance, the committee believes that an increase would benefit producers and handlers with smaller fruit this season. The committee considered increasing the tolerance from 10 to 20 percent but believed that this could put too much smaller size fruit on the market. In addition, committee members commented that the tolerance was increased by five percent during the 1992–93 season and in prior seasons because of similar problems of an abundance of small size fruit due to hot temperatures, and that the five percent increase was satisfactory. Thus, the majority of committee members agreed that the tolerance for the size of Deglet Noor dates should be increased from 10 to 15 percent through October 31, 1997.

This proposed rule would relax size requirements under the date marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, as previously stated, DAC and FP dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (7 CFR 52.1001 through 52.1011) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Agreement Act of 1946 are voluntary.

In addition, the committee's meeting was widely publicized throughout the date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the October 31, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The committee itself is composed of nine members, of which six are handlers/producers and three are producers only, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping dates from the 1996–97 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.112a [Amended]

2. In § 987.112a, paragraphs (b)(2) and (c)(2), the words ''December 29, 1992, and ending October 31, 1993,'' are removed and the words ''[Insert date one day after final rule is published in the Federal Register], and ending October 31, 1997,'' are added in their place.

Dated: December 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31163 Filed 12–05–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1205

[CN–96–008]

Cotton Research and Promotion Program: Determination of Sign-up Eligibility, and Procedure for the Conduct of a Sign-up Period for Determination of Whether to Conduct a Referendum Regarding the 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes procedures for the conduct of a sign-up period during which eligible cotton producers and importers would be offered the opportunity to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order). Producers would be provided the opportunity to sign-up to request a referendum in person at the Farm Services Agency (FSA) office that serves the county where their farm is located. All known and eligible importers would be mailed information about the sign-up period, along with a written request form that those persons who favor the conduct of a continuance referendum may complete and return to USDA.

DATES: Comments must be received by December 23, 1996.

ADDRESSES: Comments may be mailed to USDA, AMS, Cotton Division, Stop 0224, 1400 Independence Avenue S.W., Washington, D.C. 20250–0224. Comments will be made available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at this address.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Chief, Cotton Research and Promotion Staff, telephone number (202) 720–2259, facsimile (202) 690–1718.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Executive Orders 12866 and 12988; the Regulatory Flexibility Act and the Paperwork Reduction Act

This rule has been determined to be ''not significant'' for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt 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 12 of the Act, any person 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 laws, and requesting a modification of the order or an exemption therefrom. Such persons are given the opportunity for a hearing after which the Secretary shall issue a ruling on the petition. The Act provides that the District Court of the United States in any district where the petitioner resides, or where the petitioner's principal place of business is located, has jurisdiction to review the Secretary's ruling, provided that the petitioner files a complaint for that purpose within 20 days from the date of the issuance of the Secretary's ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator, Agricultural Marketing Service (AMS), has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The majority of producers and importers subject to the Order are small businesses under the criteria established by the Small Business Administration.

Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This proposed rule will provide to those persons who are against the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements set forth in this proposed rule are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum.

These proposed sign-up procedures would not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility.

In compliance with OMB regulations [5 CFR Part 1320], which implement the Paperwork Reduction Act (PRA) [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in 7 CFR 1205 have been previously approved by OMB and were assigned control number 0581–0093.

A 15-day comment period is determined to be appropriate because these proposed eligibility and participation requirements are substantially the same as the eligibility and participation that were used in previous referenda, and participation is voluntary.

Background

Following the July 1991 referendum, AMS implemented amendments to the Order. These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by the Secretary, who import cotton or cotton products into the U.S., and whom the Secretary selects from nominations submitted by importer organizations certified by the Secretary; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On October 8, 1996, in accordance with the Act, USDA issued a determination, (61 FR 52772), based on a review report of the Cotton Research and Promotion Program, not to conduct a referendum regarding the 1991 amendments to the Order. Because the review report noted that certain program participants were in favor of conducting a referendum, USDA is proposing to provide an opportunity for all eligible persons to request the conduct of a continuance referendum on the 1991 amendments by making such a request during a sign-up period.

The sign-up period would be provided for all eligible producers and importers in accordance with section 8(c)2 of the Act. Cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the FSA office that serves the county where their farm is located.

USDA would mail sign-up information, including a written request form, to all known, eligible, cotton importers. Importers who favor the conduct of a continuance referendum would return their signed request forms to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, Box 2415, Room 3096-s, 1400 Independence Ave. S.W., Washington, D.C., 20250–0539.

Importers who do not receive a request form in the mail by February 1, 1997, and who meet the eligibility requirements to participate in the sign-up, may submit a written, signed, request for a continuance referendum. Such request must be accompanied by a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 1995. Requests and supporting documentation should be mailed to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, Box 2415, Room 3096-s, 1400 Independence Ave. S.W., Washington, D.C. 20250–0539.

The sign-up period would be from January 15, 1997, through April 14, 1997. The October 8, 1996, Federal Register notice (61 FR 52773) stated that the sign-up period would be from November 25, 1996, through February 22, 1997. USDA has changed the sign-up to January 15, 1997, through April 14, 1997, to allow USDA to better prepare for the sign-up period.

Section 8(c)2 of the Act requires that if the Secretary determines, based on the results of the sign-up, that at least 10 percent (4,622) or more of the number of cotton producers and importers that voted in the 1991 referendum request a continuance referendum on the 1991 amendments, such a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton.

For example, when counting the requests, AMS Cotton Division would determine the total number of valid requests from all cotton-producing states and from importers. No more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent or 4,622 total signatures required to call for a referendum.

If the Secretary determines that fewer than 10 percent of the number of producers and importers who voted in the most recent referendum do not favor a continuance referendum, no referendum will be held.

This proposed rule would add a new subpart to establish procedures for use during the sign-up period, and these procedures would be in effect only for the duration of the sign- up period.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, chapter XI of the Code of Federal Regulations be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. In Part 1205, a new subpart is added to read as follows:

Subpart—Procedures for Conduct of Sign-up Period

Definitions

Sec.

Authority: 7 U.S.C. 2101–2118

Definitions

§ 1205.10 Act.

The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C 2101–2118; Public Law 89-502, 80 Stat. 279, as amended].

§ 1205.11 Administrator.

The term *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof. The term *cotton* does not include imported cotton for which the assessment is less than the *de minimis* assessment established by regulations.

§ 1205.13 Upland cotton.

The term *Upland cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

§ 1205.14 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1205.15 Farm Service Agency.

The term *Farm Service Agency*—formerly Agricultural Stabilization and Conservation Service (ASCS)—also referred to as ''FSA,'' means the Farm Service Agency of the Department.

§ 1205.16 Order.

The term *Order* means the Cotton Research and Promotion Order.

§ 1205.17 Person.

The term *person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

§ 1205.18 Producer.

The term *producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

§ 1205.19 Importer.

The term *importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term *import* means any such entry.

§ 1205.20 Representative period.

The term *representative period* means the 1995 calendar year.

§ 1205.21 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated to act in the Secretary's stead.

§ 1205.22 State.

The term *State* means each of the 50 states.

§ 1205.23 United States.

The term *United States* means the 50 states of the United States of America.

Procedures

§ 1205.24 General.

A sign-up period will be conducted to determine whether eligible producers and importers favor the conduct of a referendum on the continuance of the 1991 amendments to the Order.

(a) If the Secretary determines, based on the results of the sign-up period, that at least 10 percent (4,622) or more of the number of cotton producers and importers who voted in the 1991 referendum request the conduct of a continuance referendum on the 1991 Order amendments, a referendum will be held within 12 months after the end of the sign-up period. Not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers from any one state or from importers of cotton.

(b) If the Secretary determines that fewer than 10 percent (4,622) of the number of producers and importers who voted in the 1991 referendum do not favor a continuance referendum, no referendum will be held.

§ 1205.25 Supervision of sign-up period.

The Administrator shall be responsible for conducting the sign-up period in accordance with this subpart.

§ 1205.26 Eligibility.

Only persons who meet the eligibility requirements in this subpart may participate in the sign-up period. No person is entitled to sign-up more than once.

(a) Except as set forth in paragraphs (b) and (c) of this section, the following persons are eligible to request the conduct of a continuance referendum:

(1) any person who was engaged in the production of Upland cotton during calendar year 1995; and

(2) any person who was an importer of Upland cotton and imported Upland cotton in excess of the *de minimis* assessment value of $2.00 per line item entry during calendar year 1995.

(b) A general partnership is not eligible to request a continuance referendum, however, the individual partners of an eligible general partnership are each entitled to submit a request.

(c) Where a group of individuals is engaged in the production of Upland cotton under the same lease or cropping agreement, only the individual or individuals who signed or entered into the lease or cropping agreement are eligible to participate in the sign-up period. Individuals who are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, are each entitled to submit a request if they share in the proceeds of the required crop as owners, cash tenants, share tenants, sharecroppers or landlords of a fixed rent, standing rent or share tenant.

(d) An officer or authorized representative of a qualified corporation or association may submit a request on behalf of that corporation or association.

(e) A guardian, administrator, executor, or trustee of any qualified estate or trust may submit a request on behalf of that estate or trust.

(f) An individual may not submit a request on behalf of another individual.

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from January 15, 1997, through April 14, 1997. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by April 14, 1997.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers at each county office serving counties where cotton is produced, and shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, USDA shall mail a request form

to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by February 1, 1997, may participate in the sign-up period by submitting a signed, written, request for a continuance referendum, along with a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 1995. Importers must submit their requests and supporting documents to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, P.O. Box 2415, Room 3096-s, 1400 Independence Ave. S.W., Washington, D.C., 20250-0539. All requests and supporting documents must be received by the appropriate FSA office by April 14, 1997.

(c) Producers must request a continuance referendum by signing up in person at the county FSA office that serves the county where the producer's farm is located. A producer who wishes to request a referendum and whose name does not appear on the cotton producer list at the appropriate county FSA office may participate in the sign-up period by submitting a signed, written, request for a continuance referendum, along with a copy of a sales receipt for cotton produced during 1995. All requests and supporting documentation must be received by the appropriate FSA office by April 14, 1997.

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Program Delivery and Field Operations (DAPDFO), shall begin counting requests no later than April 15, 1997. FSA shall determine the number of eligible persons who favor the conduct of a continuance referendum.

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by April 23, 1997, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAPDFO shall prepare, by April 23, 1997, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by April 30, 1997, forward all county reports, and DAPDFO shall, by April 30, 1997, forward its report of importer requests, to the Director, Cotton Division, AMS, STOP 0224, 1400 Independence Avenue, SW, Washington, D.C., 20250–0224.

(d) The Chief of the Research and Promotion Staff, Cotton Division, shall prepare a report of the requests received, including the number of eligible persons who requested the conduct of a referendum, and the number of ineligible persons who made requests, to the Director of the Cotton Division, and shall maintain one copy of the report where it will be available for public inspection for a period of 5 years following the end of the sign-up period.

(e) The Director of the Cotton Division shall prepare and submit to the Secretary a report of the results of the sign-up period. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent (July 1991) referendum, but not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers in any one state or from importers of cotton. The Secretary shall announce the results of the sign-up period in a separate notice in the Federal Register.

§ 1205.34 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms consistent with the provisions of this subpart to govern conduct of the sign-up period.

Dated: December 3, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–31144 Filed 12–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 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 Jetstream Model 4101 airplanes. This proposal would require the replacement of weight limitation placards in the aft main baggage bay and in the aft right stowage compartment with new placards indicating lower maximum weight limits. It would also require a revision of the Airplane Flight Manual to delete references to the current higher weight limits for these areas. This proposal is prompted by a report indicating that existing weight limitations could result in failure of the front bulkhead of the aft main baggage bay and doors of the aft right stowage compartment during emergency dynamic landing conditions. The actions specified by the proposed AD are intended to prevent this failure, which consequently could result in injury to passengers and flight crew, and hinder evacuation of the airplane through the exit adjacent to this bulkhead.

DATES: Comments must be received by January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–131–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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

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–131–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–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received a report from the manufacturer indicating that testing of a new configuration for the aft main baggage bay has shown that the doors in the aft right stowage compartment will not meet crashworthiness requirements when the weight in that area exceeds 160 pounds and the total weight in the aft main baggage bay exceeds 968 pounds. Should these weight limitations be exceeded and emergency landing dynamic conditions arise, the front bulkhead of the aft main baggage bay and the doors of the aft right stowage compartment could fail, and consequently result in injury to passengers and flight crew, and hinder evacuation of the airplane through the exit adjacent to this bulkhead.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–11–014, dated January 18, 1996, which describes procedures for establishing new weight limits for these areas by removal of the weight limitation placards in the aft main baggage bay and aft right stowage compartment, and replacement of these placards with new placards indicating a lower maximum weight limit. It also describes procedures for revising the FAA-approved Airplane Flight Manual (AFM) for certain airplanes by removal of an amendment from that manual; this amendment references the higher weight limits in effect before the installation of the new placards. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–01–96, dated January 31, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 removal of the weight limitation placards in the aft main baggage bay and aft right stowage compartment, and replacement with new placards that establish lower maximum weight limits in these areas. It would also require a revision to the AFM for certain airplanes that would require removal of references to higher weight limits in effect before the new placards are installed. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 44 Jetstream Model 4101 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required placards would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,640, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Jetstream Aircraft Limited: Docket 96–NM–131–AD.

Applicability: Model 4101 airplanes, as listed in Jetstream Service Bulletin J41–11–014, dated January 18, 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 failure of the front bulkhead of the aft main baggage bay and the doors of the aft right stowage compartment during emergency landing dynamic conditions, which consequently could result in injury to passengers and flight crew and hinder evacuation of the airplane through the exit adjacent to the bulkhead, accomplish the following:

(a) For all airplanes: Within 30 days after the effective date of this AD, replace the weight limitation placards in the aft main baggage bay and aft right stowage compartment with new placards indicating lower maximum weight limitations, in accordance with Jetstream Service Bulletin J41–11–014, dated January 18, 1996.

(b) For airplanes having constructor numbers 41041 through 41043 inclusive, 41045, 41055, 41058, 41059, 41063, and 41064: Within 30 days after the effective date of this AD, after accomplishment of the requirements of paragraph (a) of this AD, revise the FAA-approved Airplane Flight Manual by removing Amendment P25, in accordance with Jetstream Service Bulletin J41–11–014, dated January 18, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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 December 2, 1996.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31109 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche E Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to certain Industrie Aeronautiche E Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed action would have required replacing certain AlliedSignal Aerospace outflow/safety valves in the pressurization system with new or serviceable valves. During the comment period of this NPRM, the Transport Airplane Directorate of the Federal Aviation Administration (FAA) issued AD 96–18–20 to address the same condition on these I.A.M. Model Piaggio P–180 airplanes. With this in mind, the FAA has determined that the proposed rule should be withdrawn. This withdrawal does not prevent the FAA from initiating future rulemaking on this subject.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–180 airplanes of the same type design that are registered in the United States and have an AlliedSignal Aerospace outflow/safety valve installed was published in the Federal Register on August 12, 1996 (61 FR 41753). The action proposed to require replacing outflow/safety valves with new or serviceable valves.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost.

During the comment period of this notice of proposed rulemaking (NPRM), the Transport Airplane Directorate of the FAA issued AD 96–18–20, Amendment 39–9747 (61 FR 47409, September 9, 1996), to address the same condition on these I.A.M. Model Piaggio P–180 airplanes. The continued airworthiness authority of these airplanes resides with the Small Airplane Directorate because I.A.M. Model Piaggio P–180 airplanes are type certificated under part 23 of the Federal Aviation Regulations (14 CFR part 23). However, because AD 96–18–20 is already in effect, the FAA has decided to withdraw the NPRM issued by the Small Airplane Directorate.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 96–CE–28–AD, published in the Federal Register on August 12, 1996 (61 FR 41753), is withdrawn.

Issued in Kansas City, Missouri, on December 2, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31097 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 100

[CGD07–96–063]

RIN 2115–AE46

Special Local Regulations; Invitational Rowing Regatta, Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for the Augusta Invitational Rowing Regatta. This event would be held annually on Thursday, Friday, Saturday, and Sunday in the third week of March from 7 a.m. to 5 p.m. The nature of the event and the closure of the Savannah River creates an extra or unusual hazard on the navigable waters of the Savannah

River at Augusta, GA. Therefore, these proposed regulations are necessary for the safety of life on the navigable waters.

DATES: Comments must be received on or before February 4, 1997.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (803) 724–7621.

The Group Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, Project Officer, Coast Guard Group Charleston, SC at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD07–96–063] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons desiring acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If if is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at the time and place announced by a later notice in the Federal Register.

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the Augusta Invitational Rowing Regatta. These proposed regulations are intended to promote safe navigation on the Savannah River during the rowing regatta by controlling the traffic entering, exiting, and traveling within these waters. Historically, the anticipated concentration of spectator and participant vessels associated with the Invitational Rowing Regatta has posed a safety concern, which is addressed in these proposed special local regulation.

The proposed regulations would not permit the entry or movement of spectator vessels and other non-participating vessel traffic between U.S. Highway Route 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197, from 7:00 a.m. to 5:00 p.m. annually on Thursday, Friday, Saturday, and Sunday of the third week of March. The proposed regulations would permit the movement of spectator vessels and other non-participants after the termination of the regatta each day, and during intervals between scheduled events at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a major significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures if the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulations would last for only 10 hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic-impact on a substantial number of small entities. ''Small Entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise quality as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the economic impact of this proposal to be minimal, and certifies under 5 U.S.C. 605(b) that his proposal, if adopted, will not have a significant impact on a substantial number of small entities. These proposed regulations will not have a significant economic impact on small entities because the limited area regulated and limited duration of the regulation.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact on this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that instruction, specifically section 2.B.4.g. and h., this proposal has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.724 is added to read as follows:

§ 100.724 Annual Augusta Invitational Rowing Regatta; Savannah River, Augusta, GA.

(a) *Definitions.*

(1) *Regulated area.* The regulated area is formed by a line drawn directly across the Savannah River at U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and directly across the Savannah River at Eliot's Fish Camp at mile marker 197. The regulated area would encompass the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard patrol Commander is

a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited to all non-participants.

(2) After the termination of the Invitational Rowing Regatta each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective dates.* This section is effective at 7:00 a.m. and terminates at 5:00 p.m. annually, on Thursday, Friday, Saturday and Sunday of the third week of March.

Dated: November 12, 1996.

J.D. Hull,

U.S. Coast Guard Acting Commander, Seventh Coast Guard District.

[FR Doc. 96–31032 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5660–6]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Oxygenated Gasoline Program; Carbon Monoxide State Implementation Plans for Denver and Longmont—Supplemental Notice; and PM_{10} State Implementation Plan for Denver—Supplemental Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The Environmental Protection Agency (''EPA'' or the ''Agency'') is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado that would shorten the season for the oxygenated gasoline program from four to three and a half months. The State has requested that EPA approve Colorado's elimination of the requirement for oxygenated gasoline use during the last two weeks of February for the Denver-Boulder, Fort Collins-Loveland, and Colorado Springs Metropolitan Statistical Areas (MSA). Based on Colorado's revision to its oxygenated gasoline requirements, EPA is reproposing approval of the Denver Carbon Monoxide (CO) SIP, Longmont CO SIP, and Denver PM_{10} SIP. EPA is taking the action to shorten the oxygenated gasoline season under Sections 110 and 211(m) of the Clean Air Act.

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

ADDRESSES: Comments may be mailed to Richard R. Long, Director, Air Programs, USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate contact person at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott Lee, at (303) 312–6736 or via e-mail at lee.scott@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region VIII address above.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(m) of the Act requires that certain states submit revisions to their SIPs, and implement oxygenated gasoline programs, no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. The Act requires that the winter oxygenated gasoline program apply to all gasoline sold in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or Metropolitan Statistical Area (MSA) in which the nonattainment area is located. (In Colorado, these areas are the Colorado Springs MSA, Fort Collins-Loveland MSA, and the Denver-Boulder CMSA.) Gasoline for the specified control area(s) must contain not less than 2.7% oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide.

Under Section 211(m)(2), the length of the control period, established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA guidance [1] identified an appropriate control period for Colorado, to run from the first day of November through the last day of February.

[1] See ''Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended—Notice of Availability,'' 57 FR 47849 (October 20, 1992).

On November 26, 1992, the State of Colorado submitted to EPA a revision to Regulation No. 13 (Colorado had an existing state oxygen gasoline program), which updated Colorado's oxygenated gasoline program to meet federal guidelines. The November 26, 1992 SIP revision provided for a 2.7% minimum oxygen content by weight program and established a control period in accordance with the EPA guidance. EPA proposed approval of this SIP revision on January 11, 1994 (59 FR 1513) and finalized approval on July 25, 1994 (59 FR 37698) in conjunction with a limited approval of Colorado's PM_{10} SIP.

On July 11, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. Included in the comprehensive revision was a commitment to revise Regulation No. 13, Colorado Oxygenated Gasoline Program. The State's commitment, which it has since met, was to adopt and implement a 3.1% oxygenated fuels program, providing additional benefit over the 2.7% program already required in the area by Section 211(m) of the Act. The State determined it needed the additional benefit to ensure attainment of the CO standard in Denver by the applicable attainment date.

The Colorado Air Quality Control Commission (AQCC) revised Regulation No. 13 in two steps. On July 19, 1994, the AQCC revised Regulation No. 13 to incorporate the ''maximum blending'' approach for the winter of 1994–95. This approach requires gasoline suppliers using methyl tertiary butyl ether (MTBE) as an oxygenate to blend at the 2.7% oxygen level (the maximum allowed by Federal regulations), and suppliers using ethanol as an oxygenate to blend at the 3.5% oxygen level (also the maximum allowed by Federal regulations). The market share of ethanol in the Denver area has exceeded 50% in recent years, and this approach is expected to result in at least a 3.1% oxygen content during each winter season. On October 20, 1994, the AQCC revised Regulation No. 13 to incorporate a more complex 3.1% ''averaging'' program. If the maximum blending approach should fail to provide for at least a 3.1% oxygen content, the SIP revision provides that in subsequent winter seasons the averaging program will take effect. On September 29, 1995, the Governor submitted both revisions to EPA for approval. EPA found the submittal complete on November 30, 1995. On July 9, 1996, EPA proposed approval of these revisions as a control measure for the Denver CO SIP and a

contingency measure for the Longmont CO SIP [2] (61 FR 36004).

On October 19, 1995, the AQCC held a public hearing and adopted a SIP revision (revision to Regulation No. 13) based on the provision of section 211(m)(2) that allows EPA to reduce the oxygenated gasoline control period if the State can demonstrate that, because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. The revision eliminates the oxygenated gasoline program requirements for the last two weeks of February, otherwise leaving Colorado's program requirements unchanged. The Governor submitted the revision to EPA for approval on December 22, 1995 and indicated that the revision superseded and replaced all previous versions of Regulation No. 13.

II. EPA Analysis of State Submittal

The applicable Clean Air Act requirements and EPA's rationale for its proposed actions are discussed below.

A. Section 211(m)(2) Demonstration

Section 211(m)(2) of the Clean Air Act states the Administrator may reduce the oxygenated gasoline control period below the minimum four months ''if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period.''

Based on this provision, EPA required the State to demonstrate, based on worst-case meteorology for Denver for the last 21 years (as indicated by daily peak 8-hour CO concentrations), at least a 95% probability that there would be no exceedances of the CO standard during the last two weeks of February as a result of the shortening of the control period. EPA believes that to implement the statutory requirement of assuring no exceedances it is reasonable to require a State to show a very high probability of no exceedances and that 95% is a reasonable threshold for the State's demonstration here. Given the limitations of statistical analysis and the problems associated with proving a negative, EPA believes that a higher threshold would be inappropriate. EPA has not determined whether a lower threshold would provide sufficient assurance that there would be no exceedances.

EPA believes the selected approach is conservative in assuring no exceedances of the CO standard. The risk analysis is based on worst-case conditions, and assumes that no oxygenates are present in gasoline beginning on February 14. However, because 3.1% oxygen content requirements are enforced at both retail outlets and at the terminals that supply retail outlets until the end of the control period, oxygenated gasoline continues to be supplied to retail outlets from the terminals after the end of the control period. Historically, the presence of oxygenates has tapered off over a two week period after the control period ends. EPA expects this trend to continue. Therefore, some level of oxygenates will be in gasoline and CO reductions will continue to be realized throughout the two-week period for which control requirements are being eliminated.

The State performed an analysis of the probability of a carbon monoxide exceedance in the Denver area during the last two weeks of February 1996 assuming no oxygenates in automotive fuels and all other elements of the Denver CO SIP in place. The analysis was based on a climatology of 21 years of measured daily peak carbon monoxide concentrations at the CAMP monitoring site in downtown Denver for the two weeks of interest. The high concentrations at the CAMP site have generally been the highest measured at CO monitoring sites in the Denver-Boulder area during the last two weeks of February. CAMP has also shown the greatest number of exceedances of the CO NAAQS during this two-week period. The twenty-one year period of record was sufficiently long to provide statistically realistic estimates of worst-case atmospheric dispersion conditions. Carbon monoxide emissions in Denver are expected to decrease between 1996 and 2005, and are expected to remain below 1996 levels at least through 2015, because a cleaner vehicle fleet is projected to more than offset the effect of increasing traffic volumes. Thus, the calculated probability of a CO NAAQS exceedance is at a maximum in 1996 at least through 2015. EPA does not believe it is necessary or reasonable to project beyond 2015 to meet the statutory requirement of assuring no exceedances, given the increasing uncertainty inherent in such long-range forecasting, and believes that a shorter period might be adequate.

In order to normalize the effects of emissions changes over the 21-year study period, measured concentrations were adjusted to reflect estimated changes in CO emissions between the measurement year and 1996. The resulting analysis provided a distribution of concentrations that would have occurred had the same historical meteorological conditions occurred at 1996 emission rates, without oxygenated fuels. The State's analysis, using three different statistical methods, showed that there would have been between a 3 and 5% probability of a CO NAAQS exceedance during the last two weeks of February 1996 if oxygenated fuels had not been in use. As noted above, due to the effects of fleet turnover, this 3 to 5% probability should represent the maximum probability of an exceedance during the last two weeks of February at least through 2015, and the probability should in fact decrease between 1996 and 2005.

For the Colorado Springs and Fort Collins-Loveland areas, if the oxygenated gasoline program is eliminated during the last two weeks of February, the probability of an exceedance during those two weeks is lower than it is for the Denver area. Compared to the Denver area, these areas have experienced significantly fewer exceedances of the CO standard and significantly lower ''high'' concentrations over the relevant time frame. Thus, the probability of an exceedance in the last two weeks of February 1996 in the Colorado Springs area and the Fort Collins-Loveland area, if the oxygenated gasoline program had been eliminated, would have been less than the 3 to 5% projected at the CAMP monitor. The probability is expected to decrease in years after 1996 due to fleet turnover.

The State's analysis meets the requirements discussed above and, thus, EPA can approve the shortening of the control period. However, if an exceedance occurs during the last two weeks of February, EPA intends to reevaluate this determination and consider calling for a SIP revision.

B. Impact on Denver and Longmont Carbon Monoxide SIPs

On July 9, 1996, EPA proposed approval of the Denver and Longmont CO SIPs. Subsequent to this proposal, EPA became aware that the version of Regulation No. 13 that was a control measure for Denver and a contingency measure for Longmont had been replaced by the October 19, 1995 version of Regulation No. 13. The two versions are identical except that the October 19, 1995 version eliminates the last two weeks of February from the program. In addition, for the Longmont CO SIP, the State took credit in the attainment demonstration for the 2.7% oxygenated gasoline program contained

[2] For the Longmont CO SIP, the State also included the previously approved 2.7% oxygenated gasoline program as a control measure for the attainment demonstration. See 61 FR 36004.

in the version of Regulation No. 13 that EPA approved on July 25, 1994 (59 FR 37698). The October 19, 1995 Regulation No. 13 replaces the four month, 2.7% program with the three-and-a-half month, 3.1% program. Hence, for purposes of the Denver and Longmont CO SIPs, EPA is publishing this supplemental notice to announce EPA's proposal to approve the SIPs with the October 19, 1995 version of Regulation No. 13 substituted for the prior versions. The analysis regarding the CO SIPs remains as described in the July 9, 1996 proposal, except that EPA explains below the basis for its conclusion that the elimination of the last two weeks of the oxygenated gasoline program does not affect the validity of the attainment demonstration for the Denver CO SIP or the attainment demonstration and contingency measures for the Longmont CO SIP.

1. Denver CO SIP Attainment Demonstration

The attainment demonstration is based on adverse meteorological conditions that occurred on January 15, 1988, and December 5, 1988. The State chose these dates because they represent the highest CO concentration episodes that were observed between January 1988 and January 1991.[3] The attainment demonstration is based on the presumption that if the standard is attained under the conditions present during these highest ranking CO episodes, it will also be attained for the remainder of the winter season. This is consistent with EPA policy regarding CO attainment demonstrations. None of the top forty-eight ranked episodes during the 1988 to 1991 period occurred during the last two weeks of February. Concentrations during the highest-ranked late February episodes were much lower than those recorded during the highest episodes in December and January.[4] The maximum calculated incremental increase (1.85 ppm) in CO concentration from non-oxygenated fuel vehicles would not be sufficient to increase total CO concentrations above 9.0 ppm during the last two weeks of February in the attainment year. Thus, NAAQS attainment would be assured during the last two weeks of February 2000 even without the oxygenated gasoline program.

2. Longmont CO SIP

For the Longmont CO SIP, the State relied on the preexisting 2.7% oxygenated gasoline program as one of the control measures in the attainment demonstration and the State selected the 3.1% oxygenated gasoline program as the contingency measure. EPA believes neither measure is necessary for the last two weeks of February for the reasons discussed below.

With respect to the attainment demonstration, the State calculated a second high value at the end of 1995 (the attainment date) of 6.97 ppm CO. This second high value was calculated to occur on January 27, 1995; high values for the last two weeks of February were even lower. However, even if one were to assume this second high value occurred during the last two weeks of February, the elimination of the 2.7% oxygenated fuels program would not have caused the second high value to exceed the CO standard. Since fleet turnover is expected to progressively reduce CO concentrations in future years, the elimination of the 2.7% oxygenated gasoline program during the last two weeks of February will also not affect maintenance of the CO standard in the Longmont area.

With respect to the contingency measure, Longmont has never recorded an exceedance of the CO standard in February. The highest value recorded in February was 8.9 ppm, recorded on February 13, 1988, during the special monitoring study conducted in 1988 and 1989. The federal motor vehicle control program and the enhanced inspection/maintenance program have led to significant reductions in emissions since that time, and these reductions are expected to continue in future years due to fleet turnover. Because Longmont has never had values over the CO standard during the last two weeks of February, and because data in recent years have not even approached the standard during the last two weeks in February, EPA has determined that it is not necessary for the State to require an oxygenated gasoline program during the last two weeks of February as a contingency measure in the Longmont CO SIP.

C. Impact on the Denver PM_{10} SIP

On October 3, 1996, EPA proposed approval of the Denver PM_{10} SIP. As with the Denver CO SIP, EPA became aware after proposing approval of the PM_{10} SIP that the version of Regulation No. 13 that comprised a portion of the Denver PM_{10} SIP had been replaced by the October 19, 1995 version of Regulation No. 13. As noted above, the October 19, 1995 version eliminates the last two weeks from the program and calls for a 3.1% program rather than a 2.7% program. Hence, for the purposes of the Denver PM_{10} SIP, EPA is publishing this supplemental notice to propose to approve the Denver PM_{10} SIP with the October 19, 1995 version of Regulation No. 13 substituted for the prior version. The analysis regarding the Denver PM_{10} SIP remains as described in the October 3, 1996 proposal, except that EPA explains below the basis for its conclusion that the elimination of the last two weeks of the oxygenated gasoline program does not affect the validity of the PM_{10} SIP.

The modeling analysis for the PM_{10} SIP attainment demonstration used a gridded emissions inventory for the Denver Metropolitan area and five years of historical meteorological data from Stapleton airport. To ensure accuracy, the model was tested by comparing modeled PM_{10} concentrations with those actually measured at PM_{10} monitoring sites during the base years (1984–1989). Model evaluation testing showed that the PM_{10} modeling system met published EPA criteria for accuracy. In the PM_{10} SIP attainment demonstration runs, the emission inventory was projected to the year 1995 and included emission reductions related to the proposed PM_{10} control measures. Because five years of meteorological data were used, the 24-hour PM_{10} NAAQS is met when the predicted sixth highest PM_{10} concentration at all receptor locations is less than 150 $\mu g/m^3$. The final SIP modeling results showed a sixth highest 1995 concentration of 147.8 $\mu g/m^3$ near the CAMP monitoring station in Downtown Denver.

To estimate the effect of shortening the oxygenated fuels program on PM_{10} attainment, the effect on total motor vehicle emissions was first calculated. EPA estimated that motor vehicle exhaust emissions of PM_{10} during late February would increase by approximately 4.4% without oxygenated fuels. This emission increase was then factored back into the PM_{10} SIP attainment modeling to determine the effect on predicted concentrations. At the highest concentration receptor locations near the CAMP monitoring site, motor vehicle exhaust accounted for about 10.6 $\mu g/m^3$ of the total predicted PM_{10} concentrations. A 4.4% increase in motor vehicle exhaust would thus increase total PM_{10} concentrations by 0.46 $\mu g/m^3$. At the CAMP receptor and

[3] EPA guidance calls for the use of three years of monitoring data as the basis for modeling attainment. See ''Guideline for Regulatory Application of the Urban Airshed Model for Area-wide Carbon Monoxide,'' EPA–450/4–92–011a, June 1992.

[4] The highest value recorded in the 1988 to 1991 period was 18.7 ppm. The 48th highest value during the 1988 to 1991 period was 9.0 ppm. Since the highest-ranked episode during the last two weeks of February was not within the top 48 values overall, it was lower than 9.0 ppm and was much lower than 18.7 ppm.

other locations nearby, this increase would have been insufficient to raise concentrations on the sixth highest ranked day above 150 μg/m³ for the attainment year. Readers should note that the shortening of the oxygenated gasoline program did not occur before the PM_{10} attainment date.

EPA has also considered possible impacts on maintenance of the PM_{10} NAAQS through the milestone date of December 31, 1997 and has concluded that the elimination of the oxygenated gasoline program during the last two weeks of February will not affect the maintenance of the PM_{10} standard. In calculating the sixth highest PM_{10} concentration in the maintenance year, the State estimated the growth in emissions and brought the concentration forward from the attainment demonstration. This led to a value of 149.9 μg/m³. If 0.46 μg/m³ were added to this value, the 24-hour PM_{10} standard would be exceeded. However, the sixth highest value occurred in December, not February, and thus, should be discarded. The seventh highest value also occurred in December and should also be discarded. However, even if this seventh highest value had occurred in the last two weeks of February, elimination of the oxygenated gasoline program would not have lead to an exceedance of the standard. The seventh highest value during the attainment year was 146.4 μg/m³. Projecting to the end of 1997, this value would be 148.7 μg/m³. Adding 0.46 μg/m³ to this value would not lead to an exceedance of the standard. The highest PM_{10} value actually modeled for the attainment year during the last two weeks of February was 140.1 μg/m³, significantly lower than 146.4 μg/m³. Thus, the validity of the PM_{10} SIP is not affected by the elimination of the last two weeks of February from the oxygenated gasoline program.

III. Proposed Action

EPA is proposing to approve revisions to the Colorado SIP submitted by the Governor on December 22, 1995. Specifically, EPA is proposing to approve revised Regulation No. 13, which was adopted by the Colorado Air Quality Control Commission on October 19, 1995. This revised Regulation No. 13 has the effect of eliminating the oxygenated gasoline requirements during the last two weeks of February for the Denver-Boulder, Fort Collins-Loveland, and Colorado Springs Metropolitan Statistical Areas. In addition, EPA is proposing to approve this revision to Regulation No. 13 as a substitute for the October 20, 1994 version of Regulation No. 13 that EPA proposed to approve as a control measure for the Denver CO SIP and a contingency measure for the Longmont CO SIP on July 9, 1996 (61 FR 36004), and as a substitute for the version of Regulation No. 13 that EPA approved on July 25, 1994 and that the State relied on as control measure in the Longmont CO SIP (see EPA's notice of proposed rulemaking dated July 9, 1996, 61 FR 36004) and the Denver PM_{10} SIP (see EPA's notice of proposed rulemaking dated October 3, 1996, 61 FR 51631, and EPA's limited approval of the PM_{10} SIP dated July 25, 1994, 59 FR 37698). Also, based on this revision to Regulation No. 13, EPA is reproposing to approve the attainment demonstration in the Denver CO SIP, the attainment demonstration in the Longmont CO SIP, and the attainment and maintenance demonstrations in the Denver PM_{10} SIP.

EPA intends to take final action on this proposal to shorten the oxygenated gasoline season at the same time as it takes final action on the Denver and Longmont CO SIPs (proposed 61 FR 36004). EPA may take final action on the Denver PM_{10} SIP (proposed 61 FR 51631) at a separate time.

IV. Request for Public Comments

EPA is requesting comments on today's proposal. As indicated at the outset of this document, EPA will consider any comments received by January 6, 1997. With respect to the Denver and Longmont CO SIPs and the Denver PM10 SIP, those wishing to comment should note that EPA is only entertaining comment regarding these SIPs on the change to Regulation No. 13 and any impact of this change on the approvability of these SIPs. The comment period regarding other aspects of the CO SIP has already closed and the comment period regarding other aspects of the PM10 SIP was specified at 61 FR 51631 and closes on December 2, 1996.

V. Executive Order (EO) 12866

Under EO 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the EO. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f) of the EO, including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

The SIP-related actions proposed today have been classified as Table 3 actions 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 has exempted these regulatory actions from EO 12866 review.

V. Regulatory Flexibility

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. sec. 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 that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval process does not impose any new requirements, EPA certifies that this proposed rule would 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

VI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for

informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the SIP approval actions proposed today do 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. These Federal actions approve pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401–7671q.

Dated: December 2, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–31124 Filed 12–5–96; 8:45 am]

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40 CFR Part 70

[AD–FRL–5657–3]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Sections 111 and 112 Standards; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by Connecticut for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving Connecticut's authority to implement hazardous air pollutant requirements.

DATES: Comments on this proposed action must be received in writing by January 6, 1997.

ADDRESSES: Comments should be addressed to Donald Dahl, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–4298.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight

When EPA promulgates this interim approval, it will extend for two years following the effective date. During the interim approval period, the State of Connecticut is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of Connecticut. Permits issued under a program with interim approval have full standing with respect to Part 70, and the State will permit sources based on the transition schedule submitted with the approval request.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of the State of Connecticut submitted an administratively complete title V Operating Permits Program (PROGRAM) on September 28, 1995. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated November 22, 1995. The PROGRAM submittal includes a legal opinion from the Attorney General of Connecticut stating that the laws of the State provide adequate authority to carry out the PROGRAM, and a description of how the State intends to implement the PROGRAM.

2. Regulations and Program Implementation

The State of Connecticut has submitted Section 22a–174–33 of the Department of Environmental Protection Regulations, implementing the State Part 70 program as required by 40 CFR § 70.4(b)(2). Sufficient evidence of procedurally correct adoption is included in the PROGRAM.

The following requirements, set out in EPA's Part 70 operating permits program review are addressed in Section IV of the State's submittal.

The Connecticut PROGRAM, including the operating permit regulations, substantially meet the requirements of 40 CFR Part 70, including §§ 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility; § 70.5 with respect to permit applications and criteria which define insignificant activities; §§ 70.7 and 70.8 with respect to public participation and permit review by affected States; and § 70.11 with respect to requirements for enforcement authority. Although the regulations substantially meet Part 70 requirements, there are program deficiencies that are outlined in section II.B. below as Interim Approval issues. Those Interim Approval issues are more fully discussed in the Technical Support Document (''TSD''). The ''Issues'' section of the TSD also contains a detailed discussion of elements of Part 70 that are not identical to, or explicitly contained in, Connecticut's regulation, but which are satisfied by other elements of Connecticut's program submittal and/or other Connecticut State law.

Connecticut has made several important commitments that effect how the program will be implemented during the interim approval period. The EPA is relying on these commitments to insure that Connecticut operates an acceptable operating permits program during the period. These commitments include an effort by the state to expedite certain rule changes that address critical components of its implementing regulation, including:

1. Removing the permit shield for administrative amendments: Connecticut's program now gives DEP the discretion to grant a permit shield to permit changes that have not undergone review consistent with the requirements for a significant permit modification, the only type of permit modification that qualifies for a shield under Part 70. Compare 40 CFR 70.6(f)(1), 70.7(d)(4), (e)(2)(vi), and (e)(4). DEP has committed to not grant a permit shield to any administrative amendment that has not undergone review consistent with the requirements for a significant permit modification prior to the change in its program regulation.

2. Removal of cutoff date for applicable requirements:

Connecticut's program incorporates a definition of the Code of Federal Regulations that has the effect of limiting DEP's authority to impose applicable Clean Air Act requirements to only those promulgated as of September 16, 1994. Therefore, DEP does not have the authority to include all applicable requirements in operating permits, as required under 40 CFR 70.6(a)(1). DEP has committed to time the initial issuance of permits such that only those facilities not affected by standards promulgated after September 16, 1994 will be permitted prior to the change in the program regulation.

3. EPA opportunity for review: Connecticut's program gives EPA a 45 day opportunity to review a proposed permit, but does not require DEP to resubmit the permit to EPA if DEP makes a change following EPA's initial review period. DEP has committed to submit any such permit to EPA during the interim program and prior to the change in the program regulation.

A copy of these commitments is available for review in the docket supporting this proposal. For a further discussion of these program elements, see the interim approval conditions 14, 15, and 16 listed in the proposed action section of this document.

The Connecticut Department of Environmental Protection (CT DEP) defines research and development (R&D) in a manner which allows DEP to exclude research and development operations from a source when determining if the source is major. See Section 22a–174–33(c)(4). EPA has recently announced an interpretation of its Part 70 regulation which would allow most R&D facilities to be considered separately from the source, and has proposed rule changes to Part 70 to clarify the Agency's intent. See 60 FR 45556–58 (Aug. 31, 1995). This interpretation of EPA's rule is generally consistent with Connecticut's separation of R&D activities from the source under Section 22a–174–33(c)(4) of Connecticut's regulations.

The complete program submittal and the TSD dated November 15, 1996 entitled ''Technical Support Document—Connecticut Operating Permits Program'' are available in the docket for review. The TSD includes a detailed analysis, including a program checklist, of how the State's program and regulations compare with EPA's requirements and regulations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index. The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the ''presumptive minimum.''

Connecticut has opted to make a presumptive minimum fee demonstration. Connecticut has demonstrated that actual emissions from their title V sources was 74,000 tons for 1994. Connecticut assessed 3.6 million dollars in fees from their title V sources for 1996. These fees equate to $48.64/ton of emissions which is more than the presumptive minimum of 31.78/ton of emissions. Therefore, Connecticut has demonstrated that the State will collect sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see Attachment E of Connecticut's title V program documentation.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation. Connecticut demonstrated in its title V program submittal adequate legal authority to implement and enforce section 112 requirements through the title V permit up to September 16, 1994. This legal authority is contained in Connecticut's enabling legislation, regulatory provisions defining ''applicable requirements,'' and the requirement that a title V permit must incorporate all applicable requirements. After Connecticut addresses the interim approval issue regarding the Code of Federal Regulations, EPA will evaluate Connecticut's legal authority to issue permits that assure compliance with all section 112 requirements and to carry out all section 112 activities promulgated before and after September 16, 1994. In addition, Connecticut committed in its title V program submittal to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities. For further discussion of this subject, please refer to the Technical Support Document, referenced above, and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of 112(g) upon program approval. On February 14, 1995, EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing the requirements of that provision. The section 112(g) interpretive notice explains that EPA is considering whether to allow States time to adopt rules implementing the Federal rule. Unless and until EPA provides for such an additional postponement of the effective date of section 112(g), section 112(g) must be implemented during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations for section 112(g) requirements. Since EPA has identified section 112(g) as an interim approval issue, if the final 112(g) rule does not provide for a transition period, then EPA will implement section 112(g) through a Part 71 permits during the transition period.

Since the EPA implementation of 112(g) would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, EPA would not implement section 112(g) if the Agency decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since EPA's implementation would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA proposes to limit the duration of the Agency's implementation to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for straight delegation of sections 111 and 112 standards. The Part 70 requirements for approval of a State operating permit program, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the hazardous air pollutant program General Provisions, Subpart A, of 40 C.F.R. Parts 61 and 63, promulgated under section 112 of the Act, and MACT standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a State's program

contain adequate legal authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 C.F.R. 63.91 of Connecticut's mechanism for receiving delegation of section 112 standards for Part 70 sources, that are unchanged from the Federal standards as promulgated (straight delegation) promulgated prior to September 16, 1994. EPA is also proposing the same delegation mechanism for receiving straight delegation of section 112 standards and infrastructure programs including those authorized under sections 112(j) and 112(r) for Part 70 sources promulgated after September 16, 1994, on the condition that Connecticut addresses the interim approval condition regarding the definition for ''Code of Federal Regulations'' to allow DEP to implement section 112 standards promulgated after September 16, 1994. EPA will only take final action on delegating section 112 standards promulgated after September 16, 1994 once Connecticut makes the change as described in interim approval condition 16 in the proposed actions. In addition, EPA is reconfirming the delegation of 40 CFR part 60 and 61 standards currently delegated to Connecticut as indicated in Table I.[1]

EPA is proposing to delegate all applicable future 40 CFR part 61 and 63 standards pursuant to the following mechanism unless otherwise requested by Connecticut provided Connecticut corrects its authority to accept standards after September 16, 1994.[2] Connecticut will accept any future delegation of section 111 and 112 standards by letter. A list of newly applicable regulations will be sent by the EPA Regional Office to Connecticut. If Connecticut accepts delegation, a letter will be sent to EPA Region I. The details of this delegation mechanism are set forth in Attachment A of Connecticut's Title V submittal entitled ''Program Description with Transition Plan for the State of Connecticut Title V Operating Permit Program'' and is further clarified in a Memorandum of Understanding dated October 7, 1996. This mechanism will apply to both existing and future standards but is limited to Part 70 sources. In addition, Connecticut has indicated that for some section 112 standards it may choose to submit a more stringent State rule or program through section 112(l). EPA will need to take public notice and comment for any section 112 delegation other than straight delegation. The original delegation agreement between EPA and Connecticut was set forth in a letter to Stanley J. Pac, Commissioner, on September 30, 1982. All the documents referenced to in this paragraph are available for review in the docket supporting this proposal.

d. Commitment to implement title IV of the Act. Connecticut has committed to take action, following promulgation by EPA of regulations implementing section 407 and 410 of the Act, or revisions to either Parts 72, 74, or 76 or the regulations implementing section 407 or 410, to either incorporate by reference or submit, for EPA approval, regulations implementing these provisions.

B. Proposed Actions

The EPA is proposing to grant interim approval of the operating permits program submitted to EPA by the State of Connecticut. This interim approval extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the State will permit sources based on the transition schedule submitted with the PROGRAM.

The scope of the State of Connecticut's Part 70 program that EPA is approving in this notice would apply to all Part 70 sources (as defined in the approved program) within the State of Connecticut, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. With the exceptions that Connecticut does not have the authority to implement section 112(g) requirements or section 112 requirements that were implemented through a standard which was promulgated after September 16, 1994, Connecticut's program does contain such adequate legal authorities and resources. Therefore, EPA is also proposing to grant partial approval under section 112(l)(5) and 40 CFR 63.91 of Connecticut's mechanism for receiving delegation of section 112 standards for Part 70 sources, that are unchanged from the Federal standards as promulgated (straight delegation) and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(j), and 112(r), for those standards promulgated as of September 16, 1994. EPA is also proposing to approve delegation of all section 111 and 112 standards to Connecticut promulgated after September 16, 1994, provided Connecticut revises its definition of Code of Federal Regulations consistent with interim approval condition 16 listed below. In addition, EPA is reconfirming the delegation of 40 CFR Part 60 and 61 standards currently delegated to Connecticut as indicated in Table I.[3]

The EPA is proposing to grant interim approval to the operating permits program submitted by Connecticut on September 28, 1995. The State must make the following changes to its rules to receive full approval:

1. Forty CFR 70.5(c)(6) requires a source to include in its application an explanation of any proposed exemptions of otherwise applicable requirements. Connecticut must amend its regulation to require the applicant to explain any exemptions the source believes applies to its facility.

2. Forty CFR 70.5(c)(8)(ii)(B) requires a statement in the application that the source will comply with all future requirements that become effective during the permit term. Subsection (i)(4)

[1] Please note that federal rulemaking is not required for delegation of section 111 standards.

[2] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major source'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under Part 70 for another reason, thus requiring a Part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

[3] Please note that federal rulemaking is not required for delegation of section 111 standards.

of Connecticut's rule limits such a statement to applicable requirements [with future effective dates] with which the subject source is not in compliance at the time of application. Connecticut must amend its rules to require an applicant to affirmatively state that it will remain in compliance with a rule that it is in compliance with, once the rule becomes effective.

3. Part 70 requires that a compliance schedule ''resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.'' Subsection (i)(1) of Connecticut's rule limits the relevant administrative and judicial orders to those involving violations that occurred not more than 5 years prior to the application. Connecticut's rule also limits relevant administrative orders to those involving a penalty of greater than $5,000. Connecticut must amend its rule by removing the limitations on the relevant administrative and judicial orders.

4. 40 CFR 70.8(d) addresses the right of the public to petition EPA to object to a proposed permit if EPA has not already objected under 40 CFR 70.8(c). Connecticut's rule provides that the State will respond to an EPA objection based on a petition only if EPA files an objection with the State within 45 days of EPA's receipt of the citizen's petition. There is no such time limitation in Part 70 or in the Clean Air Act. Since Connecticut's rule attempts to limit EPA's authority, Connecticut must amend its rule by removing the 45-day deadline. Connecticut's regulations cannot as a legal matter preempt federal law, and EPA retains authority to respond to a public petition during this interim program. Nevertheless, EPA is requiring the State to make the change in its rule due to the confusion the State rule may cause the public and regulated community.

5. 40 CFR 70.6(a)(7) requires a permit condition that permit fees shall be paid during the term of the permit. Connecticut's regulation must be amended to require that permits contain a provision requiring payment of fees during the term of the permit.

6. 40 CFR 70.5(b) requires a source to submit additional or corrected information upon becoming aware that an application was incomplete or contained incorrect information. Subsection (h)(2) of Connecticut's rule limits the obligation to submit such information to the period of pendency of the application, which is inconsistent with Part 70. Connecticut must change this provision in its rule to meet the requirements of 40 CFR 70.5(b).

7. 40 CFR 70.7(a)(5) requires that a State send to EPA, and make available to any person who requests it, a statement of the legal and factual basis for each draft permit (i.e., the version that goes to the public for comment). Connecticut must amend its rule to include this requirement. In addition, Part 70 requires the State to identify in the permit the origin and authority of each permit term and condition. Connecticut's rule only includes a requirement that the authority for each permit term be included in the permit. Therefore, Connecticut must amend its rule to require that the origin of permit terms and conditions also be placed into a title V permit.

8. Subsection (j)(1)(O) of Connecticut's rule requires reporting of permit deviations within 90 days. This time frame is inconsistent with EPA's interpretation of Part 70's use of the term ''prompt.'' Connecticut must amend its rule to require prompt reporting of permit deviations within a shorter time period. EPA suggests that Connecticut require a reporting time frame of 2 to 10 days. Alternatively, Connecticut may simply delete the reference to 90 days and issue permits with provisions requiring prompt reporting within a shorter time frame. Again, EPA suggests that Connecticut require a reporting time frame of 2 to 10 days.

In addition, Connecticut must correct the conflict between the reporting time frames set forth in subsections (j) and (p)(1) of its rule. The current State rule has several different reporting time frames for the same violation. Connecticut should clarify the reporting requirements by stating that subsection (p)(1) is intended to establish a reporting time frame only for application of Connecticut's emergency affirmative defense contained in subsection (p)(3).

Connecticut must also remove the following language contained in subsection (p)(1): ''after the permittee learns, or in the exercise of reasonable care should have learned.'' The Clean Air Act and Part 70 contain a strict liability legal standard, which does not depend on knowledge or a standard of reasonable care. Under Part 70, a permittee may only meet the reporting requirements associated with the affirmative defense provision if reporting is made ''within 2 working days of the time when emission limitations were exceeded due to the emergency.'' 40 CFR 70.6(g)(3)(iv).

9. Connecticut's emergency affirmative defense provision, subsection (p)(3), applies to violations of ''a technology-based emission limitation.'' The phrase used by Connecticut is consistent with Part 70's language; however, Connecticut defines the phrase more broadly than Part 70 intends. Connecticut defines the phrase as ''emission of pollutants beyond the level of emissions allowed by a term or condition of the subject permit.'' Connecticut's affirmative defense would thus apply to, among other things, health-based limits such as Part 61 standards (as opposed to only technology-based standards). Connecticut must therefore change its definition of ''technology-based emission limitation.''

In addition, Part 70 requires that the event at issue be ''sudden,'' ''reasonably unforeseeable,'' and ''beyond the control'' of the source. Connecticut's rule must be amended to require that the event be ''sudden.'' In addition, Connecticut must remove the word ''reasonable'' from the phrase ''beyond the reasonable control of the permittee'' in subsection (p)(3).

Note that EPA has proposed to remove the emergency defense provision from Part 70. If EPA does remove the provision, Part 70 would still allow a facility to use any defense that is available to it pursuant to an applicable requirement. If EPA should conclude during a final rulemaking to remove the emergency defense provision, then Connecticut would have to take appropriate action in the future to address that change.

10. Connecticut's rule does not address ''Section 502(b)(10) changes'' adequately. See 40 CFR 70.4(b)(12)(i). In an August 29, 1994 (59 FR 44572) rulemaking proposal, EPA proposed to eliminate section 502(b)(10) changes as a mechanism for implementing operational flexibility. However, the Agency solicited comment on the rationale for this proposed elimination. If EPA should conclude, during a final rulemaking, that section 502(b)(10) changes are no longer required as a mechanism for operational flexibility, then Connecticut will not be required to address 502(b)(10) changes in its rule. However, if Part 70 retains the concept of ''Section 502(b)(10) changes,'' Connecticut will have to amend its rule to be consistent with the detailed discussion set forth in the Technical Support Document for this action.

11. Subsection (r)(13)(B) of Connecticut's rule states that EPA may terminate, modify, or revoke a permit following ''an opportunity for a hearing pursuant to subsection (m) of this section.'' The problem with this provision is that it references a right to a hearing pursuant to State law. EPA does not derive its hearing authority and

procedures from Connecticut State law. Since this State provision may confuse the public about its rights, Connecticut must remove this language from its regulations.

12. Connecticut's definition of ''applicable requirement'' is missing the following elements of Part 70's definition:

a. Connecticut's definition does not include a reference to section 504(b) or 113(a)(3) of the CAA. Connecticut must amend its rule to include section 504(b) and 113(a)(3) or the implementing regulations as part of its definition of ''applicable requirement'' if EPA has promulgated federal regulations implementing sections 504(b) and 113(a)(3) during the interim approval period.

b. Connecticut's definition does not include a reference to section 183(e) concerning regulation of consumer commercial products. The EPA has implemented this section of the Act through rulemaking. The regulations can be found at 40 CFR Part 59. Connecticut must revise its definition of ''applicable requirements'' to include these provisions.

c. Connecticut's definition does not include a reference to the stratospheric ozone requirements under Title VI of the Act. Connecticut must include in its definition of ''applicable requirements'' the requirements protecting stratospheric ozone, which are codified at 40 CFR Part 82.

13. Subsection (c)(2) of Connecticut's rule identifies specific stationary sources which are not subject to the State's title V requirements, where the premise on which the stationary source is located would not for any other reason be subject to the State's title V requirements. Subsection (c)(3) of Connecticut's rule states that a stationary source subject to 40 CFR Part 61, Subpart I and located at a premise subject to the State's title V requirements (for reasons other than being subject to Subpart I) shall be subject to the State's title V requirements. While the provision in subsection (c)(3) is not incorrect, it is incomplete. Connecticut must amend Subsection (c)(3) to include the other stationary sources listed in subsection (c)(2), because Part 70 requires title V permits to contain all applicable requirements for *all* relevant emissions units at a major source, not just those subject to Subpart I. Alternatively, Connecticut could simply delete subsection (c)(3) because it is a redundant provision in relation to subsections (c)(1) and (2).

14. Subsection (k)(4) of Connecticut's rule, the permit shield, states that the shield may apply to permit modifications under Subsections (r)(1) and (r)(2). Subsection (r)(2) contains Connecticut's procedures for administrative permit amendments. In order to be consistent with Part 70, Connecticut's permit shield provisions must be amended to exclude administrative amendments to the title V permit.

15. Subsection (n) of Connecticut's rule specifies that the commissioner will provide EPA with an opportunity to review and comment upon a tentative determination issued by the State before issuance of a final title V permit. Connecticut's rule provides that EPA will be given a 45-day review period for the permit that Part 70 defines as the ''draft permit,'' not the proposed final permit. The provision also gives EPA a second 45-day review period if the State makes changes to the tentative determination within the first 45-day period; however, the provision does not account for changes to the tentative determination that were made after the initial 45-day period has expired. Connecticut must therefore amend this provision to ensure that EPA is provided with a 45-day review period regardless of whether the tentative determination was changed during or after the initial 45-day review period and a final copy of the permit is sent to EPA.

16. Subsection (a)(6) of Connecticut's rule defines the term ''Code of Federal Regulations'' or ''CFR'' to mean those federal regulations ''revised as of September 16, 1994, unless otherwise specified.'' The State's current definition of ''Code of Federal Regulations'' would preclude DEP from issuing title V permits containing provisions of the federal regulations that were promulgated after September 16, 1994. The State program therefore does not meet the Part 70 requirement that permits contain all applicable requirements. Thus, Connecticut must amend its rule by deleting the reference to a ''cut-off'' date associated with the federal requirements.

17. In the June 4, 1996, Federal Register (61 FR 28197), EPA revised the list of source categories and schedule for the 112 MACT program. Several areas of Connecticut's title V rule refer to an outdated Federal Register Notice listing source categories and schedules. Connecticut must amend these cites to reflect the current list in order to complete the list of regulated air pollutants. The cites are in the following sections of Connecticut's rule: Sections 22a-174–33(a)(12), 22a-174–33(e)(1), and 22a-174–33(g)(2)(G).

18. On February 14, 1995, EPA published an interpretive notice that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing the requirements of that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of 112(g) should be delayed beyond the date the federal rule is promulgated in order to allow States time to adopt rules that implement the federal rule. Connecticut must be able to implement section 112(g) on the date that the section 112(g) regulations become effective or on the date the State's title V program becomes effective, whichever is later. Connecticut must therefore amend its title V rule during the interim approval period if EPA promulgates federal regulations implementing section 112(g) and such regulations become effective during that time.

19. 40 CFR 70.4(b)(10) states that a permit shall either not expire or the terms and conditions of the permit shall remain in effect if a source submits a renewal application that is timely and complete and the State has not issued or denied the renewal permit prior to expiration of the original permit. Subsection (j)(1)(B) of Connecticut's rule states that ''upon expiration of the permit the permittee shall not continue to operate the subject source unless he has filed a timely and sufficient renewal application.'' This section does not clearly state that in a situation where the source continues to operate after filing a renewal application the terms and conditions of the original permit remain enforceable. However, Connecticut's Attorney General Opinion states that Section 4–182(b) of Connecticut's general Statutes ''provides that a permit shall not expire so long as a timely renewal application has been filed and is pending.'' Connecticut should therefore amend its regulation to be consistent with its State statutory law and with Part 70.

20. Subsection (f)(3) of Connecticut's rule addresses application time frames for sources subject to Connecticut's title V regulation solely by virtue of being subject to applicable requirements under 40 CFR parts 60 and 61 that became effective prior to July 21, 1992. The provision requires application within 90 days of notice to the source from the Commissioner or five years after the implementation date of the State's title V rule, whichever is earlier. EPA believes that this provision is Connecticut's attempt to address when ''minor sources'' and ''area sources'' subject to standards under Parts 60 and 61 must apply for title V permits. Forty CFR 70.3(b) provides that a State may

exempt nonmajor sources from the obligation to obtain a title V permit ''until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources * * *'' The possibility that a source would have up to five years from the effective date of Connecticut's program to apply for a title V permit would not necessarily be consistent with Part 70. Connecticut must amend its regulation to be consistent with Part 70.

21. 40 CFR 70.5(c) states that an applicant cannot omit any information needed to determine the applicability of, or to impose, any applicable requirement. Part 70 puts the burden of determining whether an activity is subject to an applicable requirement on the source. Subsection (g)(3) of Connecticut's rule lists the types of activities a source can omit from its application. Subsection (g)(4) requires an applicant to list on its application activities in subsection (g)(3) ''if the commissioner determines the emissions from any activity or items are needed to determine the applicability [of the State's title V regulation] or to impose any applicable requirement.'' The language of subsection (g)(3) is problematic because it shifts the burden of determining what information is necessary onto the State. The provision is also unclear because the applicant could not provide such information at the time of application since the Commissioner has not yet made a determination. Connecticut must amend its rule by clearly stating that any activity listed in subsection (g)(3)(B) be listed in an application to the extent necessary to determine or impose an applicable requirement

22. Subsection (j)(1)(U) of Connecticut's rule states that title V permits will include a provision that indicates that the permit ''may be modified, revoked, reopened, reissued, or suspended by the commissioner, or the Administrator in accordance with this section, section 22a–174 of the general statutes, or subsection (d) of section 22a–3a–5 of the Regulations of Connecticut State Agencies.'' The language of this provision implies that the Administrator's legal authority to modify, revoke, reopen, reissue, or suspend a permit derives from State law. That is not the case. Section 505(e) of the Act and Part 70 provide the Administrator with the legal authority to take such actions.

While Connecticut's language cannot as a legal matter either create or affect EPA's authority under the Act, Connecticut must amend subsections (j)(1)(U) and (r)(13) to remove any confusion caused by the State rule.

23. Connecticut has the authority to issue general permits pursuant to its statutory authority under Section 22a–174 of Connecticut's General Statutes. Forty C.F.R. 70.6(d)(1) states that a source will be deemed to be operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit which it is using to comply with title V. Neither Connecticut's statute governing general permits nor Connecticut's title V regulation contains such a provision. Connecticut must amend its title V regulation or general permit legislation to address this requirement.

24. Subsection (r)(2)(A)(v) of Connecticut's rule allows for certain permit changes to be processed as administrative amendments, including changes resulting from changes at the source subject to the State's minor preconstruction permitting program.

The problem with this provision is that Part 70 only allows a limited class of preconstruction review permitting changes to be processed as administrative permit amendments, i.e., those which incorporate the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 70.7 and 70.8, and compliance requirements substantially equivalent to those contained in § 70.6. Connecticut's minor preconstruction review permitting program does not contain provisions allowing for EPA's opportunity to veto the permit, does not contain provisions relating to notification to affected States, and does not contain the permit content elements of 40 CFR 70.6. Thus, Connecticut's administrative amendment provisions must be amended to require changes to the title V permit involving minor preconstruction review permit requirements to be processed through permit modification procedures that meet part 70 requirements, at least equivalent to 40 CFR 70.7(e)(2).

25. Forty CFR § 70.7(e)(1) requires a State to provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. Once its administrative amendment procedures are amended to meet Part 70 requirements, Connecticut's program will require most permit changes to be processed as significant permit modifications, because Connecticut's regulation does not allow for minor permit modifications. Therefore, Connecticut must amend its permit modification procedures to make them more streamlined and reasonable. Connecticut should either adopt a minor permit modification procedure for certain permit modifications consistent with Part 70, or adopt some other equivalent process for permit modifications that do not require public notice.

26. Forty CFR 70.5(a)(1)(iii) requires that permit renewal applications be submitted ''at least 6 months prior to the date of permit expiration, or such other longer time * * * that ensures that the term of the permit will not expire before the permit is renewed.'' Connecticut's rule requires that permit renewal applications be submitted no later than 6 months prior to the permit expiration date. Connecticut's rule also requires that Connecticut process permit renewal applications no later than 18 months after receipt of an application. Connecticut's rule therefore does not ''ensure that the term of the permit will not expire before the permit is renewed.'' Connecticut must amend its rule so that the time frames for permit renewal application and permit renewal processing are consistent with one another.

27. Subsection (s) of Connecticut's rule allows for the transfer from one person to another of the authority to operate under a title V permit to be processed as an administrative amendment. Connecticut's rule does not contain the Part 70 requirement that a transfer may not occur unless a written agreement between the two parties is submitted to the State. Such agreement must contain a specific date for transfer of permit responsibility, coverage, and liability. The problem created by Connecticut's rule is that the State's administrative amendment procedure allows the source to act on the proposed amendment at the time the request for the amendment is made. Thus, the actual transfer would take effect prior to the permit amendment. Connecticut's rule also provides that the commissioner shall modify the permit to reflect the transfer, and only after the permit modification shall the transferee be responsible for complying with the permit. However, this situation would create a problem in an enforcement context. The Clean Air Act in general provides for enforcement against ''owners or operators,'' but does not clearly provide for enforcement against prior owners. EPA may not be able to enforce against the prior owner, even though Connecticut's rule indicates that the prior owner would still be responsible for compliance with the

permit rather than the new owner/operator. Thus, Connecticut must amend its rule to require submittal by a source of a written agreement consistent with Part 70.

28. Part 70 requires that where an applicable requirement does not require periodic testing or monitoring, the permit shall include periodic monitoring. Subsection (j)(1)(K)(ii) of Connecticut's rule includes the following language: ''[T]he permittee may be required by the permit to conduct periodic monitoring or record keeping sufficient to yield reliable data * * *.'' Connecticut must amend its rule to change the word ''may'' in subsection (j)(1)(K)(ii) to the word ''shall,'' because the periodic monitoring requirement is not discretionary under Part 70. Connecticut has committed to do periodic monitoring during the interim program.

29. Subsection (b)(2)(B)(ii) of Connecticut's rule allows ''an individual or position having overall responsibility for environmental matters for the company * * *.'' to act as the responsible official. Connecticut must remove this subsection to be consistent with part 70.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by January 6, 1997.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today 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 preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 19, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Tables to the Preamble

Table I—Delegation of Parts 61 and 63 Standards as They Apply to Connecticut's Title V Operating Permits Program

Part 61 Subpart Categories

C Beryllium
D Beryllium-Rocket Motor
E Mercury
F Vinyl chloride
J Equip Leaks of Benzene
L Benzene-Cole by-Product Recovery Plant
N Arsenic-Glass Manufacturing
O Arsenic-Primary Copper-Smelters
P Arsenic-Trioxide and Metallic
V Equip Leaks (Fugitive Emission Sources)
Y Benzene Storage Vessels
BB Benzene Transfer Operations
FF Benzene Waste Operation

40 CFR Part 63

A General Provisions
H Organic Hazardous Air Pollutants for Equipment Leaks
I Organic Hazardous Air Pollutants for Certain Process Subject to the Negotiated Regulation for Hazardous Leaks
N Chromium Emissions From Hard and Decorative Chromium Electroplating
O Ethylene Oxide Emission Standards for Sterilization Facilities
R Gasoline Distribution (Stage 1)
GG Aerospace Manufacturing and Rework
II Shipbuilding and Ship Repair (Surface Coating)

Table II—Part 60 Subpart Categories

D Fossil-Fuel Fired Steam Generators
Da Electric Utility Steam Generators
Db Industrial-Commercial-Institutional Steam Generating Units
Dc Small Industrial Commercial Institutional Steam Generating Units
E Incinerators
Ea Municipal Waste Combustors
F Portland Cement Plants
G Nitric Acid Plants
H Sulfuric Acid Plants
I Asphalt Concrete Plants
J Petroleum Refineries
K Petroleum Liquid Storage Vessels
Ka Petroleum Liquid Storage Vessels
L Secondary Lead Smelters
M Secondary Brass and Bronze Production Plants
N Basic Oxygen Process Furnaces Primary Emissions
Na Basic Oxygen Process Steelmaking-Secondary Emissions
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction
T Phosphate Fertilizer Wet Process
U Phosphate Fertilizer-Superphosphoric Acid
V Phosphate Fertilizer-Diammonium Phosphate
X Phosphate Fertilizer-Granular Triple Superphosphate Storage
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants-Electric Arc Furnaces
CC Glass Manufacturing Plants
DD Grain Elevators
EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Manufacturing Plants
KK Lead-Acid Battery Manufacturing
LL Metallic Mineral Processing Plants
NN Phosphate Rock Plants

PP Ammonium Sulfate Manufacturing
QQ Graphic Arts-Rotogravure Printing
RR Tape and Label Surface Coatings
SS Surface Coating: Large Appliances
TT Metal Coil Surface Coating
UU Asphalt Processing Roofing
VV Equipment Leaks of VOC in SOCMI
WW Beverage Can Surface Coating
XX Bulk Gasoline Terminals
BBB Rubber Tire Manufacturing
DDD VOC Emissions From Polymer Manufacturing Industry
FFF Flexible Vinyl and Urethan Coating and Printing
GGG Equipment Leaks of VOC in Petroleum Refineries
HHH Synthetic Fiber Production
III VOC From SOCMI Air Oxidation Unit
JJJ Petroleum Dry Cleaners
NNN VOC From SOCMI Distillation
OOO Nonmetallic Mineral Plants
PPP Wool Fiberglass Insulation
QQQ VOC From Petroleum Refinery Wastewater Systems
SSS Magnetic Tape Coating
TTT Surface Coating of Plastic Parts for Business Machines
UUU Calciners & Dryers in the Mineral Industry
VVV Polymeric Coating of Supporting Substrates

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BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2200, 2210, 2240, 2250, and 2270

[WO–420–1800–00–24 1A]

RIN 1004–AC58

Exchanges: General Procedures; State Exchanges; National Park Exchanges; Wildlife Refuge Exchanges; Miscellaneous Exchanges

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to streamline its exchange regulations at 43 CFR group 2200 by amending § 2200.0–7 of part 2200 and by removing parts 2210, 2240, 2250, and 2270. Section 2200.0–7 would be rewritten to state clearly that, apart from the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.* (FLPMA), other statutes exist which govern site- and type-specific land exchanges that may involve BLM-managed lands or interests in lands. If BLM lands or interests are involved, these other statutes will prevail over the regulations in part 2200 where they conflict with those regulations. BLM also would simultaneously remove parts 2210, 2240, 2250, and 2270 because the regulations in those parts largely restate the substance of the exchange statutes referenced in them and are, in that respect, redundant and unnecessary.

DATES: Any comments must be received by BLM at the address below on or before January 6, 1997. Comments received after the above date will not necessarily be considered in the decisionmaking process on the final rule.

ADDRESSES: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management (630), Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You also may transmit comments electronically via the Internet to WOComment@Wo.blm.gov. Please include ''attn: RIN AC58'' in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452–5030. You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, NW., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chris Fontecchio, Bureau of Land Management, Regulatory Affairs Group, at (202) 452–5012.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background and Discussion of Proposed Rule

Land exchanges involving BLM lands and interest in lands are generally governed by FLPMA and the rules at 43 CFR part 2200. However, various other statutes authorize certain site- and type-specific land exchanges that may involve BLM lands or interests in lands. These statutes may not be fully consistent with the exchange requirements of FLPMA or with BLM's exchange regulations in part 2200. When these inconsistencies occur, the site- or type-specific statute is intended to prevail over the part 2200 regulations. Provisions currently found at 43 CFR parts 2210, 2240, 2250, and 2270 reiterate some of these site- and type-specific statutory commands.

However, in light of the regulatory reform initiative's goals of streamlining the Code of Federal Regulations (CFR), the proposed rule would remove these parts which merely restate statutory terms and would amend section 2200.0–7 to advise the public that other statutes governing certain site- and type- specific exchanges will preempt the general exchange regulations at part 2200, to the extent that they conflict. This can be accomplished without significantly affecting the rights of the United States, BLM's customers, or the public at large.

The parts which would be removed, 43 CFR parts 2210, 2240, 2250, and 2270, are almost entirely devoted to repeating statutory provisions. To the extent that they are duplicative, these regulations serve only to provide information that can be found in the statutes themselves. Furthermore, the only provisions in these parts which go beyond the statutes are provisions which can and should be removed.

For example, removing section 2240.0–3(f) would delete: (1) The requirement that States, political subdivisions thereof, or any interested party who requests public hearings to consider an exchange do so in writing; and (2) the definitions of *National Park System* and *miscellaneous areas.* These provisions constitute substance beyond that already contained in the Act of July 15, 1968, 16 U.S.C. 460*l*–22. However, BLM has determined that deleting these provisions will not meaningfully alter its administration of the Act's exchange provisions or significantly affect the rights of the United States or the public. BLM believes the benefits of streamlining and deleting unnecessary material such as part 2240 outweigh the impact of these minor substantive changes.

Next, removing part 2250 would eliminate regulatory language stating that lands eligible for exchange under the Act of August 22, 1957, 16 U.S.C. 696, include federally owned property in Florida classified by the Secretary as suitable for exchange or disposal. In fact, the statute requires that lands be ''federally owned property in the State of Florida under [the Secretary of the Interior's] jurisdiction* * *.'' Therefore, any suggestion by the existing 43 CFR 2250.0–3(c) that the land need only be Federal land in Florida, regardless of the Secretary's jurisdiction, contradicts the law. Removing part 2250 would eliminate this confusion and would delete otherwise unnecessary language.

Similarly, removing part 2270 would eliminate a few minor inconsistencies with the governing statutes, but in each case BLM's intention is that these deletions would not have any substantive effect. For example, section 2271.0–3(a) adds the word ''approximately'' to the requirement that exchanges of Indian Reservation land under the Act of April 21, 1904, 43 U.S.C. 149, must be ''equal'' in area and value. In this particular statutory context, BLM has generally interpreted the word ''equal'' to mean ''approximately equal'' to allow the exchanging parties some flexibility in making the exchange as close to equal as is reasonably possible, without risking failure over negligible differences. Although removing part 2270 will eliminate this interpretation from the CFRs, BLM advises that it will continue to interpret the term ''equal'' in this way. BLM also advises that eliminating part 2270 will cause several other minor changes, but none that involve any significant substance.

To sum up, BLM believes that there are no variances between the statute and the regulations being removed which are significant enough to justify continued publication of these otherwise redundant and unnecessary regulations. Consequently, BLM believes that the proposed rule can be implemented without materially affecting the rights and duties of the United States or the rights of the public at large, as is the intent.

Finally, please note that BLM is proposing to delete 43 CFR subpart 2202 in a separate rulemaking. Subpart 2202 is concerned with proposals relating to National Forest land exchanges administered by the Secretary of Agriculture through the Forest Service.

III. Procedural Matters

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. The BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**) and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above, or contact BLM directly.

Paperwork Reduction Act

The rule does not contain information collection requirements which the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Unfunded Mandates Reform Act

Revising 43 CFR 2200.0–7 and removing parts 2210, 2240, 2250, and 2270 will not result in any unfunded mandate to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

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

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically excludes actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the primary function of the proposed rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12988

It has been determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author of this proposed rule is Christopher D. Fontecchio, Regulatory Affairs Group, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 452–5012.

List of Subjects

43 CFR Part 2200

Land Management Bureau; National forests; Public lands.

43 CFR Part 2210

Land Management Bureau; Public lands.

43 CFR Part 2240

Land Management Bureau; National parks; Recreation and recreation areas; Seashores.

43 CFR Part 2250

Land Management Bureau; Wildlife refuges.

43 CFR Part 2270

Indians-lands; Land Management Bureau; National trails system; National wild and scenic rivers system; Public lands.

Dated: November 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, parts 2200, 2210, 2240, 2250, and 2270, subchapter B, chapter II of Title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

1. The authority for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1716, 1740.

§ 2200.0–7 [Amended]

2. Section 2200.0–7 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) The rules contained in this part apply to all exchanges, made under the authority of the Secretary, involving Federal lands, as defined in 43 CFR 2200.0–5(i). Apart from the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.* (FLPMA), there are a variety of statutes, administered by the Secretary, that authorize trades which may include Federal lands, as for example, certain National Wildlife Refuge System and National Park System exchange acts. The procedures and requirements associated with or imposed by any one of these other statutes may not be entirely consistent with the rules in this part, as the rules in this part are intended to implement the FLPMA exchange provisions. If there is any such inconsistency, and if Federal lands are involved, the inconsistent procedures or statutory requirements will prevail. Otherwise, the regulations in this part will be followed. The regulations in this part also apply to the exchange of interests in either Federal or non-Federal lands including, but not limited to, minerals, water rights, and timber.

PARTS 2210, 2240, 2250, 2270—[REMOVED]

3. Parts 2210, 2240, 2250, and 2270 are removed in their entirety.

[FR Doc. 96–31098 Filed 12–5–96; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–239, RM–8939]

Radio Broadcasting Services; Harrietta, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Melinda Hancock proposing the allotment of Channel 229A to Harrietta, Michigan, as that community's first local service. Canadian concurrence will be requested for this allotment at coordinates 44–16–38 and 85–41–55. There is a site restriction 3.6 kilometers (2.3 miles) south of the community. The site is in the Manistee National Forest.

DATES: Comments must be filed on or before January 21, 1997, and reply comments on or before February 5, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Melinda Hancock, 2243 Haslett Road, East Lansing, Michigan 48823.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–239, adopted November 22, 1996, and released November 29, 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.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–31129 Filed 12–5–96; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 61, No. 236
Friday, December 6, 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

Agricultural Marketing Service

[Docket No. FV96–916–2NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub.L. 104–13), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension to a currently approved information collection for Nectarines Grown in California, Marketing Order No. 916.

DATES: Comments on this notice must be received by February 4, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Room 2525–S, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, Post Office Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5127, Fax (202) 720–5698; or Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION:

Title: Nectarines Grown in California, Marketing Order 916.

OMB Number: 0581–0072.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The California nectarine marketing order program, which has been operating since 1958, authorizes the issuance of grade, size, and maturity regulations, inspection requirements, and marketing and production research including paid advertising. Regulatory provisions apply to nectarines shipped within and out of the area of production to any market, except those specifically exempted by the marketing order.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California nectarine marketing order program.

The order, and rules and regulations issued thereunder, authorize the Nectarine Administrative Committee (Committee), the agency responsible for local administration of the order, to require handlers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a convenience to persons who are required to file information with the Committee needed to carry out the purposes of the Act and the order. These forms require a minimum of information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

Nectarine growers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.933 hours per response.

Respondents: California nectarine producers and for-profit businesses handling fresh nectarines produced in California.

Estimated Number of Respondents: 1131.

Estimated Number of Responses per Respondent: 1.015.

Estimated Total Annual Burden on Respondents: 1085 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the California nectarine marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0072 and Marketing Order No. 916, and be mailed to Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Post Office Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket

number and page number of this issue of the Federal Register. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th & Independence Avenue SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31028 Filed 12–5–96; 8:45 am]

BILLING CODE 3410–02–P

ASSASSINATION RECORDS REVIEW BOARD

Notice of Formal Determinations, Releases, Corrections, and Assassination Records Designation

AGENCY: Assassination Records Review Board.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on November 14, 1996, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On November 14, 1996, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124–10011–10498; 1; 0; n/a
124–10145–10281; 10; 0; n/a
124–10151–10428; 5; 0; n/a
124–10158–10499; 3; 0; n/a
124–10171–10250; 24; 0; n/a
124–10177–10220; 5; 0; n/a
124–10178–10230; 9; 0; n/a
124–10178–10252; 17; 0; n/a
124–10178–10411; 3; 0; n/a
124–10178–10412; 4; 0; n/a
124–10178–10413; 5; 0; n/a
124–10178–10418; 6; 0; n/a
124–10178–10427; 10; 0; n/a
124–10178–10428; 4; 0; n/a
124–10178–10451; 2; 0; n/a
124–10178–10482; 2; 0; n/a
124–10178–10483; 1; 0; n/a
124–10178–10488; 2; 0; n/a
124–10179–10079; 10; 0; n/a
124–10179–10081; 7; 0; n/a
124–10180–10000; 2; 0; n/a
124–10180–10023; 5; 0; n/a
124–10181–10201; 3; 0; n/a
124–10185–10152; 10; 0; n/a
124–10188–10070; 6; 0; n/a
124–10189–10000; 31; 0; n/a
124–10189–10002; 75; 0; n/a
124–10189–10003; 61; 0; n/a
124–10189–10004; 18; 0; n/a
124–10189–10010; 31; 0; n/a
124–10189–10011; 34; 0; n/a
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124–10189–10014; 20; 0; n/a
124–10189–10018; 43; 0; n/a
124–10189–10019; 27; 0; n/a
124–10189–10020; 74; 0; n/a
124–10189–10021; 17; 0; n/a
124–10189–10033; 73; 0; n/a
124–10189–10034; 70; 0; n/a
124–10189–10036; 8; 0; n/a
124–10189–10037; 54; 0; n/a
124–10189–10046; 38; 0; n/a
124–10189–10047; 8; 0; n/a
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124–10189–10049; 32; 0; n/a
124–10189–10051; 98; 0; n/a
124–10189–10053; 72; 0; n/a
124–10189–10054; 54; 0; n/a
124–10229–10274; 3; 0; n/a
124–10229–10275; 3; 0; n/a
124–10229–10355; 2; 0; n/a
124–10236–10491; 3; 0; n/a
124–10237–10232; 6; 0; n/a
124–10239–10331; 5; 0; n/a
124–10239–10332; 5; 0; n/a
124–10239–10346; 3; 0; n/a
124–10239–10350; 3; 0; n/a
124–10242–10058; 5; 0; n/a
124–10242–10059; 4; 0; n/a
124–10242–10060; 5; 0; n/a
124–10242–10061; 5; 0; n/a
124–10249–10494; 25; 0; n/a
124–10254–10091; 1; 0; n/a
124–10256–10176; 2; 0; n/a
124–10258–10492; 34; 0; n/a
124–10258–10493; 44; 0; n/a
124–10258–10494; 28; 0; n/a
124–10258–10498; 34; 0; n/a
124–10263–10071; 1; 0; n/a
124–10264–10150; 4; 0; n/a
124–10266–10002; 14; 0; n/a
124–10269–10001; 62; 0; n/a

HSCA Documents: Open in Full

180–10070–10432; 1; 0; n/a
180–10076–10006; 1; 0; n/a
180–10081–10343; 1; 0; n/a
180–10084–10468; 1; 0; n/a
180–10084–10469; 1; 0; n/a
180–10085–10134; 1; 0; n/a
180–10102–10299; 1; 0; n/a
180–10108–10001; 1; 0; n/a
180–10109–10397; 1; 0; n/a
180–10111–10181; 1; 0; n/a
180–10111–10182; 1; 0; n/a
180–10111–10183; 1; 0; n/a
180–10111–10432; 1; 0; n/a
180–10112–10283; 1; 0; n/a

USSS Documents: Open in Full:

154–10002–10286; 2; 0; n/a
154–10002–10319; 3; 0; n/a
154–10002–10340; 5; 0; n/a
154–10002–10353; 2; 0; n/a
154–10002–10358; 1; 0; n/a

FBI Documents: Postponed in Part

124–10002–10282; 4; 2; 11/2006
124–10027–10151; 4; 1; 11/2006
124–10035–10100; 16; 1; 11/2006
124–10060–10081; 4; 2; 11/2006
124–10108–10005; 16; 1; 11/2006
124–10126–10314; 47; 9; 11/2006
124–10131–10118; 4; 1; 11/2006
124–10151–10147; 5; 2; 11/2006
124–10151–10373; 4; 1; 11/2006
124–10167–10390; 6; 9; 11/2006
124–10171–10027; 16; 1; 11/2006
124–10173–10437; 1; 2; 11/2006
124–10173–10439; 0; 2; 11/2006
124–10173–10443; 1; 2; 11/2006
124–10173–10468; 2; 2; 11/2006
124–10177–10232; 47; 9; 07/2006
124–10179–10104; 3; 3; 11/2006
124–10180–10013; 3; 3; 11/2006
124–10180–10022; 2; 3; 11/2006
124–10181–10141; 5; 3; 11/2006
124–10181–10220; 0; 2; 10/2017
124–10182–10060; 0; 1; 11/2006
124–10228–10423; 16; 1; 11/2006
124–10234–10052; 16; 1; 11/2006
124–10234–10082; 16; 1; 11/2006
124–10250–10096; 4; 2; 11/2006
124–10276–10140; 4; 1; 11/2006
124–10183–10227; 0; 1; 10/2017
124–10184–10005; 1; 1; 11/2006
124–10184–10014; 2; 2; 11/2006
124–10187–10055; 28; 15; 11/2006
124–10189–10009; 32; 3; 11/2006
124–10189–10012; 14; 3; 11/2006
124–10189–10015; 8; 3; 11/2006
124–10189–10035; 3; 3; 11/2006
124–10227–10208; 3; 3; 11/2006
124–10237–10455; 22; 4; 11/2006
124–10239–10358; 7; 2; 11/2006
124–10241–10115; 2; 2; 11/2006
124–10246–10446; 1; 2; 11/2006
124–10254–10340; 1; 2; 11/2006
124–10260–10409; 7; 4; 11/2006
124–10263–10280; 0; 2; 11/2006
124–10263–10286; 4; 1; 11/2006
124–10263–10325; 13; 1; 11/2006
124–10264–10134; 2; 4; 11/2006
124–10264–10153; 10; 9; 11/2006
124–10275–10246; 2; 2; 11/2006

CIA Documents: Postponed in Part

104–10050–10181; 2; 1; 05/1997
104–10051–10028; 19; 40; 12/1996
104–10054–10008; 118; 12; 11/2006
104–10054–10049; 339; 8; 12/1996
104–10057–10047; 1; 1; 11/2006
104–10057–10102; 84; 2; 11/2006
104–10059–10181; 12; 2; 11/2006
104–10059–10188; 2; 5; 10/2017
104–10061–10207; 27; 60; 05/1997
104–10063–10243; 6; 7; 11/2006
104–10063–10278; 9; 2; 11/2006
104–10063–10281; 0; 4; 10/2017
104–10063–10286; 2; 8; 05/1997
104–10063–10291; 0; 1; 10/2017
104–10063–10292; 2; 2; 11/2006
104–10065–10005; 5; 3; 05/1997
104–10065–10009; 5; 1; 05/1997
104–10065–10030; 1; 2; 10/2017
104–10065–10033; 1; 2; 10/2017
104–10065–10039; 1; 2; 10/2017
104–10065–10047; 18; 16; 05/1997
104–10065–10050; 4; 7; 05/1997
104–10065–10056; 4; 4; 05/1997
104–10065–10058; 14; 3; 05/1997
104–10065–10059; 0; 1; 10/2017
104–10065–10060; 8; 7; 11/2006
104–10065–10069; 4; 3; 10/2017
104–10065–10070; 13; 3; 10/2017
104–10065–10074; 5; 2; 10/2017
104–10065–10075; 10; 1; 10/2017
104–10065–10078; 3; 2; 10/2017
104–10065–10082; 18; 6; 05/1997
104–10065–10084; 7; 3; 11/2006
104–10065–10093; 2; 3; 05/1997
104–10065–10096; 4; 3; 05/1997
104–10065–10112; 9; 3; 05/1997
104–10065–10127; 8; 1; 05/1997
104–10065–10129; 10; 4; 12/1996
104–10065–10147; 0; 1; 05/1997
104–10065–10173; 2; 2; 05/2001
104–10065–10191; 3; 2; 05/1997
104–10065–10223; 2; 2; 10/2017
104–10065–10230; 1; 1; 05/1997
104–10065–10328; 2; 1; 10/2017
104–10065–10347; 0; 1; 05/1997
104–10065–10429; 0; 2; 05/1997
104–10065–10436; 6; 7; 05/1997
104–10066–10001; 2; 1; 10/2017
104–10066–10054; 0; 1; 05/1997
104–10066–10060; 1; 1; 05/1996
104–10066–10081; 0; 1; 05/1997
104–10066–10084; 0; 2; 05/1997
104–10066–10086; 0; 1; 05/1997
104–10066–10088; 0; 1; 05/1997
104–10066–10103; 1; 2; 05/1997
104–10066–10113; 6; 2; 05/1997
104–10066–10115; 1; 2; 10/2017
104–10066–10123; 3; 17; 05/1997
104–10066–10201; 16; 5; 05/1997
104–10066–10211; 3; 3; 05/1997
104–10066–10213; 5; 4; 05/1997
104–10066–10220; 3; 2; 05/1997
104–10066–10223; 2; 3; 05/1997
104–10066–10224; 6; 5; 05/1997
104–10066–10239; 6; 7; 11/2006
104–10066–10240; 14; 18; 11/2006

HSCA Documents: Postponed in Part

180–10075–10354; 0; 7; 05/1997
180–10083–10181; 0; 3; 05/1997
180–10088–10086; 0; 1; 05/1997
180–10088–10087; 0; 22; 05/1997
180–10110–10008; 0; 8; 05/1997
180–10110–10014; 0; 6; 05/1997
180–10110–10030; 0; 45; 05/1997
180–10112–10466; 0; 12; 05/1997

NSA Documents: Postponed in Part

144–10001–10051; 22; 17; 10/2017
144–10001–10052; 11; 6; 10/2017
144–10001–10054; 15; 8; 10/2017
144–10001–10055; 15; 7; 10/2017
144–10001–10059; 18; 10; 10/2017
144–10001–10060; 16; 10; 10/2017
144–10001–10061; 14; 8; 10/2017
144–10001–10062; 15; 11; 10/2017
144–10001–10063; 14; 9; 10/2017
144–10001–10065; 16; 9; 10/2017
144–10001–10066; 16; 10; 10/2017
144–10001–10067; 19; 13; 10/2017
144–10001–10068; 44; 31; 10/2017
144–10001–10069; 11; 4; 10/2017
144–10001–10070; 14; 9; 10/2017
144–10001–10071; 14; 11; 10/2017
144–10001–10072; 19; 8; 10/2017
144–10001–10073; 13; 7; 10/2017
144–10001–10074; 12; 6; 10/2017
144–10001–10075; 15; 9; 10/2017
144–10001–10077; 12; 6; 10/2017
144–10001–10078; 17; 9; 10/2017
144–10001–10080; 19; 10; 20/2017
144–10001–10081; 15; 9; 10/2017
144–10001–10082; 21; 13; 10/2017
144–10001–10083; 21; 14; 10/2017
144–10001–10084; 39; 32; 10/2017
144–10001–10085; 15; 7; 10/2017
144–10001–10086; 12; 6; 10/2017
144–10001–10087; 16; 6; 10/2017
144–10001–10088; 13; 7; 10/2017
144–10001–10089; 14; 9; 10/2017
144–10001–10090; 18; 12; 10/2017
144–10001–10091; 14; 9; 10/2017
144–10001–10092; 13; 9; 10/2017
144–10001–10093; 19; 13; 10/2017
144–10001–10095; 14; 10; 10/2017
144–10001–10096; 19; 8; 10/2017
144–10001–10097; 15; 11; 10/2017
144–10001–10098; 13; 6; 10/2017
144–10001–10099; 16; 9; 10/2017
144–10001–10100; 17; 10; 10/2017
144–10001–10101; 16; 10; 10/2017
144–10001–10102; 16; 8; 10/2017
144–10001–10104; 13; 8; 10/2017
144–10001–10105; 17; 10; 10/2017
144–10001–10106; 19; 13; 10/2017
144–10001–10107; 14; 7; 10/2017
144–10001–10108; 14; 6; 10/2017
144–10001–10109; 18; 13; 10/2017
144–10001–10111; 18; 11; 10/2017
144–10001–10114; 13; 9; 10/2017
144–10001–10116; 13; 8; 10/2017
144–10001–10117; 19; 9; 10/2017
144–10001–10118; 18; 10; 10/2017
144–10001–10119; 16; 11; 10/2017
144–10001–10120; 13; 6; 10/2017
144–10001–10122; 13; 7; 10/2017
144–10001–10124; 8; 4; 10/2017
144–10001–10125; 82; 45; 10/2017
144–10001–10130; 3; 2; 10/2017
144–10001–10134; 5; 2; 10/2017
144–10001–10136; 6; 3; 10/2017
144–10001–10143; 51; 46; 10/2017
144–10001–10146; 5; 3; 10/2017

NSA Documents: Postponed in Full

144–10001–10103; 10/2017
144–10001–10110; 10/2017
144–10001–10115; 10/2017

Notice of Additional Releases

After consultation with appropriate Federal Agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

124–10018–10352; 124–10027–10127; 124–10027–10203; 124–10027–10205; 124–10045–10090; 124–10054–10184; 124–10054–10232; 124–10063–10024; 124–10067–10270; 124–10145–10118; 124–10159–10360; 124–10159–10361; 124–10160–10013; 124–10169–10210; 124–10171–10249; 124–10173–10380; 124–10174–10006; 124–10175–10074; 124–10177–10069; 124–10177–10071; 124–10177–10177; 124–10178–10021; 124–10180–10306; 124–10181–10232; 124–10181–10318; 124–10181–10320; 124–10181–10330; 124–10182–10300; 124–10184–10179; 124–10184–10231; 124–10185–10165; 124–10185–10197; 124–10185–10264; 124–10185–10271; 124–10228–10322; 124–10228–10350; 124–10228–10356; 124–10228–10411; 124–10234–10463; 124–10241–10492; 124–10241–10496; 124–10241–10498; 124–10250–10072; 124–10252–10151; 124–10252–10152; 124–10256–10331; 124–10257–10308; 124–10259–10227; 124–10260–10187; 124–10271–10083; 124–10271–10095; 124–10273–10207; 124–10273–10283; 124–10273–10357; 124–10273–10359; 124–10273–10362; 124–10273–10368; 124–10276–10018

After consultation with appropriate Federal Agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full:

180–10065–10371; 180–10065–10493; 180–10066–10476; 180–10067–10451; 180–10067–10474; 180–10067–10475; 180–10067–10476; 180–10067–10477; 180–10067–10478; 180–10067–10479; 180–10067–10482; 180–10067–10483; 180–10067–10484; 180–10067–10485; 180–10070–10214; 180–10070–10435; 180–10071–10232; 180–10071–10233; 180–10071–10234; 180–10072–10006; 180–10072–10011; 180–10072–10093; 180–10072–10386; 180–10073–10057; 180–10073–10104; 180–10073–10162; 180–10075–10076; 180–10075–10176; 180–10076–10263; 180–10077–10040; 180–10077–10043; 180–10078–10213; 180–10078–10418; 180–10078–10428; 180–10080–10165; 180–10080–10480; 180–10081–10067; 180–10082–10355; 180–10082–10356; 180–10082–10447; 180–10083–10133; 180–10083–10220; 180–10084–10044; 180–10084–10258; 180–10084–10313; 180–10084–10396; 180–10085–10095; 180–10085–10274; 180–10085–10275; 180–10087–10044; 180–10087–10384; 180–10087–10387; 180–10089–10078; 180–10089–10338; 180–10089–10339; 180–10089–10470; 180–10091–10091; 180–10091–10287; 180–10091–10314; 180–10092–10033; 180–10092–10242; 180–10093–10008; 180–10093–10055; 180–10093–10110; 180–10093–10111; 180–10093–10113; 180–10093–10279; 180–10093–10280; 180–10093–10281; 180–10093–10282; 180–10094–10454; 180–10095–10403; 180–10096–10266; 180–10097–10176; 180–

10097–10177; 180–10099–10000; 180–10099–10380; 180–10099–10381; 180–10101–10089; 180–10101–10420; 180–10101–10487; 180–10103–10246; 180–10103–10427; 180–10103–10484; 180–10103–10494; 180–10104–10173; 180–10104–10185; 180–10104–10399; 180–10104–10403; 180–10105–10250; 180–10105–10332; 180–10105–10334; 180–10105–10481; 180–10106–10387; 180–10106–10391; 180–10106–10485; 180–10106–10488; 180–10108–10058; 180–10108–10082; 180–10109–10268; 180–10110–10032; 180–10112–10073; 180–10112–10144; 180–10112–10171; 180–10112–10181; 180–10112–10227; 180–10112–10463; 180–10113–10465; 180–10113–10484; 180–10114–10064; 180–10114–10094; 180–10114–10134; 180–10114–10135; 180–10116–10046; 180–10117–10072; 180–10117–10140; 180–10120–10026

After consultation with appropriate Federal Agencies, the Review Board announces that the following National Security Agency records are now being opened in full:

144–10001–10026; 144–10001–10053; 144–10001–10057; 144–10001–10064; 144–10001–10137; 144–10001–10141; 144–10001–10142; 144–10001–10155

Notice of Corrections

On August 5–6, 1996, the Review Board made formal determinations that were published in the August 26, 1996 Federal Register (FR Doc. 96–19278, 61 FR 43730). For that notice make the following corrections:

Record number	Previously published	Correct data
104–10052–10170	16; 5; 05/1997	16; 6; 05/1997
104–10052–10052	8; 1; 10/2017	6; 3; 10/2017
104–10054–10036	5; 1; 12/1996	5; 2; 12/1996

On October 16, 1996, the Review Board made formal determinations that were published in the November 5, 1996 Federal Register (FR Doc. 96–28333, 61 FR 56937). For that notice make the following correction:

Record number	Previously published	Correct data
124–10060–10320	15; 5; 10/2006	16; 6; 10/2006

On October 18, 1996, the Review Board noticed additional releases from the records of the House Select Committee on Assassinations (FR Doc. 96–26742, 61 FR 54411). The following documents were incorrectly included on that list:

180–10070–10247, 180–10070–10358, 180–10071–10080, 180–10075–10325, 180–10078–10374, 180–10091–10006, 180–10092–10191, 180–10092–10206, 180–10092–10212, 180–10092–10219, 180–10092–10221, 180–10092–10244, 180–10094–10361, 180–10095–10284, 180–10096–10373, 180–10099–10104, 180–10099–10384, 180–10112–10423.

These records will be reviewed at a subsequent meeting.

Notice of Assassination Records Designation

Designation: On October 16, 1996, the Assassination Records Review Board designated a videotape copy of the motion picture taken by Dave Powers November 21–22, 1963 an assassination record.

Designation: On November 14, 1996, the Assassination Records Review Board designated the following United States Secret Service materials assassination records: ''United States Secret Service: The Evolution of Its Protective Policies, Practices and Procedures (1932 to 1973)''; ''Report of Investigation by Inspector Arvid J. Dahlquist [on Abraham Bolden];'' computer printouts on Richard Albert Lauchli, Perry Russo, John Edward Pic, George DeMohrenschildt, Jeanne DeMohrenschildt, Michael Ralph Paine, Ruth Hyde Paine, Mark Lane, President John Fitzgerald Kennedy, Jack Leon Ruby, Marguerite Cleaverie Oswald, Marina Nikolaevna Porter, and Robert Lee Oswald Jr.; and internal memorandums from Chief James J. Rowley dated November 1963 through December 1964.

Discussion: In not designating some internal memorandums and case file information as assassination records, the Review Board relied upon the advice of its staff, which conducted a thorough review of materials in the above listed categories.

Dated: December 2, 1996.

Laura A. Denk,

[FR Doc. 96–31046 Filed 12–5–96; 8:45 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 6, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 20, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 49435) of proposed addition to the Procurement List.

Comments were received from the current contractor for the dustpan. The contractor, a small company, noted that it has frequently had a Government contract for the dustpan over the past twenty years and has made this dustpan for over fifty years. The contractor questioned whether an organization which had not made the dustpan previously could furnish it to the Government at anywhere near the current price. The contractor proposed that, if the dustpan is to be taken out of competitive procurement, that it be directed to two ''self-help'' enterprises with which the contractor has worked. The contractor also objected to having the jobs this dustpan represents transferred out of its firm and locality to another area.

The impact of this addition on the contractor is not at the level which the Committee considers to be severe, even when the contractor's record as a long-time supplier is taken into account. The nonprofit agency has been found to be capable of producing the dustpan by the

Government agency which buys it, as well as by the Committee. The price the Government will pay, as the Committee's statute requires, reflects the market for this item, so a substantial price increase will not occur.

The contractor did not indicate how many jobs would actually be lost because of the Committee's action. The two organizations the contractor named do not participate in the Committee's program. However, several organizations in that area do participate in the program. While they will not be making the dustpan, they do generate employment for people with severe disabilities living in the contractor's area.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing a small entity to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Dustpan
7290–00–224–8308

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–31096 Filed 12–5–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 6, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 11 and 25, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 53348 and 55268) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, Sidney L. Christie Federal Building, 845 Fifth Avenue, Huntington, West Virginia

Food Service Attendant, Department of Veterans Affairs Medical Center, Hampton, Virginia

Janitorial/Custodial, Naval Air Station, Meridian, Mississippi

Janitorial/Custodial, Naval Reserve Readiness Center, Seattle, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–31101 Filed 12–5–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 6, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Paper, Kraft Wrapping

8135–00–160–7762
8135–00–160–7776
8135–00–160–7778
8135–00–160–7758
8135–00–286–7317
8135–00–160–7771
8135–00–160–7769
8135–00–160–7768
8135–00–160–7766
8135–00–160–7759
8135–00–160–7757
8135–00–160–7753
8135–00–160–7752
8135–00–160–7764
8135–00–290–3407
8135–00–160–7772

NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.

Water Bag, Nylon Duck

8465–01–321–1678

NPA: Blind Industries & Services of Maryland, Baltimore, Maryland.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–31102 Filed 12–5–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 6, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Liner, Foam Impact
8465–01–420–4920
NPA: Georgia Industries for the Blind, Bainbridge, Georgia

Services

Operation of SERVMART Store, Naval Air Station, Whiting Field, Milton, Florida
NPA: Signature Works, Inc., Hazlehurst, Mississippi
Operation of SERVMART Store, Naval Air Station, Pensacola, Florida
NPA: Signature Works, Inc., Hazlehurst, Mississippi

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–31103 Filed 12–5–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[A–122–601]

Brass Sheet and Strip From Canada; 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 from one respondent, Wolverine, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period January 1, 1995 through December 31, 1995.

We have preliminarily determined that U.S. sales have not been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will not require cash deposits. Following our final determination, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries. Interested parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3019 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Department published in the Federal Register (52 FR 1217) the antidumping duty order on brass sheet and strip (BSS) from Canada. On January 26, 1996, the Department published in the Federal Register a notice of ''Opportunity to Request an Administrative Review'' of this

antidumping duty order for the period January 1, 1995 through December 31, 1995 (61 FR 2488). We received a timely request for review from the respondent, Wolverine Tube (Canada), Inc. (Wolverine). On February 20, 1996, the Department initiated an administrative review of Wolverine (61 FR 6348). The period of review is January 1, 1995 through December 31, 1995.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On October 1, 1996, the Department extended the time limit for preliminary results in this case. See Brass Sheet and Strip from Canada; Antidumping Administrative Review; Extension of Time Limit, 61 FR 51261.

Scope of the Review

Imports covered by this review are shipments of BSS, other than leaded and tin BSS. The chemical composition of the covered products is currently defined in the Copper Development Association's (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C2000. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this review are BSS of solid rectangular cross section over 0.006 inches (0.15 millimeters) in finished thickness or gauge, regardless of width. Coil, wound-on-reels (traverse wound), and cut-to-length products are included. These products are currently classifiable under Harmonized Tariff Schedule (HTS) subheadings 7409.21.00 and 7409.29.00. Although the HTS subheadings are provided for convenience and for Customs Service (Customs) purposes, the written description of the scope of this order remains dispositive.

Pursuant to the final affirmative determination of circumvention of the antidumping duty order, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 33610 (June 18, 1993).

The review covers one Canadian manufacturer/exporter, Wolverine, and the period January 1, 1995 through December 31, 1995.

United States Price (USP)

In calculating USP for Wolverine, the Department treated respondent's sales as export price (EP) sales, as defined in section 772(a) of the Tariff Act, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We calculated EP based on packed, delivered, duty-paid prices to unaffiliated customers in the United States. We made deductions from the gross unit price, where appropriate, for inland freight from the plant/warehouse to the port of exit, brokerage and handling, international freight, and U.S. customs duty, in accordance with section 772(c)(2)(A) of the Tariff Act. No other adjustments to USP were claimed or allowed.

Cost of Production Analysis

Based on the fact that the Department disregarded sales below the cost of production (COP) in the 1992 administrative review of Wolverine (the most recently completed review at the time of initiation in this review), the Department found reasonable grounds, in this review, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act, to believe or suspect that respondent made sales in the home market at prices below the cost of producing the merchandise. See Brass Sheet and Strip from Canada; Final Results of Antidumping Administrative Review, 60 FR 49582 (September 26, 1995). Therefore, pursuant to section 773(b)(1) of the Tariff Act, the Department initiated an investigation to determine whether Wolverine made home market sales during the POR at prices below their cost of production.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Wolverine in its questionnaire responses.

B. Test of Home Market Prices

We used the respondent's weighted-average COP, as adjusted (see above), for the period January 1995 to December 1995. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2), such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we found that the below-cost sales of that model were made in ''substantial quantities,'' in accordance with section 773(b)(2)(B) of the Act, and were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. When we found that below-cost sales had been made in ''substantial quantities'' and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act. In this review we disregarded those home market sales below cost.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a

different level of trade. See Final Determination of Sales at Less than Fair Value; Certain Pasta from Italy, 61 FR 30326 (June 14, 1996).

In accordance with section 773(a)(7)(A) of the Act, if we compare U.S. sales at one level of trade to NV sales at a different level of trade, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and the level of trade of the normal value sale. Second, the difference must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

In order to determine that there is a difference in level of trade, the Department must find that two sales have been made at different phases of marketing, or the equivalent. Different phases of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial ones) are not alone sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as ''distributor'' and ''wholesaler'') are useful in identifying different levels of trade, but are insufficient to establish that there is a difference in the level of trade.

In implementing this principle in the Department's reviews, we obtain information about the selling activities of the producers/exporters associated with each phase of marketing, or the equivalent. We ask each respondent to establish any claimed LOTs based on these marketing activities and selling functions.

In reviewing the selling functions reported by the respondents, we consider all types of selling activities performed on both a qualitative and quantitative basis. In analyzing whether separate LOTs existed in this review, we found that no single selling activity in the brass sheet and strip industry was sufficient to warrant a separate LOT (see Proposed Regulations, 61 FR, at 7348).

In determining whether separate LOTs exist in the home market, the Department considers the level-of-trade claims of each respondent after all adjustments. To test the claimed LOTs, we analyze the selling activities associated with the classes of customers and marketing phases respondents report. In applying this test, we expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. The Department does not only count activities, but weighs the overall function performed by each claimed level of trade.

In its initial questionnaire response and in response to the Department's supplemental questionnaire for this administrative review, Wolverine maintains that it sells to three distinct levels of trade (LOT) in the home market: Original equipment manufacturers (OEMs), general jobber distributors, and processing distributors. Wolverine sells only to processing distributors in the United States market.

In the final results of the previous administrative review, 61 FR 46618 (September 4, 1996), we agreed with petitioners' contention that Wolverine did not adequately identify the differences among the selling functions corresponding to what it claimed to be three different home market levels of trade. For these preliminary results we requested and received further information from Wolverine. In its response Wolverine distinguished between two levels of trade; sales to OEMS and sales to distributors. To test Wolverine's claimed LOTs, we analyzed home market selling activities associated with each class of customer and marketing phase reported by Wolverine (see discussion above). We analyzed the evidence on the record for this administrative review and concluded that Wolverine had sufficiently documented and justified its claimed differences in level of trade between sales to OEMs and sales to distributors in the home market. For example, the selling functions in the areas of technical and product support, customer service, freight and delivery, administrative resources expended, procurement and resourcing services, and packing requirements are significantly different between the two levels of trade. In addition, since the vast majority of the home market sales of the subject merchandise was to distributors and not to OEMs, a pattern of ''consistent'' price differences between the two levels of trade could not be established. However, the relatively few sales made to OEMs were at prices considerably higher than the prices charged to distributors for the same merchandise.

The evidence on record in this period of review indicates that the home market data base has sales of the identical subject merchandise within the same month to the same level of trade (i.e., processing distributors) as Wolverine's U.S. sales. Therefore, the Department compared Wolverine's U.S. sales only to those home market sales at the same level of trade. No LOT adjustment was, therefore, necessary.

Normal Value

Based on the comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of the foreign like products sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Tariff Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Pursuant to section 777A(d)(2) of the Tariff Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities, and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP sale, in accordance with section 773(a)(1)(B)(i) of the Tariff Act. We adjusted for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Tariff Act. We made circumstance-of-sale (COS) adjustments pursuant to section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 353.56 by deducting home market credit expenses and adding U.S. credit expenses. We increased home market price by U.S. packing costs in accordance with section 773(a)(6)(A) of the Tariff Act and reduced it by home market packing costs in accordance with section 773(a)(6)(B) of the Tariff Act. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/ exporter	Period	Margin (percent)
Wolverine Tube (Canada), Inc.	01/01/95–12/31/95	0.20

Parties to the proceeding may request disclosure within five 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 date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for assessment of antidumping duties, if any, on entries of merchandise covered by the determination and for future deposits of estimated duties, if any.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of BSS from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Wolverine will be the rate established in the final results of this administrative review (except that if the weighted-average margin is less than 0.5 percent, i.e., is de minimis, no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 8.10 percent, the rate established in the LTFV investigation, 52 FR 1217 (January 12, 1987).

This notice serves as a preliminary reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 2, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31104 Filed 12–5–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–357–004]

Certain Carbon Steel Wire Rod From Argentina: Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of determination not to terminate suspended investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1996, the Department published in the Federal Register (61 FR 46783) its third notice of intent to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina (47 FR 42393, September 27, 1982). The second notice of intent to terminate was published in August 1990, at which time the Department received an objection to termination from the petitioners and one interested party. In addition, we received a request for an administrative review and conducted an administrative review (Final Results of Administrative Review, 56 FR 40309, August 14, 1991).

The Department will terminate a suspended investigation if the Secretary concludes that the agreement is no longer of interest to interested parties. (19 CFR 355.25(d)(4)) On September 26 and 30, 1996, two petitioners, Atlantic Steel Industries, Inc. and North Star Steel Texas, Inc., objected to the Department's third notice of intent to terminate this suspended investigation. Therefore, we no longer intend to terminate the suspended investigation. We did not, however, receive a request for an administrative review at that time.

This notice is published in accordance with § 355.25(d)(4) of the Commerce Department's regulations. 19 CFR 355.25(d)(4).

Dated: November 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–31105 Filed 12–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–063]

Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the countervailing duty order on certain iron-metal castings from India. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (See Public Comment section of this notice.)

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, 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.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1980, the Department published in the Federal Register (45 FR 50739) the countervailing duty order on certain iron-metal castings from India. On October 5,1995, the Department published a notice of ''Opportunity to Request Administrative Review'' (60 FR 52149) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1, 1994, through December 31, 1994, on November 16, 1995 (60 FR 57573).

In accordance with section 355.22(a) of the Department's *Interim Regulations*, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. See Antidumping and Countervailing Duties: Interim Regulations: Request for Comments, 60 FR 25130 (May 11, 1995) (''*Interim Regulations*''). The producers/exporters of the subject merchandise for which the review was requested are:

Calcutta Ferrous	Kajaria Iron Casting Pvt. Ltd.	RSI Limited
Carnation Enterprise Pvt. Ltd	Kejriwal Iron & Steel Works	Seramapore Industries Pvt. Ltd
Commex Corporation	Nandikeshwari Iron Foundry Pvt. Ltd	Shree Rama Enterprise
Crescent Foundry Co. Pvt. Ltd	Orissa Metal Industries	Shree Uma Foundries
Delta Enterprises	R.B. Agarwalla & Company Pvt. Ltd	Siko Exports
Dinesh Brothers	R.B. Agarwalla & Co	Super Iron Foundry
Uma Iron & Steel	Victory Casting Ltd	

Delta Enterprises, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries and Uma Iron & Steel did not export the subject merchandise during the period of review (''POR''). Therefore, these companies have not been assigned an individual company rate for this administrative review. This review covers nineteen programs.

On May 29, 1996, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. See Certain Iron-Metal Castings From India; Extension of Time Limit for Countervailing Duty Administrative Review, 61 FR 26879. As explained in the memoranda from the Assistant Secretary for Import Administration to the File, dated November 22, 1995, and January 11, 1996 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than November 27, 1996, and the deadline for the final results of this review is no later than 180 days from the date on which these preliminary results are published in the Federal Register.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to the Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (''*Proposed Regulations*''), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the URAA. See Advance Notice of Proposed Rulemaking and Request for Public Comments, 50 FR 80 (January 3, 1995); Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308 (February 27, 1996).

Scope of the Review

Imports covered by the administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (''HTS'') item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Government of India and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. Pre-Shipment Export Financing

The Reserve Bank of India (''RBI''), through commercial banks, provides pre-shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit, companies may

receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials and for packing, warehousing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks, based upon the company's creditworthiness and past export performance. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period. In general, packing credits are granted for a period of up to 180 days.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POR, the rate of interest charged on pre-shipment export loans was 13.0 percent. For packing credits not repaid within 180 days, banks could charge interest at 15.0 percent for the number of days the loan was overdue. Exporters lose the concessional interest rates if the loan is not repaid within 270 days. If that occurred, banks could charge interest at 15.0 percent plus two (2.0) percent penalty interest for the duration of the loan. From October 18, 1994, banks could charge commercial interest rates on pre-shipment loans not repaid within 270 days. These rates are based on the prime lending rate (''PLR''), and ranged from 15.0 percent to 22.0 percent, depending on a company's credit rating. The non-concessional interest rate for export financing is designated as ''export credit not otherwise specified'' and is published in the RBI's Annual Report. This rate has been synchronized with the normal lending rate as applicable to domestic financing in India. Interest charges under this program must be liquidated with export proceeds. If the interest is paid with sources other than foreign currency export proceeds, the interest element of the loan will not be treated as export credit, and will be charged at rates applicable to domestic credit.

The Department found this program to be an export subsidy, and thus countervailable, in prior administrative reviews of this order, because receipt of pre-shipment export financing was contingent upon export performance and the interest rates were preferential. See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India, 56 FR 41658 (August 22, 1991); Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India, 56 FR 52515 (October 21, 1991) (''1987 and 1988 Indian Castings Final Results''), and Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review, being simultaneously published with this notice (''1993 Indian Casings Final Results'').

In prior administrative reviews of this order, the Department used the small-scale industry (''SSI'') short-term interest rate published in the RBI's Annual Report as its benchmark to measure the benefit under the pre-shipment export financing scheme. See, e.g., 1988 Indian Castings Final Results, 56 FR 52515, and 1993 Indian Castings Final Results. However, during this administrative review we received allegations that castings exporters may benefit from programs administered by the Small Industries Development Bank of India (''SIDBI''). These allegations led us to reexamine the SSI interest rate. At verification, we learned that producers/exporters of the subject merchandise would not finance their domestic operations at the SSI interest rate. Therefore, we now determine that the SSI interest rate is no longer an appropriate ''comparable'' short-term benchmark, in accordance with section 771(5)(E)(ii) of the Act.

As we explained in our November 21, 1996, Decision Memorandum on Appropriate Benchmark for Preferential Short-Term Financing, we have determined that the appropriate comparable short-term benchmark is the ''Cash Credit'' interest rate reported by the Government of India (''GOI'') in its March 13, 1996, questionnaire response. According to GOI and Bank officials, the ''cash credit'' interest rate is for domestic working capital finance, comparable to pre- and post-shipment export working capital finance. See Verification of the Government of India Questionnaire Responses at 4–6 (November 19, 1996) (''GOI Verification Report'') (public version, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). During the POR, this rate was 16.5 percent. We compared this benchmark to the interest rate charged on pre-shipment rupee loans and found that for loans granted under this program, the interest rate charged was lower than the ''cash credit'' benchmark. Accordingly, this program continues to be countervailable because the interest rate on these loans is less than what a company would have to pay on a comparable short-term loan. See section 771(5)(E)(ii) of the Act.

Eleven of the fifteen respondent companies used pre-shipment export loans for shipments of subject castings to the United States during the POR. To calculate the benefit from the pre-shipment loans to these eleven companies, we compared the actual interest paid on these loans with the amount of interest that would have been paid using the benchmark interest rate of 16.5 percent. Where the benchmark rate exceeded the program rate, the difference between those amounts is the benefit. If a company was able to segregate pre-shipment financing applicable to subject merchandise exported to the United States, we divided the benefit derived from only those loans by total exports of subject merchandise to the United States. If a firm was unable to segregate pre-shipment financing, we divided the benefit from all pre-shipment loans by total exports. On this basis, we preliminarily determine the net subsidy from this program for the producers/exporters of the subject merchandise to be as follows:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Calcutta Ferrous	0.12
Carnation Enterprise Pvt. Ltd	0.24
Commex Corporation	0.03
Crescent Foundry Co. Pvt. Ltd	0.04
Dinesh Brothers	0.57
Kajaria Iron Castings Pvt. Ltd	0.40
Kejriwal Iron & Steel Works	0.00
Nandikeshwari Iron Foundry Pvt. Ltd	0.24
R.B. Agarwalla & Company	0.03
RSI Limited	0.59
Seramapore Industries Pvt. Ltd	0.04
Shree Rama Enterprise	0.00
Siko Exports	0.00
Super Iron Foundry	0.25
Victory Castings Ltd	0.25

2. Pre-Shipment Credit in Foreign Currency (''PCFC'')

On November 8, 1993, the GOI introduced a modified pre-shipment financing scheme, Pre-Shipment Credit in Foreign Currency, to help exporters obtain additional export credit at internationally competitive interest rates. Under this scheme, commercial banks may extend PCFC loans in all convertible currencies for a period up to 180 days on the basis of a firm's export order or irrevocable letter of credit. Because the bank's investment is denominated in foreign currency, this financing is properly viewed as foreign currency denominated financing. Accordingly, Indian commercial banks may draw upon foreign exchange balances in Exchange Earners' Foreign Currency Accounts, and Resident and Non-Resident Foreign Currency Accounts as a source of funds. Commercial banks may also raise lines of credit abroad. Under RBI regulations,

however, commercial banks may not pay more than one (1.0) percent over the six month London Interbank Offering Rate (''LIBOR'') on overseas lines of credit.

The interest rate charged by commercial banks on PCFC loans is linked to LIBOR, and, as per RBI regulations, may not exceed two (2.0) percent over LIBOR. See GOI Verification Report, Exhibit 6 at 11 and 18. Because LIBOR varies on a daily basis, the actual interest rate on a PCFC loan may, therefore, vary depending on when the loan was taken out. Interest on PCFC loans is paid on the foreign currency amount of the loan. Banks may extend the credit period beyond 180 days and charge additional interest of two (2.0) percent above the rate charged for the initial 180 day period. If export has not taken place within 360 days, or if the export order is canceled, banks may liquidate the loan by selling the equivalent amount of foreign currency (principal plus interest) at the selling foreign exchange rate prevailing on the day of liquidation. The interest recovered on the liquidated loan will be charged on the rupee equivalent of the principal amount at the rate of ''Export Credit Not Otherwise Specified,'' plus a penalty rate of two (2.0) percent. Until October 17, 1994, this rate was set by the RBI at 15.0 percent (not including the penalty). Thereafter, commercial banks, were free to determine the rate. As of May 18, 1994, Indian commercial banks could also extend PCFC loans under a line of credit, or ''running account facility,'' similar to the line of credit under the pre-shipment rupee financing scheme described above.

Receipt of PCFC loans is contingent upon export performance. Therefore, we determine that this program constitutes an export subsidy, in accordance with section 771(5A)(B) of the Act, to the extent that the interest rate on these loans is less than what a company would have to pay on a comparable commercial short-term loan.

Because PCFC loans are denominated in foreign currency, our normal practice would be to use a foreign currency benchmark, which would be the interest rate on alternative foreign-indexed loans in India. However, we have not been able to find such a benchmark, and have, therefore, used as a benchmark the rupee-denominated benchmark interest rate, adjusted to take into account the ''expected'' movements in the rupee/dollar exchange rate. (PCFC loans taken out by castings exporters were dollar-denominated.) We did this by comparing the spot rate on the day the PCFC loan was taken out with the six-month forward exchange rates. Because we had only limited data on forward rates, we could not match the forward rates with the period covered by the loan terms. We therefore used the forward exchange rate that most closely matched the loan period. We compared the adjusted benchmark to the interest rate charged on PCFC loans and found that for loans granted under this program the interest rate charged was lower than the benchmark. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we determine that this program confers countervailable benefits.

One of the fifteen respondent companies used PCFC financing for shipments of subject castings to the United States during the POR. To calculate the benefit from the PCFC loans to this company, we compared the actual interest paid on these loans with the amount of interest that would have been paid using the adjusted benchmark interest. If the benchmark rate exceeded the program rate, the difference between those amounts is the benefit. Because the company was unable to segregate PCFC financing applicable to subject merchandise exported to the United States, we divided the benefit from all PCFC loans by total exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.45 percent for Calcutta Ferrous and 0.00 percent for all other producers/exporters of the subject merchandise.

3. Post-Shipment Export Financing

Post-shipment export financing consists of loans in the form of trade bill discounting or advances by commercial banks. The credit covers the period from the date of shipment of goods to the date of realization of export proceeds from the overseas customer. Post-shipment finance, therefore, is a working capital finance or sales finance against receivables. In general, post-shipment loans are granted for a period of up to 90 days. The interest rate charged on these loans was 13.0 percent during the POR. For loans not repaid within the negotiated number of days (90 days maximum), banks must charge interest at 15.0 percent for the number of days the loan was overdue. If the loan is not repaid within 180 days, exporters lose the concessional interest rates on this financing, and interest is charged at 20.0 percent for the duration of the loan. As of October 18, 1994, banks could charge commercial interest rates on post-shipment loans not repaid within 180 days. These rates are based on the PLR, and ranged from 15.0 percent to 22.0 percent during 1994.

In the *1993 Indian Castings Final Results,* the Department found this program to be an export subsidy, because receipt of the post-shipment financing was contingent upon export performance. The Department also found that the program conferred countervailable benefits, because the interest rates were preferential. For reasons stated in the prior section for pre-shipment financing above, we are using the ''cash credit'' interest rate as our benchmark. Because loans under this program are discounted, and the effective rate paid by exporters on these loans is a discounted rate, we calculated from the ''cash credit'' benchmark a discount rate of 14.16 percent for the POR. We compared this benchmark to the interest rate charged on post-shipment loans and found that the program interest rate charged was lower than the benchmark. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program continues to be countervailable, because the interest rate on these loans is less than what a company would have to pay on a comparable commercial short-term loan.

During the POR, two of the fifteen respondent companies made payments on post-shipment loans for shipments of subject castings to the United States. to calculate the benefit from these preferential loans we followed the same short-term loan methodology discussed above for pre-shipment financing. Because the company was unable to segregate post-shipment financing applicable to subject merchandise exported to the United States, we divided the benefit from all post-shipment loans by total exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.03 percent for Dinesh Brothers Pvt. Ltd, 0.02 percent for Super Iron Foundry and 0.00 percent for all other producers/exporters of the subject merchandise.

4. Post-Shipment Export Credit in Foreign Currency (''PSCFC'')

On January 1, 1992, the GOI introduced a modified post-shipment financing scheme, *i.e.*, post-shipment export credit in foreign currency. Under this modified scheme, exporters may discount foreign currency export bill at foreign currency interest rates linked to LIBOR. Loans under this financing scheme are not provided to the exporter in the foreign currency, but the post-shipment credit liability of the exporter is denominated in foreign currency, which is then liquidated with export proceeds in foreign currency. PSCFC loans are normally granted for a period of up to 180 days and the interest rate is fixed and announced by the RBI. See GOI Verification Report at 2–3 and Exhibit 6. The interest amount,

calculated at the applicable foreign currency interest rate, is deducted from the total amount of the bill, and the exporter's account is credited for the rupee equivalent of the net foreign currency amount. During the POR, the interest rate for PSCFC loans was 6.5 percent for the negotiated term of the loan (up to 180 days). Interest for overdue loans was charged at 8.5 percent. If the loan is not repaid within 30 days beyond the negotiated due date, the loan is converted into rupee credit, and interest is charged at a commercial interest rate over the entire loan period. During the POR, non-export related short-term commercial interest rates in India ranged from 15.0 to 22.0 percent. Where the overseas customer defaults and the export bill cannot be liquidated with export proceeds, the exporter must repay the rupee equivalent of the bill at the exchange rate prevailing on the day of liquidation by the bank.

In the 1993 Indian Castings Final Results, the Department found this program to be an export subsidy, and thus countervailable, because receipt of PSCFC loans was contingent upon export performance, and the interest rates were preferential. We also stated in the 1993 administrative review that where loans were denominated in foreign currency, such as PSCFC, our normal practice would be to use a foreign currency benchmark to determine whether the loans are preferential. Because we were unable to locate an interest rate for alternative foreign currency-indexed loans in India, we adjusted the rupee-denominated SSI benchmark interest rate, taking into account movements in the rupee-dollar exchange rate over the term of the loan (all PSCFC loans by castings exporters were dollar-denominated). However, during this administrative review we obtained additional information concerning the operation of the PSCFC program which has led us to modify this approach.

Under the PSCFC program, companies can elect to have export bills converted into rupees using either the spot rate of exchange or the forward rate of exchange. If the spot rate of exchange is used, and the bank (holding the bill) realizes and exchange rate gain due to exchange rate movements up to the date the bill comes due, the bank must, by law, transfer this gain to the exporter. On the other hand, if the bank suffers an exchange rate loss, exporters, by law, must cover that loss. See GOI Verification Report at 5, and Memorandum Re: Meeting with Bank of America Officials at 3 (November 21, 1996) (public document, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Thus, the bank, in effect, faces an exchanges rate that is fixed over the ''life of the bill.'' Under such circumstances, where the rupee value of the bill—from the bank's standpoint—is, in fact, fixed at the time of discount, the rate of discount measured in either dollars or rupees is the same. Therefore, the PSCFC discount rate can be viewed equivalently as either a dollar-denominated rate or a rupee-denominated rate. If viewed as a dollar-denominated rate, no exchange rate adjustment to the rupee-denominated benchmark is warranted, because the banks face no exchange rate risks in holding the bills. Thus, however the PSCFC discount rate is viewed, a rupee-benchmark is appropriate for benefit calculation purposes where the exporter opts to convert his bills using the spot rate of exchange.

Where the exporter opts, instead, to convert bills using the forward rate of exchange, the PSCFC discount rate is properly viewed as dollar-denominated, but a downward adjustment to this rate is warranted due to the forward premium that attached to the dollar throughout the POR. Use of the forward rate transferred this premium to the exporter, increasing the rupees (and dollar-equivalent) the bank pays the exporter *at the time of discount.* Since the face value (in dollars) of the bill remains fixed, this increase in the dollar-equivalent paid to the exporter effectively reduces the discount rate charged by the bank. Because we attempt to compare effective interest rates to effective interest rates, it was necessary to adjust the interest rate for exporters that opted to convert their bills at the forward rate of exchange. Accordingly, the Department used a dollar-denominated benchmark rate and reduced the PSCFC discount rate by the forward premium rate prevailing at the time of discount. Because we had only limited data on forward rates, we could not match exactly forward rates with bill specific discount periods. Therefore, we have used forward rates that most closely matched the discounting period.

For reasons stated in the pre-shipment financing section above, we are using the ''cash credit'' interest rate as our benchmark for PSCFC loans. Because loans under this program are discounted, and the effective rate paid by exporters on these loans is a discounted rate, we derived a benchmark discount rate of 14.16 percent for the POR. However, as stated above, where exporters converted their bills at the forward rate of exchange, we adjusted the rupee-denominated discount benchmark by expected movements in the exchange rate over the term of the loan. We compared this benchmark discount rate to the interest rate charged on PSCFC loans and found that the program interest rate charged was lower than the benchmark. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program continues to confer countervailable benefits, because the interest rates on these loans are less than what a company would have to pay on a comparable commercial short-term loan.

During the POR, thirteen of the fifteen respondent companies made payments on PSCFC loans for shipments of subject castings to the United States. To calculate the benefit from these loans we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports or exports of the subject merchandise to the United States, depending on whether the company was able to tie each loan to individual destinations. On this basis, we preliminarily determine the net subsidy from this program to be as follows:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Calcutta Ferrous	1.91
Carnation Enterprise Pvt. Ltd	0.14
Commex Corporation	0.91
Crescent Foundry Co. Pvt. Ltd	0.59
Dinesh Brothers	1.45
Kajaria iron Castings Pvt. Ltd	3.54
Kejriwal Iron & Steel Works	0.10
Nandikeshwari Iron Foundry Pvt. Ltd	2.74
R.B. Agarwalla & Company	0.67
RSI Limited	2.21
Seramapore Industries Pvt. Ltd	2.15
Shree Rama Enterprise	0.00
Siko Exports	2.23
Super Iron Foundry	0.00
Victory Castings Ltd	1.77

5. Income Tax Deductions Under Section 80HHC

Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of goods and merchandise from taxable income. In the 1988 Indian Castings Final Results, the Department found this program to be an export subsidy, and thus countervailable, because receipt of benefits was contingent upon export performance. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with section 772(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy, and that financial

contributions in the form of tax revenue not collected, are countervailable.

To calculate the benefit to each company, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company would have paid during the review period had it not claimed any deductions under section 80HHC. We then divided this difference by the value of the company's total exports. On this basis, we preliminarily determine the net subsidy from this program to be as follows:

Net subsidies—producer/exporter	New subsidy rate (percent)
Calcutta Ferrous	3.19
Carnation Enterprise Pvt. Ltd	2.15
Commex Corporation	0.45
Crescent Foundry Co. Pvt. Ltd	7.52
Dinesh Brothers	0.00
Kajaria iron Castings Pvt. Ltd	11.64
Kejriwal Iron & Steel Works	15.04
Nandikeshwari Iron Foundry Pvt. Ltd	0.28
R.B. Agarwalla & Company	3.86
RSI Limited	4.89
Seramapore Industries Pvt. Ltd	7.02
Shree Rama Enterprise	13.09
Siko Exports	2.28
Super Iron Foundry	0.05
Victory Castings Ltd	0.00

6. Import Mechanisms (Sale of Licenses)

The GOI allows companies to transfer certain types of import licenses to other companies in India. During the POR, producers/exporters of subject castings sold Special Import Licenses. In prior administrative reviews of this order, the Department found this program to be an export subsidy, and thus countervailable, because companies received these licenses based on their status as exporters. See, e.g., 1993 Indian Castings Final Results. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy, and that financial contributions in the form of the revenue earned on the sale of licenses, are countervailable.

Because the sale of Special Import Licenses could not be tied to specific shipments, we calculated the subsidies by dividing the total amount of proceeds a company received from sales of these licenses by the total value of its exports of all products to all markets. We preliminarily determine the net subsidy from the sale of Special Licenses to be as follows:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Calcutta Ferrous	0.00
Carnation Enterprise Pvt. Ltd	0.00
Commex Corporation	0.00
Crescent Foundry Co. Pvt. Ltd	0.00
Dinesh Brothers	0.00
Kajaria Iron Castings Pvt. Ltd	0.24
Kejriwal Iron & Steel Works	0.06
Nandikeshwari Iron Foundry Pvt. Ltd	0.00
R.B. Agarwalla & Company	0.00
RSI Limited	0.00
Seramapore Industries Pvt. Ltd	0.15
Shree Rama Enterprise	0.00
Siko Exports	0.00
Super Iron Foundry	0.00
Victory Castings Ltd	0.00

7. Exemption of Export Credit From Interest Taxes

Indian commercial banks are required to pay a three percent tax on all interest accrued from borrowers. This tax is passed on to borrowers in its entirety. As of April 1, 1993, the GOI exempted form the interest tax all interest accruing or arising to any commercial bank on loans and advances made to any exporter as export credit. In the 1993 Indian Castings Final Results, we determined that this exemption is an export subsidy, and thus countervailable, because only interest accruing or arising on loans and advances made to exporters in the form of export credit is exempt from the interest tax. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy, and that financial contributions, in the form of tax revenue not collected, are countervailable.

During the POR, fourteen of the fifteen respondent companies made interest payments on export related loans, through the pre- and post-shipment financing schemes, and, thus, were exempted from the interest tax under this export program. To calculate the benefit to each company, we first determined the total amount of interest paid by each producer/exporter of subject castings during the POR by adding all interest payments made on pre- and post-shipment loans. Next, we multiplied this amount by three percent, the amount of tax that the interest would have been subject to without the exemption. We then divided the benefit by the value of the company's total exports or exports of subject merchandise to the United States, depending on whether the export financing was on total exports or only exports of subject casting to the United States. On this basis, we preliminarily determine the net subsidy from this program to be as follows:

Net subsides—producer/exporter	Net subsidy rate (percent)
Calcutta Ferrous	0.09
Carnation Enterprise Pvt. Ltd	0.03
Commex Corporation	0.03
Crescent Foundry Co. Pvt. Ltd	0.02
Dinesh Brothers	0.16
Kajaria Iron Castings Pvt. Ltd	0.24
Kejriwal Iron & Steel Works	0.00
Nandikeshwari Iron Foundry Pvt. Ltd	0.15
R.B. Agarwalla & Company	0.02
RSI Limited	0.12
Seramapore Industries Pvt. Ltd	0.06
Shree Rama Enterprise	0.00
Siko Exports	0.13
Super Iron Foundry	0.07
Victory Castings Ltd	0.08

B. Other Program Preliminarily Determined To Confer Subsidies

Payment of Premium Against Advance Licenses

The Advance License scheme allows exporters to import raw materials used in the production of an exported product duty free. During the 1993 administrative review, we found that exporters could pay for goods imported under an Advance License at two exchange rates under the Liberalized Exchange Rate Management System (''LERMS''). The LERMS was in effect from March 1, 1992 through February 28, 1993. Under the LERMS, the GOI maintained a dual exchange rate system where all foreign currency export proceeds were remitted at two exchange rates: Forty percent of the export value was exchanged at the official RBI rate and sixty percent at the (higher) market-determined rate. Purchases of most imports were made at the market exchange rate. This applied to both exporters and non-exporters. Exporters holding Advance Licenses under the Duty Exemption Scheme, however, could purchase imports at the dual exchange rates. Because forty percent of the value of the imported goods was exchanged at the lower official exchange rate, the net cost of these goods to the exporter was lowered. Advance Licenses are issued to companies based on their status as exporters. Therefore, in the 1993 review, we determined that provisions allowing exporters to import goods at exchange rates more favorable than those available to non-exporters

was an export subsidy, and thus countervailable. See 1993 Indian Castings Final Results. We verified that the LERMS was terminate effective February 28, 1993.

During the POR, however, exporters could obtain a premium from the GOI equal to eight (8.0) percent of the value of their unutilized Advance Licenses. The purpose of the premium is to compensate exporters for ''losses'' incurred due to the equalization of exchange rates in March 1993. To qualify for this premium, companies must have exported goods prior to March 1993 and realized export proceeds at the 60/40 ratio. These companies must also have experienced delays in the delivery of imported raw material inputs under an Advance License for the exports. To fulfill the export obligation, these companies had to use domestically-soured inputs. Under the Advance License scheme, exporters then may obtain special permission from licensing authorities to dispose of the raw material inputs that were imported duty free in their own production or by transferring them to another company. If the goods are transferred for use in domestically sold goods, the imported goods will subject to duty. In either case, the exporter must show that the export obligation has been met for which the company imported duty free raw materials. However, because the exchange rates were equalized, the exporters would now have to pay for the Advance License imports at the full market exchange rate. Thus, the eight percent premium is designed to compensate the exporter for the fact that export proceeds were realized at lower exchange rates, while the raw material imports intended for use in the exported goods were paid for at higher exchange rates.

Receipt of the premium is limited to companies that imported raw materials under an Advance License. Because Advance Licenses are issued to companies based on their status as exporters, we determine that receipt of this compensation is an export subsidy, and thus countervailable. See section 771(5A)(B) of the Act. During the POR, only Dinesh Brothers Pvt. Ltd. received the premium against Advance Licenses. We calculated the benefit to Dinesh by dividing the amount of the compensation by the value of the company's total exports during 1994. On this basis, we preliminarily determine the net subsidy from this program to be 3.65 percent *ad valorem* for Dinesh Brothers and 0.00 percent for all other companies.

II. Programs Preliminarily Found Not To Be Used

We examined the following programs and preliminarily find that the producers/exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

1. Market Development Assistance (MDA).
2. Rediscounting of Export Bills Abroad.
3. International Price Reimbursement Scheme (IPRS).
4. Cash Compensatory Support Program (CCS).
5. Programs Operated by the Small Industries Development Bank of India (SIDBI).
6. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement).
7. Export Promotion Capital Goods Scheme.
8. Benefits for Export Oriented Units and Export Processing Zones.
9. Special Imprest Licenses.
10. Special Benefits.
11. Duty Drawback on Excise Taxes.

Preliminary Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's Interim Regulations, we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we preliminarily determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Calcutta Ferrous	5.77
Carnation Enterprise Pvt. Ltd	2.56
Commex Corporation	1.42
Crescent Foundry Co. Pvt. Ltd	8.16
Dinesh Brothers	5.85
Kajaria Iron Castings Pvt. Ltd	16.06
Kejriwal Iron & Steel Works	15.21
Nandikeshwari Iron Foundry Pvt. Ltd	3.40
R.B. Agarwalla & Company Pvt. Ltd	4.59
RSI Limited	7.82
Seramapore Industries Pvt. Ltd	9.43
Shree Rama Enterprise	13.90
Siko Exports	4.65
Super Iron Foundry	0.39
Victory Castings Ltd	2.10

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, for those exporters with *de minimis* rates, no countervailing duties will be assessed or cash deposits required.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See § 355.22(a) of the Interim Regulations. Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.33(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See 1993 Indian Castings Final Results.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered

by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: November 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31094 Filed 12–5–96; 8:45 am]

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[C–533–063]

Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 22, 1996, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1993, through December 31, 1993. We have completed this administrative review and determine the net subsidy to be zero percent *ad valorem* for Delta Enterprises and Super Iron Foundry, and 5.45 percent *ad valorem* for all other companies. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, 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.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1996, the Department published in the Federal Register (61 FR 25623) the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On June 21, 1996, case briefs were submitted by the Engineering Export Promotion Council of India (EEPC) and the exporters of certain iron-metal castings to the United States (respondents) during the period of review (POR), and the Municipal Castings Fair Trade Council and its members (petitioners). Company specific comments to the Department's preliminary determination were also submitted on June 21, 1996, by R.B. Agarwalla & Company, exporter of the subject merchandise to the United States during the POR. On June 28, 1996, rebuttal briefs were submitted by respondents and petitioners. The review covers the period January 1, 1993, through December 31, 1993, and involves 14 companies and twelve programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act (URAA). See 60 FR 80 (January 3, 1995).

Scope of the Review

Imports covered by the administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by the Government of India, and six producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting and original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Calculation Methodology for Assessment and Cash Deposit Purposes

In accordance with *Ceramica Regiomontana, S.A.* versus *United States*, 853 F. Supp. 431 (CIT 1994), we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. We then weighed the rate received by each company using as the weight its share of total Indian exports to the United States of subject merchandise, including all companies, even those with *de*

minimis and zero rates. We then summed the individual companies' weighted rates to determine the weighted-average, country-wide subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above de minimis, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). Two companies had significantly different net subsidy rates during the review period pursuant to 19 CFR 355.22(d)(3). These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Pre-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate %
Delta Enterprises	0.00
Super Iron Foundry	0.00
Program Rate	0.13

2. Post-Shipment Export Financing and Post-Shipment Credit Denominated in Foreign Currency (PSCFC)

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate %
Delta Enterprises	0.00
Super Iron Foundry	0.00
Program Rate	1.25

3. Income Tax Deductions Under Section 80HHC

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate %
Delta Enterprises	0.00
Super Iron Foundry	0.00
Program Rate	3.64

4. Import Mechanisms

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate %
Delta Enterprises	0.00
Super Iron Foundry	0.00
Program Rate	0.04

B. New Programs Determined To Confer Subsidies

1. Exemption of Export Credit From Interest Taxes

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate %
Delta Enterprises	0.00
Super Iron Foundry	0.00
Program Rate	0.06

2. Imports Made Under an Advance License Through the Liberalized Exchange Rate Management System (LERMS)

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate %
Delta Enterprises	0.00
Super Iron Foundry	0.00
Program Rate	0.33

We verified that this program was terminated as of February 28, 1993, and that there were no residual benefits. See Certain Iron-Metal Castings from India: Preliminary Results of Countervailing Duty Administrative Review, 61 FR 25623, 25626 (May 22, 1996) (*1993 Castings Prelim*). Because this constituted a program-wide change, the cash deposit rate for this program will be zero. See § 355.50 of the *Proposed Regulations.*

II. Programs Found Not To Confer Subsidies

Inward Exchange Remittances Under the Liberalized Exchange Rate Management System (LERMS)

In the preliminary results, we found that this program did not confer subsidies during the POR. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

III. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Market Development Assistance (MDA)
B. Rediscounting of Export Bills Abroad
C. International Price Reimbursement Scheme (IPRS)
D. Cash Compensatory Support Program (CCS)

E. Pre-Shipment Financing in Foreign Currency (PSFC)

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1

Petitioners argue that the Department incorrectly used the small-scale industry (SSI) short-term interest rate published in the Reserve Bank of India's (RBI) August 1994 *Annual Report* to calculate the benefit provided to castings exporters under the Pre- and Post-Shipment export financing programs. By using the SSI rate, the Department has underestimated the full benefit received by castings exporters under these programs.

The SSI rate, petitioners claim, is a preferential loan rate regulated by the RBI. Therefore, the Department's benefit calculation is skewed, because one preferential lending rate (export financing) is being judged against another preferential rate (SSI). Petitioners contend that this type of comparison is ''unjust,'' irrespective of whether the benchmark rate is provided to a specific industry. Petitioners further contend that by relying on its finding in the 1991 Castings Final Results, the Department again assumes that loans to the SSI sector are non-specific within that sector without having made such a determination based on record evidence and in accordance with section 355.43(b)(2)(i) of the *Proposed Regulations.* According to petitioners, the Department's regulations do not permit a program to escape a specificity finding, merely because it ''appears'' not to be limited to a group of companies.

Finally, petitioners assert that in selecting a benchmark rate, the Department is directed by § 355.44(b)(3)(i) of the *Proposed Regulations* to rely on the predominant source of short-term financing in India. Petitioners also cite *Royal Thai Government* v. *United States*, 850 F. Supp. 44, 49 (Ct. Int'l Trade 1994), for the proposition that because the rate must be ''representative'' of short-term commercial lending, it may not be unreasonably low in comparison to other commercial rates. According to petitioners, record evidence indicates that the SSI rate is not the predominant source of short-term financing in India. Rather, because RBI credit regulations require that 32 percent of net bank credit to be targeted to priority sectors, including the SSI sector, the predominant type of financing appears to fall under the 68 percent of financing that is not provided on preferential terms.

Accordingly, petitioners contend that the Department should use the ''non-specific'' commercial borrowing rate in India as its benchmark in the Final Results, as published in the International Monetary Fund's International Financial Statistics Yearbook. In 1993 this rate was 16.25 percent.

Respondents claim that petitioners have not presented any new arguments that should propel the Department to depart from its prior findings. According to respondents, the information submitted by petitioners concerning the rate published in the IMF Yearbook constitutes new and untimely information, and should, therefore, be rejected. Respondents contend that statements made by Indian commercial bank officials concerning lending rates were ''imprecise,'' and not sufficient for setting the benchmark rate. Also, petitioners do not demonstrate that SSI loans are in fact specific, but merely indicate that the non-specific finding should not be adopted without additional investigation of the loans. With respect to statements by commercial bank officials that a percentage of net bank credit be targeted to certain industry sectors, respondents argue that this merely notes the minimum and not the actual amount that was lent to these sectors. Accordingly, the Department should reject petitioners arguments, and, consistent with its past practice, apply the SSI rate as the benchmark.

Department's Position

While petitioners may argue that comparing one preferential rate against another is ''unjust,'' and that the SSI rate does not represent the ''predominant'' source of short-term financing in India, it has been the Department's practice to use as a short-term loan benchmark for small businesses, the interest rates provided to small businesses, even if that benchmark is lower than other commercial interest rates. *See, e.g.*, the discussion of the benchmark used in the FOGAIN program in *Bricks From Mexico*, 49 FR 19564 (May 8, 1984). Because castings exporters qualify as small-scale industry firms, we have used the interest rate for small-scale industries as our benchmark. This has been our consistent practice for the export financing programs in this and past administrative reviews. See *e.g.*, Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India, 56 FR 52515 (October 21, 1991) (*1988 Castings Final*), and Certain Iron-Metal Castings from India, 60 FR 44843 (August 29, 1995) (*1991 Castings Final*.)

With respect to petitioners' argument that the Department must determine whether loans to the SSI sector are non-specific within that sector, it has been the Department's practice not to examine whether a program provided to small businesses is specific absent an allegation that the assistance under the program is limited to enterprises or industries within the universe of small businesses. See, *e.g.*, § 355.43(b)(7) of the *Proposed Rules*, and Textile Mill Products and Apparel from Singapore, 50 FR 9840 (March 12, 1985). We have found no evidence, and petitioners have not presented any information on the record of this review, that would lead us to examine the specificity of the SSI loans. As such, we continue to find that the SSI rate is an appropriate benchmark to use in the calculation of the benefit under the export financing programs. However, new allegations that we are investigating in the 1994 administrative review of this case (see Memorandum to the File Re: Petitioners' New Allegations (May 29, 1996) (public document on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce)) may lead us to reconsider the use of the SSI interest rates as the benchmark for the export financing programs in that review.

Comment 2

Petitioners argue that in order to provide a more accurate measure of the level of subsidization under the export financing programs, the Department should adjust the benchmark interest rate to reflect the ''effective'' cost of commercial financing in India. In particular, certain service charges that the Government of India (GOI) reported as adding to the normal cost of commercial borrowing should be added to the benchmark rate. This would also be in accordance with the *Proposed Regulations*, which express a preference for a comparison of effective interest rates.

Respondents indicate that the service charges are also applicable to export financing. Therefore, if they were added to the benchmark, they should also be added to the preferential export financing rate. Because this would be a difficult exercise, the Department has always correctly used the nominal rates for both the benchmark and the export loan interest rates.

Department's Position

We agree with respondents. There is no indication that the charges listed in

the GOI's questionnaire response are limited to export financing and do not apply to domestic commercial lending. According to the GOI, these service charges add ''to the cost of *normal* commercial borrowing'' (emphasis added). See GOI Original Questionnaire Response at 9 (February 22, 1995) (public version on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Petitioners have not cited any record information that would lead us to conclude that the service charges are limited solely to non-export financing and that adding them to the cost of commercial borrowing would provide a more accurate measure of the level of subsidization under the export financing programs. Accordingly, the service charges will not be added to the benchmark interest rate.

Comment 3

Petitioners cite statements made by commercial bank officials and other statements by the GOI to support their contention that exporter's ''effective'' rate of interest under the PSCFC program is much lower than the ''nominal'' rate reported in the response and used by the Department in its preliminary calculations. Specifically, petitioners cite a statement by commercial bank officials that under the PSCFC, exporters could lower their cost of borrowing ''by selling the dollar value of the export bill at the forward rate to the bank [and] capture the forward dollar premium against the rupee.'' See Citibank Verification Report at 2 (October 30, 1995) (public version on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Petitioners argue that by comparing ''nominal'' subsidized and benchmark interest rates for PSCFC loans, the Department is not capturing the full benefit received by castings exporters under this program.

Respondents claim that the practice of booking forward exchange rates is not a subsidy. Rather, buying forward is an established commercial practice throughout the world and is one method used by exporters to hedge against fluctuations in exchange rates. Respondents also indicate that exporters may hedge their export bills without using the PSCFC program.

Department's Position

Upon completing verification of the questionnaire responses in this administrative review, petitioners submitted comments on the verification reports and requested that the Department ask respondents to provide further information concerning the forward premium, as well as additional programs discussed at verification. See Review of Verification Reports in Countervailing Duty Administrative Review for 1993 (November 29, 1995) (public document on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). After analyzing petitioners' comments on the verification reports, we did not request further information from the respondents with respect to the forward booking option. We examined petitioners' arguments in light of the information on the record which consisted of statements made at verification by bank officials and respondent companies. These indicated that only one of the fourteen companies under review had exercised the forward booking option. In our view, at that time, the arguments made by petitioners were insufficient to send out new questionnaires and gather new information after verification. Accordingly, our preliminary results did not discuss or account for the forward premium.

The comments that petitioners have filed for these final results are the same as those filed on the verification reports. Since no new factual information has been submitted since the preliminary results, a determination cannot be made based on the record evidence of this proceeding as to whether and to what extent Indian exporters received an even greater benefit under the PSCFC if the program interest rate is adjusted to take into account the forward premium.

However, during the 1994 administrative review, which is ongoing, we received timely new subsidy allegations that we are investigating. Our investigation of these allegations has led us to reexamine the short-term lending practices in India, including how the option of booking forward exchange rates operates, and whether and to what extent this affects exporters' effective rate of borrowing under PSCFC.

Comment 4

Petitioners argue that the Department must calculate a benefit for the RBI's refinancing practices that it preliminarily determined to be countervailable in the 1992 administrative review of this order. Petitioners indicate that the Department did not mention this program in its preliminary results for this review, although information on the record shows that the circumstances with respect to this program have not changed.

According to petitioners, the GOI has, by encouraging private banks to lend to the export sector, provided exporters with access to preferential funds that they otherwise would not have had available to them. Domestic firms did not have access to these preferential funds, and the interest rates charged were more preferential than they might have been because the GOI's involvement created a greater differential between rates of interest available on the market to all Indian firms and rates available to the export sector.

Petitioners cite Certain Steel Products from Korea (*Steel*), 58 FR 37,338 (July 9, 1993) and Certain Stainless Steel Cooking Ware from the Republic of Korea (*Cooking Ware*), 51 FR 42,867, 42,868 (1986) as support for their contention. Petitioners state that, as the Department recognized in *Steel* and *Cooking Ware*, when a government encourages private banks to target a greater proportion of the finite amount of capital that is available to a certain industry (or export sector), this leaves fewer funds for the non-targeted sector to borrow. Thus, the GOI's provision of refinancing to banks, which encourages banks to make more funds available to the export sector than they otherwise would have provided, in turn making fewer funds available to the non-export sector, has the effect of driving up the cost of financing for non-exporters. Accordingly, because the GOI's refinancing practices constitute an export subsidy, petitioners argue that the Department should calculate the benefit conferred by these practices and countervail the full amount of the benefit.

Respondents argue that the Department was correct not to consider the GOI's refinancing practices in this administrative review. According to respondents, RBI refinancing is not a separate subsidy from the Post-Shipment Export Financing, but is, rather, what allows the banks to provide preferential post-shipment credit. If the Department were to countervail the refinancing, it would be countervailing the same subsidy twice. Therefore, the Department should find that these practices do not confer countervailable subsidies.

Department's Position

We disagree with petitioners. Higher rediscount or refinancing ratios provided for export loans may indeed encourage commercial banks to provide export loans over domestic loans and drive up the cost of financing for non-exporters. In such cases, when we determine that a program provides a preference for lending to exporters rather than non-exporters, we must

determine an appropriate way to measure that preference. Normally, we measure the preference by the difference between the interest rates charged on the export loans and the higher interest rates charged on domestic loans. See, *e.g., Cooking Ware,* 51 FR at 42868. We only seek alternative methodologies when we find that there is no difference between the benchmark interest rate on export loans and the interest rate on domestic loans. See, *e.g.,* Certain Steel Products from Korea, 58 FR at 37345. In the 1992 final results of this case, we found that the higher refinancing ratios provided on export loans are the mechanism that allows the banks to provide the preferential post-shipment financing. We also agreed with respondents' assertion that countervailing the refinancing would result in double-counting the benefit from the program. Therefore, we measured the preference as the differential between the program interest rate and the benchmark interest rate. See Certain Iron-Metal Castings from India; Final Results of Administrative Review, (1992 Castings Final), being simultaneously published with this notice.

Petitioners' cites to *Steel* and *Cooking Ware* are misplaced. In *Cooking Ware,* we stated that the different rediscount ratios for export and domestic loans results in the provision of export financing on preferential terms because ''* * * commercial banks have an incentive to channel more funds to finance those firms' export transactions and fewer funds to finance their domestic transactions.'' *Cooking Ware,* 51 FR at 42868. This is consistent with our finding in the 1992 Castings Final that the higher refinancing ratios provided on export loans is the mechanism and incentive that allows the commercial banks to extend the preferential post-shipment financing. However, in *Cooking Ware,* we found that the interest rate on both export and domestic short-term loans provided by banks were the same. Therefore, to measure the preference for export over domestic loans, we compared the 10 percent rate for short-term export loans with a weighted average of short-term domestic credit, including credit provided outside the normal banking system. We considered this measure the best approximation of what firms would pay for export financing if there were not a preference within the banking system for providing loans for export transactions. See *Cooking Ware,* 51 FR at 42868. In *Steel,* we found that the GOK provided the steel industry with preferential access to medium- and long-term credit from government and commercial banking institutions. We determined that, absent the GOK's targeting of specific industries, all industries would compete on an equal footing for the scarce credit available on the favorable markets. However, because the GOK controlled long-term lending in Korea and placed ceilings on long-term interest rates, there was a limited amount of capital available, which would force companies to resort to less favorable markets. Therefore, we determined that the three-year corporate bond yield on the secondary market was the best approximation of the true market interest rate in Korea.

In this case, we can measure the preference created by the export refinancing using the difference between the interest rates charged on export loans and the interest rates charged on domestic loans. This approach is consistent with our treatment of export loans provided by the Privileged Circuit Exporter Credits Program in Carbon Steel Wire Rod from Spain: Final Affirmative Countervailing Duty Determination, 49 FR 19557 (May 8, 1984). The use of an alternative method for measuring the preference is not warranted in this case because the interest rates charged on export and domestic loans are not uniform within India. Therefore, we have used our standard short-term loan methodology, as described in § 355.44(3)(b) of the *Proposed Regulations,* and have not calculated any additional benefit for the higher refinancing ratio provided for export loans.

Comment 5

According to petitioners, there are miscellaneous calculation issues relating to respondents use of the export financing programs which conceal benefits under these programs. Petitioners cite the RSI and R.B. Agarwalla verification reports for their claim that the ''quarterly billing'' approach for pre-shipment financing is likely to conceal interest costs that would otherwise be countervailed. Petitioners also contend that the Department must subtract all credits posted to company accounts to determine the total net post-shipment interest expense incurred during the POR.

Respondents reject petitioners' argument that the quarterly billing approach under the pre-shipment financing program allows castings exporters to conceal interest charges. According to respondents, the Department has verified the questionnaire response of RSI, R.B. Agarwalla, and other castings exporters on numerous occasions and has never found that interest charges were being concealed under the pre-shipment financing program. With respect to interest credits, respondents argue that petitioners have misunderstood how the post-shipment financing program works and that if the credits were deducted as suggested by petitioners, the subsidy would be overstated.

Department's Position

We disagree with petitioners that the quarterly billing method or running account facility allows exporters to conceal interest charges. Respondents correctly indicate that the Department's verification of the pre-shipment export financing program in this and past administrative reviews has not revealed that castings exporters are concealing interest charges under this program. In the instant review, for example, of the four companies that reported utilizing the running account facility for pre-shipment interest payments, the Department verified the accuracy of the information of three of these, Kajaria, R.B. Agarwalla and RSI. As the verification reports for these companies attest, we traced the reported interest payments to each company's general ledger, bank statements, payment vouchers and financial statements. We found that the companies paid the interest actually charged by the banks on these loans and that they accurately reported in the questionnaire responses the amount of interest paid to the bank.

Moreover, information presented at verification indicates that the quarterly billing method is a normal banking practice afforded to those exporters that meet certain criteria. For example, RSI officials stated at verification that upon review of a company's creditworthiness, Indian commercial banks may establish a line of credit under the pre-shipment financing program. To secure the loan, exporters must pledge their raw materials and works in progress as collateral. RSI officials also explained that interest is charged to the company by the bank on the last day of each quarter, based on the outstanding balance at the end of that period. See RSI Verification Report at 2 (October 30, 1995) (public version, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

With respect to the interest credits on post-shipment export financing, we disagree with petitioners. As we explained in the preliminary results, under post-shipment financing, commercial banks discount export bills for a period of up to 180 days. The interest amount, calculated at the

applicable foreign currency interest rate, is deducted from the total amount of the bill, and the exporter's account is credited for the rupee equivalent of the net foreign currency amount. If payment from the overseas customer is received prior to the due date of the loan, exporters will receive a credit in an amount equal to the interest calculated over the number of days early payment is made. Therefore, castings exporters have appropriately provided post-shipment interest payments net of all credits received due to early payment. To do otherwise would overstate the benefit received under this program, as the higher interest payment would yield a higher absolute benefit on those loans which were paid early. Accordingly, these credits have appropriately been subtracted by respondent companies.

At verification, Commex Corporation officials explained that they had failed to subtract interest credits for early payment of post-shipment loans in their questionnaire response. Therefore, after tracing the revised loan information through the company's records, and calculating the amount of the credit, we accepted these data showing interest payments net of all credits received. Post-shipment interest payments reported by R.B. Agarwalla, on the other hand, were already net of any credits received. See R.B. Agarwalla Verification Report at 4 (October 30, 1995) (public version, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Likewise, the public version of Calcutta Ferrous' post-shipment loan sheet indicates that the company subtracted all credits posted to its accounts for early payment. For the reasons stated above, we conclude that there are no miscellaneous calculation issues as claimed by petitioners.

Comment 6

Petitioners state that the Department improperly failed to countervail the value of Advance Licenses, because Advance Licenses are export subsidies and not equivalent to duty drawback. According to petitioners, Advance Licenses constitute a countervailable subsidy within the meaning of Item (a) of the Illustrative List of Export Subsidies (Illustrative List), which defines one type of export subsidy as ''[t]he provision by governments of direct subsidies to any firm or any industry contingent upon export performance.'' Because Advance Licenses are issued to companies based on their status as exporters, and because products imported under such a license are duty-free, petitioners state that such licenses provide a subsidy based on the requirement that an export commitment be met.

Petitioners further claim that the Department has in this and previous reviews mistakenly confused the nature of the Advance License program with duty drawback programs. According to petitioners, for a duty drawback program not to be countervailed, it must meet certain conditions outlined in Item (i) of the Illustrative List. Item (i) provides that ''[t]he remission or drawback of import charges [must not be] in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported products.'' This condition, according to petitioners, has not been met with respect to the Advance License program, because the Indian government apparently has made no attempt to determine whether the amount of material that is imported duty-free under Advance Licenses is at least equal to the amount of pig iron contained in exported subject castings, *i.e.*, ''physically incorporated in the exported products.''

Moreover, petitioners argue that respondents' ability to transfer Advance Licenses to other companies under certain conditions is further evidence that this program is not the equivalent of a drawback program, because the licenses are not limited to use solely for the purpose of importing duty-free materials. For these reasons, petitioners state that the Department should countervail in full the value of Advance Licenses received by respondents during the POR.

Respondents state that Advance Licenses allow importation of raw materials duty free for the purposes of producing export products. They state that if Indian exporters did not have Advance Licenses, the exporters would import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that although Advance Licenses are slightly different from a duty drawback system, because they allow imports duty free rather than provide for remittance of duty upon exportation, this does not make them countervailable. Respondents also indicate that if a license had been transferred during the POR, then it might have been a subsidy; this did not occur, however.

Department's Position

As we explained in the 1991 review (see 1991 Castings Final, 60 FR at 44846), petitioners have only pointed out the administrative differences between a duty drawback system and the Advance License scheme used by Indian exporters. Such administrative differences can also be found between a duty drawback system and an export trade zone or a bonded warehouse. Each of these systems has the same function: each exists so that exporters may import raw materials to be incorporated into an exported product without the assessment of import duties.

The purpose of the Advance License is to allow an importer to import raw materials used in the production of an exported product without first having to pay duty. Companies importing under Advance Licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are physically incorporated into an exported product is not a countervailable subsidy, if the remission or drawback is not excessive. We determined that respondents used Advance Licenses in a way that is equivalent to a duty drawback scheme. That is, they used the licenses in order to import, net of duty, raw materials which were physically incorporated into the exported products. Furthermore, we have never found that castings exporters have transferred an Advance License. Accordingly, our determination that the use of Advance Licenses is not countervailable remains unchanged.

Comment 7

Petitioners claim that the Department has underestimated the benefit received by castings exporters under the program that exempts export credit from interest taxes. According to petitioners, certain companies have received additional export credit, either in the form of loans or advances from sources other than Pre- and Post-Shipment export financing. In support of their contention, petitioners cite the company verification reports and financial statements as well as a GOI verification report exhibit that allegedly details a range of export credit options available to castings exporters.

Respondents argue that the information cited by petitioners from both the questionnaire responses and verification reports in no way indicates that castings exporters received tax exempt export financing other than that provided through the Pre- and Post-Shipment lending programs. With respect to other export credit options listed in the GOI verification report, respondents claim there is no record evidence showing that respondents companies used any of these programs during the POR.

Department's Position

At verification, we traced each company's total interest payments listed in the general ledger to the financial statements. We found no discrepancies and no evidence that castings exporters had received any additional export financing or had utilized other export credit options as cited by petitioners. See, e.g., Commex Verification Report at 2 (October 30, 1995) (public version, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). With respect to the ''Unsecured Loans'' reported by RSI, the company stated at verification that these were ''non-bank loans pertaining to their polymer products division.'' We confirmed that none of these were for exports of the subject merchandise. See RSI Verification Report at 3 (October 30, 1995) (public version, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Moreover, there is no indication that the short-term loans listed in RSI's February 22, 1995, questionnaire response were export-related loans. Again, we traced all export financing shown in RSI's general ledger to the company's financial statements at verification and found no discrepancies. Accordingly, because all export-related financing has been accounted for in the Department's calculations for this program, we determine that the benefit from the exemption for exporters from the tax on loan interest has not been underestimated.

Comment 8

Petitioners argue that the Department has improperly failed to countervail IPRS benefits bestowed on non-subject castings. They state that the Department's failure to countervail such subsidies is at odds with the language and intent of the countervailing duty law, which applies to any bounty or grant whether bestowed directly or indirectly. Petitioners further contend that the statute requires Commerce to countervail indirect as well as direct subsidies because the benefit reduces a respondent's costs, regardless of whether it is paid (directly) upon the export of subject castings or (indirectly) upon the export of non-subject castings. In either event, petitioners claim, the company's costs are equally reduced, thereby conferring the countervailable benefit. In support of their contention, petitioners cite 19 U.S.C. 1303(a)(1) and *Armco, Inc.* v. *United States,* 733 F. Supp. 514 (Ct. Int'l Trade) (1990). Petitioners further assert that the URAA makes clear that U.S. law continues to countervail benefits that are conferred, regardless of ''whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise.''

Petitioners further contend that castings exporters can easily avoid paying countervailable duties by making no claims for IPRS payments on the subject castings, but linking their claims on non-subject castings. This is possible, according to petitioners, because eligibility for IPRS payments is based on the use of domestic pig iron, and pig iron is fungible.

Respondents state that petitioners have misapplied the term ''indirectly.'' They state that IPRS payments are not ''indirectly'' paid on subject castings merely because they are paid to the same producer. Respondents argue that there is no benefit—either direct or indirect—to the subject merchandise when benefits are paid on other products. Respondents state that petitioners are making the ''money is fungible'' argument which has never been accepted by the Department. They state the Department should not accept this argument now.

Respondents also object to petitioners' contention that respondents are circumventing the countervailing duty law by linking their claims to exports of non-subject castings. According to respondents, petitioners provide no evidence in support of their assertions. In fact, the GOI and respondent companies have been verified numerous times, and the Department has never found any indication that claims for IPRS were paid on non-subject castings in a way that circumvents the countervailing duty law, as claimed by petitioners.

Department's Position

As we stated in the 1992 Castings Final and the 1991 Castings Final, petitioners have misinterpreted the term ''indirect subsidy.'' According to petitioners, a reimbursement of costs incurred in the manufacture of product B may provide an indirect subsidy upon the manufacture of product A. As such, petitioners argue that grants tied to the production or export of product B, should also be countervailed as a benefit upon the production or export of product A. This is clearly at odds with established Department practice with respect to the treatment of subsidies, including indirect subsidies. The term ''indirect subsidies'' as used by the Department refers to the manner of delivery of the benefit which is conferred upon the merchandise subject to an investigation or review. This is the point the court was making in Armco where it was concerned that subsidies not escape being countervailed because of certain parent/subsidiary relationships. The interpretation proposed by petitioners, that a benefit tied to one type of product also provides an indirect subsidy to another product, is not within the purview or intent of the statutory language under section 771(5)(B)(ii).

The Department's practice with respect to this issue is spelled out in our *Proposed Regulations.* These state that for countervailable benefits found to be ''tied to the production or sale of a particular product or products, the Secretary will allocate the benefit solely to that product or products. If the Secretary determines that a countervailable benefit is tied to a product other than the merchandise, the Secretary will not find a countervailable subsidy on the merchandise.'' Section 355.47(a) of the *Proposed Regulations.* Tying benefits to specific products is established Department practice in the administration of the countervailing duty law. See, *e.g.*, Industrial Nitrocellulose from France, 52 FR 833 (January 9, 1987); Apparel from Thailand, 50 FR 9818 (March 12, 1985); and Extruded Rubber Thread from Malaysia, 60 FR 17515 (April 9, 1995). Moreover, we find no merit in petitioners' claim that castings exporters can avoid paying countervailing duties by shifting their claims for IPRS payments from subject to non-subject castings. When claims are filed for IPRS payments, the amount of the rebate determined by the GOI is based on the contention that 100 percent of the material used in the production of the exported good is domestic pig iron. This being the case, it is impossible to shift the claims from subject to non-subject merchandise because the IPRS payments are based upon 100 percent use of domestic pig iron regardless of the actual content of domestic pig iron, imported pig iron, or scrap used in the production of the exported good.

Comment 9

According to petitioners, the Department should countervail benefits provided to castings exporters under numerous programs found during the course of this proceeding. Citing the GOI verification report, petitioners claim that the Duty Drawback Scheme (DDS) appears to be identical to the Cash Compensatory Support Scheme that the Department found countervailable in prior reviews. Given these similarities, petitioners state, respondents must prove that the drawback under this program is not excessive. According to petitioners, the

record does not establish that the allowable rebate for castings exporters is less than the applicable excise rates. Accordingly, the Department should calculate a benefit for this program.

Petitioners further note that Commex Corporation and the GOI have not provided sufficient information to show that Commex's Export Development Rebate Reserve should not be countervailed. Therefore, petitioners contend, the Department should calculate a subsidy benefit for this program by dividing the amount listed in the financial statements by the company's total exports. If the Department decides not to countervail the export reserve, it should determine what it will do with this reserve if it is ''used'' in the future.

Finally, petitioners note from RSI's verification report that the company's financial statement refers to a Deferred Export Market Development Expenditure and that respondents have not explained whether these expenditures are part of a GOI program. Lacking information to show affirmatively that this amount should not be countervailed, petitioners assert that the Department should calculate a benefit for this program. If the Department decides not to countervail the export reserve, it should determine what it will do with this reserve if it is ''used'' in the future.

With respect to the DDS, respondents argue that the Department long ago determined that this was not a subsidy. In support of their argument, respondents cite the Department's August 20, 1980, final countervailing duty determination. Respondents also claim that irrespective of whether Commex's Export Development Rebate Reserve was a subsidy, petitioners acknowledge that it was not used during the POR and, therefore, cannot be countervailed during the review period. Respondents make the same argument concerning RSI's Deferred Export Market Development Expenditure. In any case, the Department noted in RSI's verification report that the deferred expenditure was not related to subject castings, and, as such, cannot be a subsidy benefiting castings exported to the United States.

Department's Position

We disagree with petitioners that there are additional programs that should be countervailed during this proceeding. First, with respect to the DDS, we noted in our May 14, 1996, Memorandum to the File Re: Duty Drawback of Excise Taxes Program (public document on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce) that this program had been examined during the investigation. At that time, we found that the rebate of excise taxes on domestically sourced pig and scrap iron consumed in the production of exported goods was non-excessive, and, therefore, did not confer countervailable benefits. During the verification of the questionnaire responses for this administrative review, we again found that the duty drawback claimed for excise taxes paid on domestically sourced pig iron was not excessive. See *e.g.*, Commex Corporation Verification Report at 3–4 (October 30, 1995) (public version on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Therefore, our original determination for this program has not changed.

With respect to the Export Development Rebate Reserve and the Deferred Export Market Development Expenditure, we verified that these were not used during this POR and, accordingly, cannot be countervailed. See, *e.g.*, RSI Verification Report at 4 (October 30, 1995), and Commex Corporation Verification Report at 4 (October 30, 1995) (public versions on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

Comment 10

According to respondents, the Department incorrectly found that sales of import licenses by Kejriwal during the POR conferred countervailable benefits on exports of subject castings. Respondents' claim that Kejriwal's August 14, 1995, supplemental questionnaire response clearly indicates that the licenses sold by the company during the POR were earned on sales other than exports of the subject merchandise to the United States. Respondents argue that in the absence of verification of the company or other record evidence demonstrating that the licenses were tied to subject castings, the Department should not consider these licenses to have benefited Kejriwal's exports of the subject merchandise to the United States.

Petitioners argue the respondents' claim should be rejected because the record does not demonstrate that the licenses sold by Kejriwal during the POR were received only in connection with non-subject merchandise. According to petitioners, respondents' argument that these licenses are tied to non-subject castings rests upon Kejriwal's ambiguous statement in its supplemental questionnaire response that ''[t]he licenses sold * * * was [sic] obtained on total exports less exports of subject merchandise to the U.S.A.'' Petitioners claim that this statement is not only unsupported by record evidence but contradicts other evidence. In its original questionnaire response, Kejriwal stated that the licenses sold during the POR were Special Replenishment and Additional Licenses. The Department found in its preliminary determination of this administrative review that receipt of Special and Additional Licenses is based on a company's overall export performance and that these licenses cannot be tied to specific export shipments. Accordingly, respondents' claim that these licenses were tied to exports other than subject castings is inconsistent with the stated purpose of these licenses. Therefore, petitioners contend that record evidence fully support the Department's determination to countervail the licenses sold by Kejriwal during the POR.

Department's Position

We disagree with respondents. In this and past administrative reviews of this order, we found that receipt of Additional and Special Licenses was based on a company's export performance for all exports and that these licenses could not be tied to specific sales. See, *e.g.*, 1991 Castings Final, 60 FR at 44843. Where a benefit is not tied to a particular product, it is the Department's practice to allocate the benefit to all products exported by a firm where the benefit received is pursuant to an export program. See § 355.47(c) of the *Proposed Regulations.* Accordingly, where we have found that castings exporters sold licenses that could not be tied to specific sales, we determined that the sale benefited the company's entire export sales. During this administrative review, we verified that Additional and Special Licenses could be received only on the basis of a company's total export performance. Therefore, Kejriwal's statement that ''[t]he licenses sold * * * was [sic] obtained on total exports less exports of subject merchandise to the U.S.A.,'' does not constitute sufficient new evidence to overturn our earlier finding. Moreover, the mere fact that a company may choose not to include exports to the United States in applying for a license does not in any way demonstrate that the sale of such licenses cannot benefit exports to the United States. See, *e.g.*, Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review, 61 FR 55272, 55276 (October 25, 1996). Therefore, our determination that the sale of these licenses benefits Kajaria's total export

sales, including the subject merchandise, remains unchanged.

Comment 11

Respondents contest the Department's use of a rupee-loan interest rate, adjusted for exchange rate changes, as the benchmark to calculate the benefit on PSCFC loans. According to respondents, this is inconsistent with item (k) of the ''Illustrative List of Export Subsidies,'' annexed to the GATT Subsidies Code. Item (k) provides that an ''export credit'' is a subsidy only if those credits are granted by governments at interest rates below the cost of funds to the government. Because the Indian commercial banks providing PSCFC loans could themselves borrow at LIBOR-linked rates, the appropriate benchmark, respondents claim, is a LIBOR-linked interest rate. Accordingly, PSCFC loans should not be considered beneficial to the extent that they are provided at rates below the appropriate benchmark, *i.e.*, the rate at which Indian commercial banks could borrow U.S. dollars.

According to petitioners, the Department has consistently rejected the ''cost-to-government'' methodology of item (k), because that approach does not adequately capture the benefits provided under short-term financing programs. In support of their argument, petitioners cite the Department's determinations in Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review, 60 FR 17515, 17517 (1995) and Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review, 56 FR 12175, 12177 (1991). Petitioners also cite the 1989 final results of Certain Textile Mill Products from Mexico, in which the Department stated:

> When we have cited the Illustrative List as a source for benchmarks to identify and measure export subsidies, those benchmarks have been consistent with our long-standing practice of using commercial benchmarks to measure the benefit to recipient of a subsidy program. The cost-to-government standard in item (k) of the Illustrative List does not fully capture the benefits provided to recipients of FOMEX financing. Therefore, we msut [sic] use a commercial benchmark to calculate the benefit from a subsidy, consistent with the full definition of ''subsidy'' in the statute.

See 54 FR 36841, 36843 (1989). According to petitioners, the Department's repudiation of the ''cost-to-government'' standard contemplated in item (k) was upheld and restated in the Statement of Administrative Action: Agreement on Subsidies and Countervailing Measures, H. Doc. No. 316, 103d Cong., 2d Sess. (1994). For these reasons, the Department should reject respondents' argument and adopt as a benchmark a non-preferential interest rate based on the ''predominant'' form of short-term financing in India.

Department's Position

We disagree with respondents that the Department should use a LIBOR-linked interest rate as an appropriate benchmark for the PSCFC program. In determining whether a short-term export loan is preferential and confers countervailable benefits, the Department's practice has been to compare the amount of interest paid by a company for the loan with the amount the firm would have paid on a benchmark loan. In the case of short-term financing, the Department is instructed to use as a benchmark

> * * * the average interest rate for an alternative source of short-term financing in the country in question. In determining this benchmark, the Secretary normally will rely upon the predominant source of short-term financing in the country in question.

See § 355.44(b)(3)(i) of the Proposed Regulations, 54 FR at 23380 (emphasis added). In the preamble to the *Proposed Regulations,* we explained that ''the purpose of the comparison is to determine what a firm's cost of money would be absent the allegedly countervailable government loan.'' 54 FR at 23369.

In this case, we have determined that the predominant source of short-term financing in India is financing for the SSI sector at interest rates defined by the RBI. See, e.g., 1991 Castings Final, 60 FR 44843. We also found that PSCFC loans are limited only to exporters, and only exporters have access to LIBOR-linked interest. Therefore, as explained in § 355.44(b)(1) of the Proposed Regulations, because the amount paid by exporters on PSCFC loans is less than what a firm would pay for benchmark loans, we determined that PSCFC loans confer countervailable benefits. Because we found that PSCFC loans are limited to exporters and that non-exporters do not have access to these low-cost financing rates, LIBOR-linked interest rates clearly do not represent the predominant source of short-term financing in India. The fact that commercial banks may borrow at LIBOR-linked rates is, therefore, irrelevant to our finding.

Furthermore, petitioners correctly note that the Department has consistently rejected the ''cost-to-government'' standard of item (k) of the Illustrative List, which respondents cite in support of their argument that the appropriate benchmark for PSCFC loans should be a LIBOR linked interest rate. The cost-to-government standard contemplated in item (k) does not limit the United States in applying its own national countervailing duty law to determine the countervailability of benefits on goods exported from India. See, e.g., Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review, 57 FR 562 (January 7, 1992). Therefore, in compliance with the U.S. countervailing duty law and the Department's past practice, we will continue to use as a benchmark the ''predominant'' source of short-term financing in India to determine whether PSCFC loans confer countervailable benefits upon exports of the subject merchandise to the United States.

Comment 12

According to respondents, the Department correctly adjusted the discounted benchmark interest rate for exchange rate changes. Respondents claim, however, that this adjustment is erroneous when it increases the benchmark, because the benchmark interest rates cannot be higher than the rate at which exporters could otherwise have borrowed.

Petitioners contend that respondents fail to understand that the discounted benchmark could only be capped if PSCFC loans were denominated in rupees. However, the adjustment was made because these loans were dollar denominated. Accordingly, the Department correctly determined that on dollar terms the appropriate benchmark on these foreign currency loans did not equal the non-adjusted benchmark.

Department's Position

Respondents' assertion that the benchmark rate for PSCFC loans should be capped is incorrect. The discounted benchmark interest rate reflects the predominant source of short-term rupee financing in India. As we explained in the preliminary results, we have adjusted this benchmark because we were unable to find a foreign currency interest rate to use as a benchmark. Accordingly, we adjusted the benchmark for changes in the rupee/dollar exchange rate, thereby converting the rupee benchmark into a foreign currency benchmark. See 1993 Castings Prelim, 61 FR at 25625. If the benchmark increased beyond the rupee rate, that merely reflected the effect of currency movements on the interest rate and the exporter's alternative cost of borrowing. Accordingly, the benchmark should not be capped at the rupee rate

because the rupee interest rate was not the exporter's alternative cost of borrowing. Therefore, our determination in the preliminary results remains unchanged.

Comment 13

According to respondents, for purposes of Section 80HHC, earnings from the sale of licenses are considered export income which may be deducted from taxable income to determine the tax payable by the exporter. Therefore, because proceeds from the sale of licenses are also part of the deductions under Section 80HHC, to countervail this revenue and the deduction results in double counting the subsidy from the sale of licenses. Respondents also contend that the Department is double counting the subsidy from the export financing programs. The financing programs reduce the companies' expenses in financing exports, which in turn increases profits on export sales. Because the 80HHC deduction increases as export profits increase, the financing programs increase the 80HHC deduction. Therefore, respondents argue, countervailing the financing programs and the 80HHC deduction means the benefit to the exporter is countervailed twice.

In the 1991 final results of this case, the Department argued that adjusting the benefit from 80HHC for other subsidies is not a permissible offset under section 771(6) of the Act. Under section 771(6), deductions are allowed because they represent actual costs to the exporter which lessen the benefit on the subsidy to the exporter. Respondents claim that section 771(6) of the Act is irrelevant to this issue, because it does not deal with the potential double counting of subsidies. With respect to the Department's policy to disregard the secondary tax effects of countervailable subsidies, respondents assert that this is also irrelevant in this case. According to respondents, the issue is whether the same subsidy is being countervailed twice (once because it provides a direct countervailable benefit and once because it makes up part of a tax deduction), and not whether the ''after tax benefit'' is somehow less than the nominal benefit.

According to petitioners, respondents' argument that the interest saved under the export financing programs and the proceeds from license sales are included in the Section 80HHC deduction is not supported by any record information. Respondents also offer no support for their claim that these programs increase the exporter's profits. Petitioners state that respondents err in equating revenues with profits, because profit is reached only at the point that revenues exceed costs. Respondents have not identified any record information indicating that castings exporters' receipt of concessional financing directly results in their revenues exceeding costs.

Moreover, petitioners argue that even if countervailing proceeds from the sale of licenses and concessional export credit had some effect on the amount of the Section 80HHC deduction, it would not be an allowable offset under the countervailing duty law. Also, because these effects would be secondary, they would not be permissible. Therefore, the Department should use the same methodology for calculating the benefit from these programs as it used in its analysis for the preliminary results of review.

Department's Position

Contrary to respondents' arguments, the same subsidy is not being countervailed twice. The 80HHC income tax exemption is a separate and distinct subsidy from the pre- and post-shipment export financing subsidy and the sale of import licenses subsidy. The pre- and post-shipment financing programs permit exporters to obtain short-term loans at preferential rates. The benefit from that program is the difference between the amount of interest the respondents actually pay and the amount of interest they would have to pay on the market. The interest enters the accounts as an expense or cost, just like hundreds of other expenses. There is no way to determine what effect a reduced interest expense has on a company's profits because there are so many variables (not just countervailable subsidies) that enter into, and affect, a company's costs. In order to consider the effect that such reduced interest expense would have on profits, all of the other variables that affect profits (all other revenues and expenses) would have to be isolated.

Similarly, the revenue from the sale of import licenses is considered to be a grant to the company, and that grant constitutes the benefit. The revenue a company receives from the sale of the licenses may enter the accounts as income, or it may enter the accounts as a reduction in costs. Because all the income and expenses from all sources enters into the calculation of a company's profit (or loss), there is no way to determine what effect the countervailable grant has on a company's profit.

Respondents suggest that the Department attempt to isolate the effect of the countervailable grants and loans on the company's profits and, once that effect is determined, alter the measurement of the benefit of the 80HHC program to reflect the effect of the countervailable grants and loans. As stated in the Proposed Regulations under section 355.46(b), this is something the Department does not do; ''In calculating the amount of countervailable benefit, the Secretary will ignore the secondary tax consequences of the benefit.'' To factor in the effect of other subsidies on the calculation of the benefit from a separate subsidy undermines the principle that we do not, and are not required to, consider the effects of subsidies on a company's profits or financial performance.

In all of the cases where we have actually examined both grant and loan programs, as well as income tax programs (either exemptions or reductions), this principle has been applied even though it has not been expressly discussed. For example, in the Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, 58 FR 37273 (July 29, 1993), the Department found cash grants and interest subsidies under the Economic Expansion Law of 1970 to constitute countervailable subsidies. 58 FR at 37275–37276. At the same time, the Belgian government exempted from corporate income tax grants received under the same 1970 Law. 58 FR at 37283. The Department found the exemption of those grants from income tax liability to be a countervailable subsidy. *Id.* Significantly, it did not examine the tax consequences of the tax exemption of the grants. See also Final Affirmative Countervailing Duty Determination: Certain Pasta From Turkey, 61 FR 30366 (June 14, 1996), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia, 57 FR 38472 (Aug. 25, 1992).

In this case, because all companies' profits are taxable at the corporate tax rate, an exemption of payment of the corporate tax for specific enterprises or industries constitutes a countervailable subsidy. The amount of the benefit is equal to the amount of the exemption. The countervailable grant may or may not have contributed to the taxable profits, but the grant does not change the amount of the exemption that the government provided, and countervailing the tax exemption does not overcountervail the grant.

Respondents claim that they are not asking us to consider the secondary tax consequences of subsidies—yet they are asking us to consider the effect of the grant and loan subsidies in the

valuation of the tax subsidy. As stated above, we do not adjust the calculation of the subsidy to take into consideration the effect of another subsidy. This would be akin to an offset, and the only permissible offsets to a countervailable subsidy are those provided under section 771(6) of the Act. Such offsets include application fees paid to attain the subsidy, losses in the value of the subsidy resulting from deferred receipt imposed by the government, and export taxes specifically intended to offset the subsidy received. Adjustments which do not strictly fit the descriptions under section 771(6) are disallowed. (See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Extruded Rubber Thread from Malaysia 57 FR 38472 (August 25, 1992).)

It is clear that the 80 HHC program is an export subsidy; it provides a tax exemption to exporters that other companies in the economy do not receive. This is not a secondary consequence of a grant or loan program. Rather it is the primary consequence of a particular government program designed to benefit exporters. Just as we do not consider the effect of the standard tax regime on the amount of the grant to be countervailed, we do not consider the effect of other subsidy programs on the amount of tax exemption to be countervailed. Accordingly, we continue to find these programs to be separate and distinct subsidies and to find that no adjustment to the calculation of the subsidy for any of the programs is necessary.

Comment 14

According to respondents, each type of payment received under the IPRS, CCS, the sales of licenses, and another program involving duty drawback, is considered export income and is, therefore, deducted from taxable income under 80HHC. Accordingly, because revenues from the CCS, IPRS, duty drawback, and sales of licenses are not related to, and were not earned on exports of subject castings to the United States, they should not be included in the calculation of 80HHC benefits. Respondents claim they are not suggesting that the Department offset the 80HHC subsidy, which would be impermissible under section 771(6) of the Act; nor are they asking the Department to disregard secondary tax effects. Rather, respondents maintain that because the income does not relate to subject castings at all, the unpaid tax on this income cannot be a subsidy benefitting the subject merchandise.

Petitioners assert that the Department properly countervailed the benefits received under the 80HHC program, because it provides a subsidy associated with the export of all goods and merchandise. Petitioners further state that no new information has been provided in this review to suggest that the Department should modify its method for calculating the benefit under this program. Accordingly, the Department's final determination should continue to fully countervail 80HHC benefits.

Department's Position

We disagree with respondents' assertion that we incorrectly calculated the benefit provided under the 80HHC program. In the case of programs where benefits are not tied to the production or sale of a particular product or products, it is our practice to allocate the benefit to all products produced by the firm. See e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey, 61 FR 30366, 30370 (June 14, 1996). Because the 80HHC program is an export subsidy, we appropriately allocated the benefit over total exports. We have used this methodology to calculate benefits from the 80HHC program in previous reviews of this order. See *e.g.*, 1991 Final Results, and our response to comment 13, above.

Comment 15

Respondents argue that the Exemption of Export Credit from Interest Taxes program should not be viewed as a subsidy to castings exporters, because this merely enables the banks to provide export financing at a lower interest rate. According to respondents, because the lower interest rate is the subsidy, the interest tax exemption is subsumed in the subsidy relating to the lower interest rate on export loans.

Petitioners argue that respondents have not provided any record evidence to support their claim that interest tax exemption is subsumed in the preferential export credit rates. According to petitioners, respondents' assumption is unfounded, because it is the RBI, and not Indian commercial banks, that sets the level of subsidized interest rates in India. Furthermore, the Department noted in the preliminary results notice that the interest tax is passed on to borrowers by commercial banks. Therefore, petitioners contend, the Department correctly found that the interest tax exemption constituted an additional benefit for castings exporters.

Department's Position

Contrary to respondents' claim, there is no relationship between the interest tax and commercial banks' ability to extend financing at preferential rates to Indian exporters. In our preliminary results, we found that the GOI charges a three percent tax on all interest accruing from borrowers. As of April 1, 1993, however, the GOI exempted from the interest tax all interest accruing on export loans and advances made to an exporter. See 1993 Castings Prelim, 61 FR at 25625. Our finding that this exemption conferred countervailable benefits upon exporters was based on the fact that the interest tax was passed on to borrowers in its entirety. Because the interest tax is passed on by commercial banks, the effective cost of borrowing for the exporter increases. The exemption for exporters, however, relieves them of this additional liability. Accordingly, their cost of borrowing is lower than that for non-exporters, interest rates notwithstanding. Respondents' contention that the ''interest tax exemption is subsumed in the subsidy relating to the lower interest rate on export loans'' is incorrect and not supported by record evidence. Petitioners correctly note that the interest rate structure in India is regulated by the RBI, which announces periodically the interest rates commercial banks must charge on export financing. The interest tax does not in any way influence these rates, but is, rather, an additional cost to borrowers from which exporters are exempt.

Comment 16

According to respondents, argued collectively and by R.B. Agarwalla individually, the Department over-calculated the subsidy found as a result of imports made under an Advance License, because it failed to deduct revenue lost from export sales of subject castings due to LERMS. Respondents argue that exporters could purchase pig iron under an Advance License at two exchange rates, the higher market rate and the lower official rate. However, they also argue that under the LERMS, the exporters lost revenue on the exports produced with the imported pig iron, because payment for the export sale was converted into rupees at dual exchange rates: 60 percent at the higher market rate and 40 percent at the lower government-controlled rate. The revenue lost from the exchange at the lower rate, respondents contend, should be deducted from the benefit calculated by the Department under this program. In its brief, R.B. Agarwalla provided an attachment detailing its ''loss due to LERMS'' on the company's exports of subject castings to the United States.

According to petitioners, the Department noted in its preliminary results notice that during 1993 all export earnings, regardless of whether inputs were imported under an Advance License, were subject to the same LERMS treatment, *i.e.*, remitted at the dual exchange rates. In light of this, petitioners contend that respondents' argument should be rejected, because they have not explained why this non-targeted treatment under LERMS should provide a basis for an offset to the benefit provided under the Advance License scheme.

Department's Position

We disagree with respondents. In the preliminary results, we explained that during 1993, while the LERMS was still in effect, all imports had to be purchased at the market exchange rate, with the exception of goods imported under an Advance License. Under this scheme, 40 percent of the value of imported goods could be paid for at a lower rate of exchange. Because Advance Licenses are issued to companies based on their status as exporters, we determined that the provision under LERMS allowing exporters with Advance Licenses to import goods at exchange rates more favorable than those available to non-exporters constitutes an export subsidy. See 1993 Castings Prelim, 61 FR at 25626.

Respondents' claim that the exporters ''lost revenue'' on exports produced with goods imported under an Advance License is misleading and does not correspond to the facts. Prior to the implementation of the LERMS, all export earnings were converted at a single exchange rate, the official government rate, which corresponds to the lower government rate at which 40 percent of export earnings were exchanged under the LERMS. Accordingly, the GOI's liberalization of the foreign currency markets provided exporters with increased export earnings, as only 40 percent of remittances were converted at the lower official rate after implementation of the LERMS. Moreover, as we stated in the preliminary results, under the LERMS, all export earnings were remitted at the 60:40 exchange rates. Accordingly, there was no discrimination in the application of the LERMS among exporters. Thus, there is no basis for considering that the exchange rates applied to export earnings constitute an offset for the exchange rates applied to imports. For the above reasons, our findings for this program remain unchanged.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine the net subsidy to be zero percent for Delta Enterprises and Super Iron Foundry and 5.45 percent ad valorem for all other companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate
Delta Enterprises	0.00
Super Iron Foundry	0.00
All Other Companies	5.45

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from Delta Enterprises and Super Iron Foundry, and 5.13 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31095 Filed 12–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–063]

Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 29, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on Certain Iron-Metal Castings From India for the period January 1, 1992 to December 31, 1992. We have completed this review and determine the net subsidies to be 0.00 percent ad valorem for Dinesh Brothers, Pvt. Ltd., 13.99 percent for Kajaria Iron Castings Pvt. Ltd., and 6.02 percent ad valorem for all other companies. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Marian Wells, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4105 or 482–6309, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1995, the Department published in the Federal Register (60 FR 44839) the preliminary results of its administrative review of the countervailing duty order on Certain Iron-Metal Castings From India. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On September 28, 1995, case briefs were submitted by the Municipal Castings Fair Trade Council (MCFTC) (petitioners), and the Engineering Export Promotion Council of India (EEPC) and individually-named producers of the subject merchandise that exported iron-metal castings to the United States during the review period (respondents). On October 5, 1995, rebuttal briefs were submitted by the MCFTC and the EEPC. The comments addressed in this notice were presented in the case and rebuttal briefs.

The review covers the period January 1, 1992 through December 31, 1992. The review involves 14 companies (11 exporters and three producers of the subject merchandise) and the following programs:

(1) Pre-Shipment Export Financing
(2) Post-Shipment Export Financing

(3) Income Tax Deductions under Section 80HHC
(4) Import Mechanisms
(5) Advance Licenses
(6) Market Development Assistance
(7) International Price Reimbursement Scheme (IPRS)
(8) Falta Free Trade Zones and Other Free Trade Zones Program
(9) Preferential Freight Rates
(10) Preferential Diesel Fuel Program
(11) 100 Percent Export-Oriented Units Program
(12) Cash Compensatory Support Program (CCS)

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Rules), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Rules were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (Jan. 3, 1995).

Scope of the Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Pursuant to *Ceramica Regiomontana, S.A.* v. *United States*, 853 F. Supp. 431, 439 (CIT 1994), Commerce is required to calculate a country-wide CVD rate, i.e., the all-others rate, by ''weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.'' Therefore, we first calculated a subsidy rate for each company subject to the administrative review. We then weighted the rate received by each company using its share of U.S. exports to total Indian exports to the United States of subject merchandise. We then summed the individual companies' weighted rates to determine the weighted-average country-wide subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Because the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). Two companies (Kajaria and Dinesh) received significantly different net subsidy rates during the review period. These companies would be treated separately for assessment and cash deposit purposes, while all other companies would be assigned the weighted-average country-wide rate. However, because this notice is being published concurrently with the final results of the 1993 administrative review, the 1993 administrative review will serve as the basis for setting the cash deposit rate.

Analysis of Comments

Comment 1

Petitioners argue that the Department must calculate a benefit for the Reserve Bank of India (RBI) refinancing practices that it preliminarily determined to be countervailable. Petitioners assert that the Government of India (GOI) has, by encouraging private banks to lend to the export sector, provided exporters with access to preferential funds that they otherwise would not have had available to them. Domestic firms did not have access to these preferential funds, and the interest rates charged were more preferential than they might have been because the GOI's involvement created a greater differential between rates of interest available on the market to all Indian firms and rates available to the export sector.

Petitioners cite Certain Steel Products from Korea (Steel), 58 FR 37,338 (July 9, 1993) and Oil Country Tubular Goods from Korea (OCTG), 49 FR 46,776, 46,777, 46,784 (November 28, 1994) as support for their contention. Petitioners state that, as the Department recognized in Steel and OCTG, when a government encourages private banks to target a greater proportion of the finite amount of capital that is available to a certain industry (or export sector), this leaves fewer funds for the non-export sector to borrow. Thus, the GOI's provision of refinancing to banks, which encourages banks to make more funds available to the export sector than they otherwise would have provided, in turn making fewer funds available to the non-export sector, has the effect of driving up the cost of financing for non-exporters.

Petitioners assert that even if potential benchmark rates are inflated due to the refinancing program, a substantial gap still exists between the benchmark rates and the refinancing rates. They cite the benchmark used in the preliminary results (15 percent) as well as a lending rate listed in the International Financial Statistics Yearbook (18.92 percent) which are both much higher than the refinance rates (11 and 5.5 percent). They assert that the Department should use the 18.92 percent rate because the RBI rate used in the preliminary results (15 percent) underestimates the benchmark rate.

Respondents contend that the RBI refinancing is not a separate subsidy from the Post-Shipment Export Financing, and hence should not be countervailed. They argue that the refinancing is what allows the banks to give the preferential post-shipment credit and if the Department were to countervail the refinancing, it would be countervailing the same subsidy twice. They add that petitioners' concern over the fact that the refinancing rates are lower than other rates in India is without merit. Respondents state that refinancing rates between central banks and commercial banks are always lower than rates charged by commercial banks to non-bank customers.

Department's Position

Petitioners are correct when they assert that higher rediscount or refinancing ratios provided for export loans may encourage commercial banks to provide export loans over domestic loans and drive up the cost of financing for non-exporters. See section 771(5)(A)(ii) of the Act. In such cases, when we determine that a program provides a preference for lending to exporters rather than non-exporters, we must determine an appropriate way to measure that preference. Normally, we measure the preference by the difference between the interest rates charged on the export loans and the higher interest rates charged on domestic loans. (See *e.g.*, OCTG.) In this case, we consider the higher refinancing ratios provided

on export loans to be the mechanism that allows the banks to provide the Preferential Post-Shipment Financing. We agree with respondents' assertion that countervailing the refinancing would result in double-counting the benefit from the program. Therefore, we have measured the preference as the differential between the program interest rate and the benchmark interest rate.

We believe petitioners' cites to OCTG and Steel are misplaced. In OCTG, the Government of Korea (GOK) set the interest rates for both export and domestic loans at a uniform rate of 10 percent. We stated that if all the other terms and conditions were the same for export and domestic loans then we would find no export subsidy to exist. However, we found that the GOK set different rediscount ratios for export and domestic loans to encourage banks to provide export financing. Because there was no difference in the interest rates which were set for export and domestic loans, we had to devise another method to measure this preference. As such, we measured the preference for export over domestic loans by comparing the 10 percent rate with a weighted average of short-term domestic credit. We considered this measure the best approximation of what firms would pay for export financing if there were not a preference within the banking system for providing loans for export transactions.

In Steel, we found that the GOK provided the steel industry with preferential access to medium- and long-term credit from government and commercial banking institutions. We determined that absent the GOK's targeting of specific industries, all industries would compete on an equal footing for the scarce credit available on the favorable markets. However, because the GOK controlled long-term lending in Korea and placed ceilings on long-term interest rates, there was a limited amount of capital available, which would force companies to resort to less favorable markets. Therefore, we determined that the three-year corporate bond yield on the secondary market was the best approximation of the true market interest rate in Korea.

In this case, we can measure the preference created by the export refinancing using the difference between the interest rates charged on export loans and the interest rates charged on domestic loans. This approach is consistent with our treatment of export loans provided by the Privileged Circuit Exporter Credits Program in Carbon Steel Wire Rod from Spain: Final Affirmative Countervailing Duty Determination (49 FR 19557, May 8, 1984). The use of an alternative method for measuring the preference is not warranted in this case because the interest rates charged on export and domestic loans are not uniform within India. Therefore, we have used our standard short-term loan methodology (see 19 CFR 355.44(3)(b) (1994)) and have not calculated any additional benefit for the higher refinancing ratio provided for export loans.

Comment 2

Petitioners state that the Department improperly failed to countervail the value of advance licenses, because advance licenses are simply export subsidies and not the equivalent of a duty drawback program. First, petitioners contend that the advance licenses are export subsidies as defined by item (a) of the Illustrative List of Export Subsidies (Illustrative List), annexed to the General Agreement on Tariffs and Trade (GATT) Subsidies Code, as they are contingent upon export performance. Petitioners also claim that the advance license program does not meet the criteria of a duty drawback system that would be permissible in light of item (i) of the Illustrative List. They base this claim on the fact that (1) the advance licenses were not limited to use just for importing duty-free input materials because the licenses could be sold to other companies; (2) eligibility for drawback is always contingent upon the claimant demonstrating that the amount of input material contained in an export is equal to the amount of such material imported, which the respondents failed to do; and (3) the GOI made no attempt to determine the amount of material that was physically incorporated (making normal allowances for waste) in the exported product as required under Item (i). For these reasons, petitioners state that the Department should countervail in full the value of advance licenses received by respondents during the period of review.

Respondents state that advance licenses allow importation of raw materials duty free for the purposes of producing export products. They state that if Indian exporters did not have advance licenses, the exporters would import the raw materials, pay the duty, and then receive drawback upon export. Respondents argue that, although advance licenses are slightly different from a duty drawback system because they allow imports duty free rather than provide for remittance of duty upon exportation, this does not make them countervailable. Respondents also rebut petitioners' contention that the GOI has no way of knowing how much imported pig iron is in the exported product. Respondents contend that the Department has verified in prior reviews that the Indian government carefully checks the amount imported under advance licenses and the amount physically incorporated into the exported merchandise. Respondents also state that no advance licenses were sold during the POR.

Department's Position

Petitioners have only pointed out the administrative differences between a duty drawback system and the advance license scheme used by Indian exporters. Such differences do not render the advance license scheme different from a duty drawback system. Similar administrative differences can also be found between a duty drawback system and an export trade zone or a bonded warehouse. Each of these systems has the same function: To allow a producer to import raw materials used in the production of an exported product without having to pay duties.

Companies importing under advance licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are physically incorporated into an exported product is not a countervailable subsidy, if the remission or drawback is not excessive. We determined that respondents used advance licenses in a way that is equivalent to how a duty drawback scheme would work. That is, they used the licenses in order to import, net of duty, raw materials which were physically incorporated into the exported products. We have determined in previous reviews of this order (see, *e.g.*, Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review (Castings 91) (60 FR 44843, August 29, 1995)), based on verified information, that the amount of raw materials imported and reported in the context of this administrative review was not excessive vis-a-vis the products exported. On this basis, we determine that use of the advance licenses was not countervailable.

Comment 3

Petitioners argue that, to the extent that any respondent received CCS or IPRS payments on non-subject castings or sold Replenishment and Exim Scrip Licenses related to non-subject castings, the Department should calculate and countervail the value of CCS and IPRS payments and the sale of licenses

related to non-subject castings in this administrative review. They state that the Department's failure to countervail subsidies on non-subject castings exports is at odds with the language and intent of the countervailing duty law, which applies to any subsidy whether bestowed ''directly or indirectly.'' To support their contention, petitioners cite *Armco, Inc.* versus *United States*, 733 F. Supp. 514 (1990). They also assert that the URAA makes clear that U.S. law continues to countervail benefits that are conferred, regardless of ''whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise.' They argue that subsidies conferred on non-subject castings should be countervailed because these subsidies provide indirect benefits on exports of the subject castings.

Respondents state that petitioners have misapplied the term ''indirectly.'' They state that the CCS, IPRS payments, and proceeds from the sales of licenses relating to other merchandise are not ''indirectly'' paid on subject castings merely because they are paid to the same producer. Respondents argue that there is no benefit—either direct or indirect—to the subject merchandise when benefits are paid on other products. Respondents state that petitioners are making the ''money is fungible'' argument which has never been accepted by the Department. They state the Department should not accept this argument now.

Respondents also object to petitioners' contention that respondents are circumventing the law by claiming more CCS or IPRS on non-subject castings. They claim that there is no basis for petitioners' assertions. In fact, the GOI and the respondent companies have been verified numerous times, and not once has the Department determined that claims for CCS, IPRS or licenses were paid on non-subject castings in a way that circumvents the law.

Department's Position

Section 771(5)(A)(ii) of the Act is concerned with subsidies that are ''paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise''. Petitioners have misinterpreted the term ''indirect subsidy.'' They argue that a subsidy tied to the export of product B may provide an indirect subsidy to product A, or that a reimbursement of costs incurred in the manufacture of product B may provide an indirect subsidy upon the manufacture of product A. As such, they argue that grants that are tied to the production or export of product B, should also be countervailed as a benefit upon the production or export of product A. As explained below, this is at odds with established Department practice with respect to the treatment of subsidies, including indirect subsidies. The term ''indirect subsidies'' as used by the Department refers to the manner of delivery of the benefit which is conferred upon the merchandise subject to an investigation or review. The term, as used by the Department, does not imply that a benefit tied to one type of product also provides an indirect subsidy to another product. The kind of interpretation proposed by petitioners is clearly not within the purview or intent of the statutory language under section 771(5)(A)(ii).

In our Proposed Rules, we have clearly spelled out the Department's practice with respect to this issue. ''Where the Secretary determines that a countervailable benefit is tied to the production or sale of a particular product or products, the Secretary will allocate the benefit solely to that product or products. If the Secretary determines that a countervailable benefit is tied to a product other than the merchandise, the Secretary will not find a countervailable subsidy on the merchandise.'' Section 355.47(a). This practice of tying benefits to specific products is an established tenet of the Department's administration of the countervailing duty law. See, *e.g.*, Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review 52 FR 833, 834–35 (January 9, 1987); Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand, 50 FR 9818, 9823 (March 12, 1985); and Extruded Rubber Thread from Malaysia: Final Results of Countervailing Duty Administrative Review, 60 FR 17515, 17517 (April 6, 1995).

Comment 4

Importers argue that the Department incorrectly calculated the country-wide rate. They state that the Department assigned Kajaria an individual company rate based on the fact that it was significantly different from the weighted-average country-wide rate. However, the Department also included the amount of subsidies found to have been received by Kajaria in calculating the weighted-average country-wide rate. Importers argue this is contrary to the countervailing duty statute because it results in the collection of countervailing duties in excess of the subsidy amounts found by the Department. This is because the inclusion of this high rate in the weighted-average country-wide rate increases the all others' rate and, hence, the amount collected from all other shippers would include a portion of the subsidies received by Kajaria, which are already offset by the collection of the individual rate on Kajaria's shipments. Importers assert that the Department must exclude Kajaria's rate from the all others rate calculations to ensure that the amount collected is equal to, and does not exceed, the actual amount of subsidies that were found.

Respondents agree with importers that the inclusion in the country-wide rate of companies' rates that are ''significantly'' higher than the country-wide rate is improper when those companies are also given their own separate company-specific rates. They argue that this methodology overstates and, in part, double counts the overall benefit from the subsidies received by respondents. Respondents argue that *Ceramica Regiomontana, S.A.* v. *United States*, 853 F. Supp. 431 (CIT 1994) does not require the Department to include ''significantly'' higher rates in calculation of the country-wide rate. They state that a careful reading of that case, as well as *Ipsco Inc.* v. *United States*, 899 F. 2d 1192 (Fed. Cir. 1990), demonstrates that the courts in both cases were only concerned about the over-statement of rates owing to elimination of *de minimis* or zero margins from the country-wide rate calculation. Respondents claim that every company's rate is being pulled up to a percentage greater than it should be because the Department has included in the weighted-average country-wide rate the rates of companies that received their own ''significantly'' higher company-specific rates. Thus, they state that the country-wide rate is excessive for every company to which it applies. Respondents state that, not only is it unfair to charge this excessive countervailing duty, it is also contrary to law, in conflict with the international obligations of the United States, and violative of due process.

Petitioners state that respondents have misread *Ceramica* and *Ipsco*. They state that the plain language of *Ceramica* requires the Department to calculate a country-wide rate by weight averaging the benefits received by all companies by their proportion of exports to the United States inclusive of zero rate firms and *de minimis* firms. Petitioners state that while *Ceramica* and *Ipsco* dealt factually with the circumstances in which respondent companies had lower-than-average rates, the principle on which these cases is based applies equally to instances in which some companies have higher-than-average

rates. They state that the courts have determined that the benefits received by all companies under review are to be weight-averaged in the calculation of the country-wide rate. Therefore, petitioners conclude that the Department followed the clear directives from the court.

Department's Position

We disagree with respondents that ''significantly different'' higher rates (including BIA rates) should not be included in the calculation of the CVD country-wide rate. We further disagree with respondents' reading of *Ceramica* and *Ipsco*. In those cases, the Department excluded the zero and *de minimis* company-specific rates that were calculated before calculating the country-wide rate. The court in *Ceramica,* however, rejected this calculation methodology. Based upon the Federal Circuit's opinion in *Ipsco,* the court held that Commerce is required to calculate a country-wide CVD rate applicable to non-*de minimis* firms by ''weight averaging the benefits received by *all* companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.'' *Ceramica,* 853 F. Supp. at 439 (emphasis on ''all'' added).

Thus, the court held that the rates of *all* firms must be taken into account in determining the country-wide rate. As a result of *Ceramica,* Commerce no longer calculates, as it formerly did, an ''all others'' country-wide rate. Instead, it now calculates a single country-wide rate at the outset, and then determines, based on that rate, which of the company-specific rates are ''significantly'' different.

Given that the courts in both *Ipsco* and *Ceramica* state that the Department should include all company rates, both *de minimis* and non *de minimis,* there is no legal basis for excluding ''significantly different'' higher rates, including BIA rates. To exclude these higher rates, while at the same time including zero and *de minimis* rates, would result in a similar type of country-wide rates bias of which the courts were critical when the Department excluded zero and *de minimis* rates under its former calculation methodology.

Comment 5

Respondents claim that the Department used the incorrect denominator, total exports of subject castings, to calculate the benefit to RSI Ltd. from the Section 80 HHC income tax program.

Department's Position

Upon a review of our calculations, we have determined that we did use the incorrect denominator, exports of subject merchandise, in calculating the benefit to RSI Ltd. from the Section 80 HHC program. For purposes of these final results, we have corrected our calculations by using total export sales of all merchandise as the denominator for this calculation.

Comment 6

Respondents argue that the Department has incorrectly calculated preshipment interest for two of RB Agarwalla's loans. First, respondents claim that the Department assumed that RB Agarwalla Pre-Shipment Export Financing loans taken on October 30, 1991 and November 16, 1991 ran for 17 days plus 53 days, for a total of 70 days. Respondents state that only 19 days of interest should be considered for the 1992 calculation, since much of the interest was not paid in the period of review. In the second case, regarding loans from the Hongkong & Shanghai Banking Corporation to RB Agarwalla, respondents claim that the Department failed to take into account an interest payment made in 1992. According to respondents, the Department assumed incorrectly that the interest was paid in 1991. This interest accrued during 1991 but was actually paid during 1992 and should, therefore, be included in the calculation of preshipment interest for 1992.

Department's Position

Upon a review of our calculations, we have determined that we did use the incorrect number of days to calculate the benefit to RB Agarwalla from certain of its preshipment loans. We have corrected our calculations by using 19 days rather than 70, as we determined that interest was calculated for those days in the 1991 review. Additionally, we have included RB Agarwalla's interest payment in our calculation of the interest paid by RB Agarwalla during 1992.

Comment 7

Respondents claim that the Department used the incorrect denominator, RB Agarwalla's sales of subject castings, in its calculation of the benefit to RB Agarwalla from the Pre-Shipment Export Financing Program. According to respondents, the correct denominator for calculating the benefit is total exports of all products during the POI.

Department's Position

Upon a review of our calculations, we have determined that we did use the incorrect denominator, exports of subject merchandise, in calculating the benefit to RB Agarwalla from the Pre-Shipment Export Financing program. For purposes of these final results, we have corrected our calculations by using total exports of all merchandise to all markets as the denominator.

Comment 8

Respondents claim that the Department's calculation of Pre-shipment Export Financing loans includes loans that are not included in Kejriwal's list of loans. Therefore, these loans should not be included in the Department's calculation.

Petitioners disagree with respondents' claim. They assert, based on proprietary information, that the Department has actually underestimated the benefit provided to Kerjriwal by the Pre-Shipment Export financing program because there is no evidence that these loans were paid off during the review period.

Department's Position

We disagree with respondents. The loans to which respondents refer are not new loans but rather unpaid balances on existing loans. Kejriwal did not report its remaining payments on these loans in its 1992 questionnaire responses. Additionally, we have checked the public record of the 1993 administrative review and discovered that Kejriwal reported not having used this program during 1993. Based on these facts, in our preliminary results of review, we calculated a benefit based on the assumption that Kejriwal paid the loan off in 180 days. However, as petitioners have argued, we may have underestimated the benefit as we have no evidence on the record to indicate that Kejriwal paid off this loan during the review period. Therefore, for purposes of this review period, we have calculated interest on the unpaid balance through the end of 1992 for both of these loans.

Comment 9

Respondents state that the Department has incorrectly countervailed the sale of an additional license by Kejriwal during the period of review. Respondents state that all licenses listed in the company's response were earned on sales of industrial castings or on sales of subject castings to markets other than the United States. Therefore, the Department should not consider the sale

of the license as a subsidy when it calculates Kejriwal's benefits.

Petitioners state that the Department was correct in finding that the sale of an additional license by Kejriwal is a subsidy on subject castings.

Department's Position

Upon a review of our calculations and Appendix J of Kejriwal's May 9, 1994, response, we have determined that Kejriwal did receive its additional license for non-subject merchandise. Therefore, we are not calculating a benefit from Kejriwal's sale of this additional license for purposes of these final results of review.

Comment 10

Respondents state that countervailing the Pre- and Post-Shipment Export Financing programs, the sale of import licences and the income tax deductions under Section 80 HHC of the Income Tax Act double counts the subsidy from the financing programs and import license sales. They argue that, under Section 80 HHC, earnings from the sale of licenses are considered export income which may be deducted from taxable income to determine the tax payable by the exporter. Therefore, respondents argue that, because proceeds from the sale of licenses are also part of the deductions under Section 80 HHC, to countervail the payments and the deduction results in double counting the subsidy from the sale of licenses. Additionally, the Department is double counting the subsidy by countervailing both the financing programs and the 80 HHC tax deduction. Respondents assert that the financing programs reduce the companies' expenses in financing exports, which in turn, increases profits on export sales. Because the 80 HHC deduction increases as export profits increase, the financing programs increase the 80 HHC deduction. Thus, countervailing the financing programs and the 80 HHC deduction means the benefit to the export is countervailed twice.

Respondents argue that adjusting the tax deduction in order to avoid double counting should not be considered offsetting the subsidy as provided by section 771(6) of the Act. Under that section, deductions are allowed because they represent actual costs to the exporter which lessen the benefit on the subsidy to the exporter. Respondents also assert that the Department's treatment of secondary tax effects is also not relevant in this case. The issue in this case is whether the same subsidy is being countervailed twice, not whether the ''after tax benefit'' is somehow less than the nominal benefit.

Petitioners assert that respondents benefit from both the preferential financing programs and sale of import licenses as the programs ultimately increase their profits and their total income. Respondents further benefit because they are able to use the 80 HHC program to eliminate or reduce the taxes owed on these increased profits and income. Therefore, the Department should use the same methodology for calculating the benefit from these programs as it used in its analysis for the preliminary results of review.

Department's Position

Contrary to respondents' arguments, the same subsidy is not being countervailed twice. The 80 HHC income tax exemption is a separate and distinct subsidy from the pre- and post-shipment export financing subsidy and the sale of import licenses subsidy. The pre- and post-shipment financing programs permit exporters to obtain short-term loans at preferential rates. The benefit from that program is the difference between the amount of interest the respondents actually pay and the amount of interest they would have to pay on the market. The interest enters the accounts as an expense or cost, just like hundreds of other expenses. There is no way to determine what effect a reduced interest expense has on a company's profits because there are so many variables (not just countervailable subsidies) that enter into, and affect, a company's costs. In order to consider the effect that such reduced interest expense would have on profits, all of the other variables that affect profits (all other revenues and expenses) would have to be isolated. Similarly, the revenue from the sale of import licenses is considered to be a grant to the company, and that grant constitutes the benefit. The revenue a company receives from the sale of the licenses may enter the accounts as income, or it may enter the accounts as a reduction in costs. Because all the income and expenses from all sources enters into the calculation of a company's profit (or loss), there is no way to determine what effect the countervailable grant has on a company's profit.

Respondents suggest that the Department attempt to isolate the effect of the countervailable grants and loans on the company's profits and, once that effect is determined, alter the measurement of the benefit of the 80 HHC program to reflect the effect of the countervailable grants and loans. As stated in the Proposed Regulations under section 355.46(b), this is something the Department does not do; ''In calculating the amount of countervailable benefit, the Secretary will ignore the secondary tax consequences of the benefit.'' To factor in the effect of other subsidies on the calculation of the benefit from a separate subsidy undermines the principle that we do not, and are not required to, consider the effects of subsidies on a company's profits or financial performance.

In all of the cases where we have actually examined both grant and loan programs, as well as income tax programs (either exemptions or reductions), this principle has been applied even though it has not been expressly discussed. For example, in the Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, 58 FR 37273 (July 29, 1993), the Department found cash grants and interest subsidies under the Economic Expansion Law of 1970 to constitute countervailable subsidies. 58 FR at 37275–37276. At the same time, the Belgian government exempted from corporate income tax grants received under the same 1970 Law. 58 FR at 37283. The Department found the exemption of those grants from income tax liability to be a countervailable subsidy. *Id.* Significantly, it did not examine the tax consequences of the tax exemption of the grants. See also Final Affirmative Countervailing Duty Determination: Certain Pasta From Turkey, 61 FR 30366 (June 14, 1996), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia, 57 FR 38472 (Aug. 25, 1992).

In this case, because all companies' profits are taxable at the corporate tax rate, an exemption of payment of the corporate tax for specific enterprises or industries constitutes a countervailable subsidy. The amount of the benefit is equal to the amount of the exemption. The countervailable grant may or may not have contributed to the taxable profits, but the grant does not change the amount of the exemption that the government provided, and countervailing the tax exemption does not overcountervail the grant.

Respondents claim that they are not asking us to consider the secondary tax consequences of subsidies—yet they are asking us to consider the effect of the grant and loan subsidies in the valuation of the tax subsidy. As stated above, we do not adjust the calculation of the subsidy to take into consideration the effect of another subsidy. This would be akin to an offset, and the only

permissible offsets to a countervailable subsidy are those provided under section 771(6) of the Act. Such offsets include application fees paid to attain the subsidy, losses in the value of the subsidy resulting from deferred receipt imposed by the government, and export taxes specifically intended to offset the subsidy received. Adjustments which do not strictly fit the descriptions under section 771(6) are disallowed. (See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Extruded Rubber Thread from Malaysia 57 FR 38472 (August 25, 1992).)

It is clear that the 80 HHC program is an export subsidy; it provides a tax exemption to exporters that other companies in the economy do not receive. This is not a secondary consequence of a grant or loan program. Rather it is the primary consequence of a particular government program designed to benefit exporters. Just as we do not consider the effect of the standard tax regime on the amount of the grant to be countervailed, we do not consider the effect of other subsidy programs on the amount of tax exemption to be countervailed. Accordingly, we continue to find these programs to be separate and distinct subsidies and to find that no adjustment to the calculation of the subsidy for any of the programs is necessary.

Comment 11

Respondents state that the Department preliminarily found that several programs, including IPRS, CCS, the sales of licenses, and another program involving duty drawback, did not benefit sales of subject castings to the United States. Respondents argue that, regardless of the fact that none of the income earned through these programs benefitted subject castings exported to the United States, the Department still countervailed the deduction of this income. Respondents suggest that income from the CCS, IPRS, duty drawback, and sales of licenses should not be included in the calculation of 80 HHC benefits. Respondents are not suggesting that the Department offset the subsidy or disregard secondary tax effects. They are stating that because the income does not relate to subject castings, the unpaid tax on this income cannot be a subsidy benefitting the subject merchandise.

Respondents also argue that the Department overstated Kajaria's benefits from the Section 80 HHC Income Tax Deduction program by not factoring out its greater profits made on exports of non-subject castings. They assert that the Department should not include the profit earned on non-subject castings in its 80 HHC calculation.

Petitioners state that the Department has correctly countervailed the benefits received under the 80 HHC program. They argue that respondents have failed to recognize that the Department has countervailed this program because it provides a subsidy associated with the export of all goods and merchandise. Petitioners add that no new information has been provided in this review to suggest that the Department should change its calculations. They assert that the Department should reject Kajaria's claim that its 80 HHC benefits are overstated.

Department's Position

We disagree with respondents' assertion that we incorrectly calculated the benefit provided by the 80 HHC program. Again, respondents are, in effect, requesting the Department to trace specific revenues in order to determine the tax consequences on such revenues. As we explained above in Comment 10, this is something the Department does not do and is not required to do.

Further, it is our practice, in the case of programs where benefits are not tied to the production or sale of a particular product or products, to allocate the benefit to all products produced by the firm. (See e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey 61 FR 30366, 30370 (June 14, 1996).) In this case, because the 80 HHC program is an export subsidy not tied to specific products, we appropriately allocated the benefit over total exports. We have used this methodology to calculate benefits from the 80 HHC program in previous reviews of this order.

Final Results of Review

For the period January 1, 1992 through December 31, 1992, we determine the net subsidies to be 0.00 percent *ad valorem* for Dinesh Brothers, Pvt. Ltd., 13.99 percent for Kajaria Iron Castings Pvt. Ltd., and 6.02 percent *ad valorem* for all other companies. Because this notice is being published concurrently with the final results of the 1993 administrative review, the 1993 administrative review will serve as the basis for setting the cash deposit rate.

This notice serves as the only reminder to parties subject to APO of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with section 355.34(d) of the Proposed Regulations. Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31106 Filed 12–5–96; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Orlando, Jacksonville, Tampa, Bronx, Brooklyn and Brownsville

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) program to operate the Orlando, Jacksonville and Tampa, Bronx, Brooklyn, and Brownsville MBDCs. The Orlando, Jacksonville, Tampa, Bronx and Brooklyn solicitations were originally published in the Federal Register, Thursday, June 6, 1996, Vol. 61, No. 110, Pages 28847 and 28851. The Brownsville MBDC solicitation was published on Wednesday, June 12, 1996, Vol. 61, No. 14, Page 29738.

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: December 2, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–31036 Filed 12–5–96; 8:45 am]

BILLING CODE 3510–21–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act

TIME AND DATE: 10:00 a.m., Tuesday, December 10, 1996.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Crib Slats

The Commission will consider options to address hazards related to the structural integrity of side rail slats on cribs.

2. Petition CP 96–1 on Multi-Purpose Lighters

The staff will brief the Commission on Petition CP 96–1, from Judy L. Carr, requesting the Commission to amend the safety standard for cigarette lighters to include multi-purpose lighters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 4, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–31245 Filed 12–4–96; 2:13 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmital No. 97–03]

36(b) Notification; Arms Sales

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassifed text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD. (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 97–03, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: December 1, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

15 NOV 1996

In reply refer to:
I-05484/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-03, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Germany for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Germany

(ii) Total Estimated Value:

Major Defense Equipment*	$18 million
Other	$ 9 million
TOTAL	$27 million

(iii) Description of Articles or Services Offered:
Four HARPOON Shipboard Command and Launch Control Systems (HSCALCS), hardware/software for shipboard installation and checkout of launcher systems, technical services to support shipboard installation, software integration, system checkout/acceptance testing and engineering analysis, personnel training and training equipment, special support and test equipment including a HARPOON Guided Missile Simulator (HGMS), spare and repair parts, publications and technical documentation, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Navy (LFG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached

(vii) Date Report Delivered to Congress: 15 NOV 1996

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Germany - HARPOON Missile Shipboard Launcher Systems

The Government of Germany has requested the purchase of four HARPOON Shipboard Command and Launch Control Systems (HSCALCS), hardware/software for shipboard installation and checkout of launcher systems, technical services to support shipboard installation, software integration, system checkout/acceptance testing and engineering analysis, personnel training and training equipment, special support and test equipment including a HARPOON Guided Missile Simulator (HGMS), spare and repair parts, publications and technical documentation, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $27 million.

This sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of Germany; furthering standardization and interoperability of naval shipboard systems; and enhancing the defense of Western Europe.

Germany plans to install this HARPOON shipboard equipment on new construction frigates in order to improve its surface warfare capability. Germany has HARPOON missiles in its inventory and therefore will have no difficulty absorbing this additional HARPOON equipment into its armed forces.

The sale of this HARPOON equipment will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, Saint Louis, Missouri. There may be one or more offset agreements entered into in connection with this proposed sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Germany.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HARPOON Shipboard Equipment Weapons Control Console is classified Confidential. The Fault Isolation Kit, an item of special test equipment, is classified Confidential as are the preprogrammed computer boards used on the HARPOON Guidance Missile Simulator. Operational and maintenance manuals and system related technical data which provide information on system vulnerabilities are classified Confidential.

2. If a technologically capable adversary were to obtain knowledge of this equipment, it is possible that countermeasures could be developed thereby reducing overall weapon system effectiveness.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 96–31066 Filed 12–5–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 97–02]

36(b) Notification; Arms Sales

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the re1uirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 97–02, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: December 1, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

15 NOV 1996

In reply refer to:
I-05483/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-02, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: The Netherlands

(ii) Total Estimated Value:

Major Defense Equipment*	$18 million
Other	$ 9 million
TOTAL	$27 million

(iii) Description of Articles or Services Offered:
Four HARPOON Shipboard Command and Launch Control Systems (HSCALCS), hardware/software for shipboard installation and checkout of launcher systems, technical services to support shipboard installation, software integration, system checkout/acceptance testing and engineering analysis, personnel training and training equipment, special support and test equipment including four HARPOON Guided Missile Simulators (HGMS), spare and repair parts, publications and technical documentation, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Navy (LFM, Amendment 1)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached

(vii) Date Report Delivered to Congress: 15 NOV 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands - HARPOON Missile Shipboard Launcher Systems

The Government of the Netherlands has requested the purchase of four HARPOON Shipboard Command and Launch Control Systems (HSCALCS), hardware/software for shipboard installation and checkout of launcher systems, technical services to support shipboard installation, software integration, system checkout/acceptance testing and engineering analysis, personnel training and training equipment, special support and test equipment including four HARPOON Guided Missile Simulators (HGMS), spare and repair parts, publications and technical documentation, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $27 million.

This sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of the Netherlands; furthering standardization and interoperability of naval shipboard systems; and enhancing the defense of Western Europe.

The Netherlands plans to install this HARPOON shipboard equipment on new construction frigates in order to improve its surface warfare capability. The Netherlands has HARPOON missiles in its inventory and therefore will have no difficulty absorbing this additional HARPOON equipment into its armed forces.

The sale of this HARPOON equipment will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, Saint Louis, Missouri. There may be one or more offset agreements entered into in connection with this proposed sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HARPOON Shipboard Equipment Weapons Control Console is classified Confidential. The Fault Isolation Kit, an item of special test equipment, is classified Confidential as are the preprogrammed computer boards used on the HARPOON Guidance Missile Simulator. Operational and maintenance manuals and system related technical data which provide information on system vulnerabilities are classified Confidential.

2. If a technologically capable adversary were to obtain knowledge of this equipment, it is possible that countermeasures could be developed thereby reducing overall weapon system effectiveness.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 96–31067 Filed 12–5–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 97–04]

36(b) Notification; Arms Sales

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 97–04, with attached transmittal and policy justification pages.

Dated: December 1, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

15 NOV 1996

In reply refer to:
I-05485/96

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-04, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $50 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 97-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Spain

(ii) Total Estimated Value:

Major Defense Equipment*	$39 million
Other	$11 million
TOTAL	$50 million

(iii) Description of Articles or Services Offered:
Twenty vehicles, with ancillary equipment, from the family of Assault Amphibious Vehicles (AAV), communications equipment, 17 HBM2 .50 caliber machine guns, 17 M19 40MM machine guns, 17 M257 smoke grenade launchers, two M240 7.62 machine guns, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support.

(iv) Military Department: Navy (SCP)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 15 NOV 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain - Assault Amphibious Vehicles

The Government of Spain has requested the purchase of 20 vehicles, with ancillary equipment, from the family of Assault Amphibious Vehicles (AAV), communications equipment, 17 HBM2 .50 caliber machine guns, 17 M19 40MM machine guns, 17 M257 smoke grenade launchers, two M240 7.62 machine guns, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support. The estimated cost is $50 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Spain.

Spain will use this new equipment as replacements for its current inventory of amphibious vehicles, previously procured from the United States Government, and to modernize and strengthen its Naval operational amphibious capability in support of national defense objectives. Having had previous operational experience with amphibious vehicles, Spain will have no difficulty absorbing this new equipment into its armed forces.

The sale of these vehicles and support will not affect the basic military balance in the region.

The Assault Amphibious Vehicles will be procured for Spain through a competitive procurement. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–31068 Filed 12–5–96; 8:45 am]
BILLING CODE 5000–04–C

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the United States Department of Agriculture and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the United States Department of Agriculture (USDA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between USDA and DoD that their records are being matched by computer. The record subjects are USDA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under the Food Stamp Program administered by USDA so as to permit USDA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective January 6, 1997, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: MR. AURELIO NEPA, JR. AT TELEPHONE (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and USDA has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that USDA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between USDA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the USDA, 14th and Independence Avenue, SW, Room 143-West, Washington, DC 20250. Telephone (202) 720–1168.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the Federal Register at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 21, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: December 1, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the United States Department of Agriculture and the Department of Defense for Debt Collection

A. *Partipating agencies:* Participants in this computer matching program are the United States Department of Agriculture (USDA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USDA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of this agreement, USDA will provide and disclose certain food stamp debtor records to DMDC so that DMDC can identify and locate any Federal personnel, employed or retired from service with the Federal Government, who may owe delinquent debts to the Federal Government for overissued Food Stamp Program benefits. USDA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act when voluntary payment is not forthcoming. These collection efforts will include requests by USDA of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for computing the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716, Administrative Offset, 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 7 U.S.C. 2022 (Collection and Disposition of Claims); 10 U.S.C. 136, Assistant Secretaries of Defense; Section 101(l) of Executive Order No. 12674; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108, Collection by Offset from Indebted Government Employees (OPM); 7 CFR part 3, Debt Management (Agriculture); 7 CFR 273.18 (Claims against households).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are

USDA will use records from the system of records published as Claims Against Food Stamp Recipients--USDA FNS–3, last published at 56 FR 50552 on October 7, 1991, and amended at 58 FR 48633 on September 17, 1993.

DoD will use the record system identified as S322.11 DMDC, entitled

'Federal Creditor Agency Debt Collection Data Base', last published in the Federal Register at 61 FR 32779 on June 25, 1996.

E. *Description of computer matching program:* USDA, as the source agency, will provide DMDC with magnetic tapes which contain the names of certain debtors who are delinquent in paying for overissued food stamp benefits. Upon receipt of the computer tape files of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the USDA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DoD, OPM, OMB and the Treasury Department, consists of employment records of Federal employees and military members, active and retired. Matching records ('hits'), based on the SSN, will produce the debtor's name, service or agency, category, and current work and/or home address. The hits or matches will be furnished to USDA. USDA is responsible for verifying and determining that the data on the DMDC reply tape files are consistent with USDA source files and for resolving any discrepancies or inconsistencies on an individual basis. USDA is also responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between USDA and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 96–31069 Filed 12–5–96; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Notice to Alter a Record System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a record system.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration will expand the 'Categories of individuals covered by the system' to include military personnel, and adds Equal Employment Opportunity statistics (i.e., age, handicap status, race and national origin) to the 'Categories of records in the system'.

DATES: The alteration will be effective on January 6, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of the Staff Director, Public Affairs, HQ Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 20, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 1, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S233.10 DLA-KW

SYSTEM NAME:

Work Assignment, Performance and Productivity Records and Reporting Systems *(February 22, 1993, 58 FR 10864).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S900.20 CA.'

SYSTEM NAME:

Delete entry and replace with 'Workforce Composition, Workload, and Productivity Records.'

SYSTEM LOCATION:

Delete entry and replace with 'Primary database location: Headquarters, Defense Logistics Agency, Corporate Performance Office, 8725 John J. Kingman Road, Suite 2533 Fort Belvoir, VA 22060–6221.

Decentralized locations: Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Military and civilian personnel assigned to the Defense Logistics Agency.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The primary database contains name, Social Security Number, date of birth, job series, position number, pay plan, geographic location, tenure group, EEO statistics (sex, race, national origin, handicap status), and current employment status with DLA.

Decentralized locations may, in addition, contain descriptions of individual work assignments, hours expended against particular assignments or categories of assignments, cost accounting codes and similar workload data.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of authority; 5 U.S.C. Ch. 61, Hours of Work; 5 U.S.C. 1104, Delegation of authority for personnel management; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Part II, Personnel; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To provide on-screen information data and statistics to officials of DLA for use in manpower management and manpower studies; to provide senior management and EEOC officials with workforce composition statistics.

Information at decentralized segments is used by the record subject's immediate supervisor and other appropriate management officials to schedule and track individual work assignments; to record and control workload; and to report workload requirements.'

* * * * *

STORAGE:

Delete entry and replace with 'Records are maintained in paper and electronic form.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by individual's name or Social Security Number. Paper files may also be retrieved chronologically, by project, or by type of assignment.'

SAFEGUARDS:

Delete entry and replace with 'Records are stored in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. The primary database is password protected with access limited to the system administrator and the system administrator's immediate or higher level supervisors.

Information at decentralized segments is password protected with access limited to the subject's immediate supervisor and other appropriate management officials.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records in the primary database are purged and replaced every 45 days. Decentralized segments are retained so long as the individual is engaged in the same work within the same organizational segment, but in no case longer than 5 years. Records are destroyed when the individual leaves the job or the organizational unit or when 5 years have elapsed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Staff Director, Corporate Performance Office, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is provided from existing records; employees and members; supervisors; and team leaders.'

* * * * *

S900.20 CA

SYSTEM NAME:

Workforce Composition, Workload, and Productivity Records.

SYSTEM LOCATION:

Primary database location: Headquarters, Defense Logistics Agency, Corporate Performance Office, 8725 John J. Kingman Road, Suite 2533 Fort Belvoir, VA 22060–6221.

Decentralized locations: Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel assigned to the Defense Logistics Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The primary database contains name, Social Security Number, date of birth, job series, position number, pay plan, geographic location, tenure group, EEO statistics (sex, race, national origin, handicap status), and current employment status with DLA.

Decentralized locations may, in addition, contain descriptions of individual work assignments, hours expended against particular assignments or categories of assignments, cost accounting codes and similar workload data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 5 U.S.C. Ch. 61, Hours of Work; 5 U.S.C. 1104, Delegation of authority for personnel management; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Part II, Personnel; and E.O. 9397 (SSN).

PURPOSE(S):

To provide on-screen information data and statistics to officials of DLA for use in manpower management and manpower studies; to provide senior management and EEOC officials with workforce composition statistics.

Information at decentralized segments is used by the record subject's immediate supervisor and other appropriate management officials to schedule and track individual work assignments; to record and control workload; and to report workload requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records and information contained therein may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Retrieved by individual's name or Social Security Number. Paper files may also be retrieved by chronologically, by project, or by type of assignment.

SAFEGUARDS:

Records are stored in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. The primary database is password protected with access limited to the system administrator and the system administrator's immediate or higher level supervisors.

Information at decentralized segments is password protected with access limited to the subject's immediate supervisor and other appropriate management officials.

RETENTION AND DISPOSAL:

Records in the primary database are purged and replaced every 45 days. Decentralized locations are retained so long as the individual is engaged in the same work within the same organizational segment, but in no case longer than 5 years. Records are destroyed when the individual leaves the job or the organizational unit or when 5 years have elapsed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Corporate Performance Office, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort

Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA-CAAV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA-CAAV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided from existing records; employees and members; supervisors; and team leaders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–31070 Filed 12–5–96; 8:45 am]

BILLING CODE 5000–04–F

Department of the Navy

Notice of Record of Decision on the Realignment of Naval Air Station (NAS) Miramar, San Diego, California

SUMMARY: The Department of the Navy has decided to realign NAS Miramar into Marine Corps Air Station (MCAS) Miramar. This decision is made upon careful consideration of all comments on the Environmental Impact Statement (EIS) prepared for the realignment action. After review of the administrative record and information received during the environmental review process, the Department of the Navy has determined that no new significant environmental information or circumstances exist. Consequently, the Department of the Navy has determined that a supplemental EIS is not warranted. It has been decided to implement the realignment action using the West-Ramp configuration (Alternative B), which was both the preferred alternative and also the environmentally preferred alternative.

DATES: This ROD becomes effective December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this ROD or the Miramar realignment action may be obtained from Lieutenant Colonel George Martin at (619) 537–6679.

SUPPLEMENTARY INFORMATION: The text of the entire ROD is provided as follows:

Table of Contents

1. Introduction

The Department of the Navy (DoN) has been studying a proposal to realign Marine Corps Aviation assets from MCAS El Toro and MCAS Tustin to other locations in Southern California. The realignment would include Marine Corps aircraft, their dedicated personnel, equipment and support. The realignment would be undertaken in accordance with the Defense Base Closure and Realignment Act (BRAC) of 1990 (Pub. L. 101–510). The DoN has conducted extensive analysis of the proposal under Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality (CEQ) regulations implementing NEPA procedures (40 C.F.R. 1500–1508). The process used for the analysis sought the views of the public and those Federal, State and local agencies with special expertise. As a result of extensive interest shown by the public, the process was extended to provide the public with additional information and an additional opportunity to comment. Their comments have been carefully considered and have helped identify and resolve a number of issues and to sharpen the analysis. A number of the most important issues, and the manner in which they have been resolved, are set out in this Record of Decision. Having reviewed the Final Environmental Impact Statement, the Supplemental Information Report, and all the comments and the administrative record in this matter, the Department of the Navy (DoN) announces its decision to proceed with the realignment of NAS Miramar to MCAS Miramar.

2. Proposed Action

In compliance with the approved recommendations of the 1993 and 1995 Defense Base Closure Commissions, the proposed action is the relocation of Marine Corps aircraft, along with their dedicated personnel, equipment and support, from MCAS El Toro and MCAS Tustin to NAS Miramar and the conversion of NAS Miramar to MCAS Miramar. The relocation of aircraft and conversion from a Navy to Marine Corps Air Station involves: Replacement of Navy fixed-wing aircraft (including associated maintenance and support functions) designated for realignment to other Naval Air Stations with U.S. Marine Corps fixed-wing aircraft (including maintenance and support functions); the addition of rotary-wing (helicopter) aviation squadrons (including maintenance and support functions); construction of facilities to meet the requirements of the Marine Corps; use and modification of existing fixed-wing flight corridors; designation of new rotary-wing flight corridors, an increase in fixed-wing missions that involve carrying air-to-ground ordnance for use at training ranges; establishment of Confined Area Landing (CAL)/ Mountainous Area Landing (MAL) sites; and adoption of Marine Corps flight procedures. Upon full implementation of the proposed action, MCAS Miramar will support approximately 256 aircraft (eight rotary-wing squadrons and nine fixed-wing squadrons), and approximately 11,000 personnel.

3. Purpose and Need

The purpose and need of the proposed action is to comply with the 1993 and 1995 BRAC Commissions' recommendations for the closure of MCAS El Toro and MCAS Tustin and relocation of MCAS El Toro and MCAS

Tustin aircraft, along with their dedicated personnel, equipment, and support, in a manner that supports the Marine Corps force structure.

4. Background

This action was initiated following Congress' approval of the 1993 recommendations of the Defense Base Closure and Realignment Commission established under the Defense Base Closure and Realignment Act of 1990, Public Law 101–510. Pursuant to that law, recommendations of the Commission become final if the President sends them to Congress and Congress does not reject them within 45 legislative days. Once recommendations become final, 10 U.S.C. 2904 requires that the closures and relocations must be implemented within six years. The 1993 recommendations included the closure of MCAS El Toro and direction to ''Relocate its aircraft along with their dedicated personnel, equipment and support to other naval air stations, primarily, Naval Air Station (NAS) Miramar, California, and MCAS Camp Pendleton, California.'' Included in the same Commission action was a change to the 1991 BRAC Commission's recommendations for MCAS Tustin, which had named Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms as one of the receiving sites for helicopter assets being realigned from MCAS Tustin. The BRAC 93 Commission deleted MCAGCC as a receiving site and directed relocation to ''NAS North Island, NAS Miramar, or MCAS Camp Pendleton, California.'' In BRAC 95, the Commission again altered the receiving site for assets realigned from MCAS Tustin by striking the three potential sites listed in BRAC 93 and substituting ''other air stations consistent with operational requirements.''

The proposed action is one of several steps to implement the BRAC recommendations. In January 1994, the Marine Corps prepared an Environmental Assessment (EA) for the temporary relocation of eight MCAS El Toro tactical F/A–18 squadrons and certain support elements to Miramar, replacing 12 squadrons of Navy F–14s. The EA concluded that the temporary relocation of the F/A–18s, operating within existing NAS Miramar flight procedures, would have no significant impact on the environment. A Finding of No Significant Impact (FONSI) was made in July 1994. The temporary relocation that was evaluated by the EA has since been completed. In another interim move subsequent to the BRAC 95 decision, and unrelated to the selection of permanent relocation sites, all of MCAS Tustin's CH–46Es (medium lift helicopters) were temporarily relocated to MCAS El Toro in order to facilitate placing a significant portion of MCAS Tustin in caretaker status. The relocation of four of these medium lift helicopter squadrons to MCAS Camp Pendleton is the subject of a separate EIS.

The analysis undertaken for relocation of assets and conversion of NAS Miramar to MCAS Miramar in the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) assumed that as many as eleven fixed-wing and ten rotary-wing squadrons would be assigned to Miramar (The Supplemental Information Report (SIR), discussed below, contained a typographical error that stated the DEIS and FEIS evaluated the relocation of nine vice ten rotary-wing squadrons to Miramar). The Marine Corps, through force structure decisions, has decommissioned one fixed-wing (F/A–18) squadron previously assigned to MCAS El Toro and transferred another fixed-wing (F/A–18) squadron to MCAS Iwakuni, Japan. In separate actions to implement the overall direction of BRAC and meet force structure requirements, one MCAS Tustin rotary-wing squadron has been relocated to MCAS New River, and another rotary-wing squadron has been relocated to Marine Corps Base (MCB), Hawaii. Thus, realignment will actually include only nine fixed-wing and eight rotary-wing squadrons. Consequently, much of the EIS analysis overstates the projected impacts for this action. Further clarification on the overstatement of impacts was provided in a Supplemental Information Report (SIR).

Although neither addressed by NEPA, nor directed by CEQ Regulations, the Department of the Navy determined that the use of a Supplemental Information Report to address comments on the FEIS would serve as a vehicle for a more thorough discussion of matters over which there remained public concern. The SIR and the public comment it generated would also provide the final decision maker with a more detailed analysis for consideration in coming to a decision, thereby furthering the purposes of NEPA. The SIR was published on September 6, 1996, with a 30 day public comment period.

The Department of the Navy received and has considered 277 letters from the interested public during the comment period on the FEIS. It also received and has considered 825 letters from the interested public during the comment period on the SIR. While the SIR substantially addressed comments received on the FEIS, some of the primary issues are re-addressed in this Record of Decision.

5. Alternatives

NEPA and the CEQ regulations require the Department of the Navy to study and evaluate a reasonable range of alternatives for accomplishing the purpose and need underlying the proposed action. Because the underlying purpose and need of the realignment of assets from MCAS El Toro and MCAS Tustin is to satisfy BRAC mandates designed to reduce infrastructure, costs, and personnel requirements, alternative sites that did not contribute to such reductions did not fall within the range of reasonable alternatives and did not warrant detailed, comparative analysis. For alternatives that were initially identified but subsequently eliminated from detailed study, regulations require the Department of the Navy only to discuss briefly the reasons for their having been eliminated.

Potential receiving sites for the assets to be realigned from MCAS El Toro and MCAS Tustin were screened on the basis of several criteria: (1) Realignment recommendations approved by the President and accepted by Congress in BRAC 93 and 95; (2) operational requirements; (3) infrastructure required to support the realigned assets; and, (4) personnel requirements.

To achieve the economies that were basic to BRAC, Marine Corps force structure relies on the location of installations to form interdependent, mutually supporting regional complexes on the East Coast, West Coast, and in the Pacific. In order to meet operational and mission requirements, the selected receiving site(s) should be in close proximity to the established regional complex. MCAS El Toro and MCAS Tustin are located within the West Coast regional complex. Receiving sites for the realigned assets therefore need to lie within the West Coast region. The Marine Corps regional complex on the West Coast is centered around MCB Camp Pendleton, CA.

Five possible locations were identified within the West Coast region: MCAS Camp Pendleton, NAS North Island, NAS Miramar, Naval Air Facility (NAF) El Centro, and March Air Reserve Base (March ARB). These five sites were then evaluated based upon operational requirements (including the ability to conduct aircraft carrier landing practice and access to high performance air combat maneuvering airspace), infrastructure (including identification of requirements for runways, hangars, and maintenance and support facilities,

as well as the cost of modernizing or building those facilities), and personnel requirements (including Congressional limitations on end-strength).

All locations except NAS Miramar were determined to be unreasonable and were eliminated from the range of alternatives that would be subjected to detailed study and analysis so that the analysis in the EIS could be focused upon reasonable alternatives. The FEIS discussed why the Department of the Navy determined that locations other than NAS Miramar could not reasonably achieve the purpose and need for the proposal. Further clarifying information on the criteria used to evaluate feasibility and the basis for eliminating alternatives from detailed discussion were provided in the SIR. An independent Department of Defense review also confirmed that locations other than NAS Miramar (specifically March ARB) could not reasonably achieve the purpose and need for the proposal.

The FEIS identified Miramar as the preferred location for the fixed-wing aircraft realigned from MCAS El Toro and most of the rotary-wing aircraft realigned from MCAS Tustin. Three alternative site configurations at MCAS Miramar (East Ramp (A), West Ramp (B), and East Ramp II (C)) were analyzed in detail. A no-action alternative, which would not realign aircraft from MCAS El Toro and MCAS Tustin and thereby prohibit closure, was not evaluated in the EIS because BRAC exempts from consideration under NEPA the need for closing a military installation and the need for realigning functions from closing installations to other receiving installations.

Some comments asserted that a no-action alternative should have been used to establish baselines for the proposed action. The suggested no-action alternative would consist of operating NAS Miramar at the reduced levels it has operated while the Navy realigns assets elsewhere. This no-action alternative would ignore the reasons for the reduced Navy operations. The Department of the Navy did develop and use a no-action alternative for NAS Miramar. Because the BRAC recommendations relocated Navy aircraft from NAS Miramar to make way for realigned Marine Corps aircraft, the no-action alternative considered the environmental impacts associated with operating NAS Miramar as if no Marine Corps aircraft were realigned there and it continued to operate entirely with Navy aircraft, using Navy procedures and operating at its historical usage levels. This no-action alternative was used as the basis against which to measure the impacts of the proposed action.

A number of comments addressed the Department of the Navy's screening of potential sites other than NAS Miramar that might receive assets relocating from MCAS Tustin and MCAS El Toro, asserting that alternative locations should have been examined in depth. Most of these comments focused on the relocation of Marine Corps rotary-wing aircraft and recommended that the Department of the Navy relocate these aircraft to March ARB. Some of these comments referred to a December 12, 1994 study from the Commander, Marine Corps Air Bases Western Area (COMCABWEST). That study suggested that relocating the helicopters to March ARB would be cheaper than jointly relocating fixed-wing and rotary-wing aircraft to Miramar,

In response to these public comments, I carefully reviewed the selection and screening of feasible sites for the relocation of Marine Corps fixed-wing and especially rotary-wing aircraft. In particular, I reviewed the 1994 COMCABWEST cost study that was cited in several of the comments. I concluded that the 1994 COMCABWEST study was limited in scope, failed to include costs in both dollars and personnel that would be required to run an additional Marine Corps Air Station, and was based on assumptions that are now invalid due to closure and realignment decisions resulting from BRAC 95. The COMCABWEST study assumed that the majority of facilities at March ARB would be available to the Marine Corps. In fact, most facilities are not available to the Marine Corps and significant new construction, in particular hangars and pavement, would be required. It also assumed that the Navy would remain at Miramar, however, in accordance with BRAC, most Navy units have already relocated to various other sites. Finally, it assumed that the Marine Corps would be operating at March ARB as a tenant unit, not a host command. However, Air Force officials have stated that reserve forces cannot host large numbers of active duty forces and the active force would have to take control of the base with the reserve unit becoming a tenant.

In response to the public concern expressed about the extent of the alternatives analysis in the FEIS, the Deputy Secretary of Defense undertook an independent review of the resource implications of relocating Marine Corps helicopters. I have carefully studied that independent review, which concluded that the proposed relocation of fixed- and rotary-wing aircraft to Naval Air Station Miramar is significantly more cost effective than relocating rotary-wing aircraft to March ARB. This independent review established that the non-recurring Department of Defense construction costs for relocating Marine Corps rotary-wing assets to March ARB exceed the costs of the proposed collocation at Miramar of the rotary-wing and fixed-wing by approximately $250 million. After proponents of moving to March ARB questioned some portions of the analysis, additional review determined that the Marine Corps could avoid an estimated $3 million annually in housing and subsistence allowances by moving the realigning rotary-wing squadrons to March ARB. The findings of the original OSD review, however, remain sound and the cost avoidance associated with housing and subsistence allowances did not alter the conclusion that annual recurring costs associated with the March ARB scenario are significantly higher than the recurring costs of collocating the rotary-wing squadrons with the fixed-wing squadrons at Miramar. As demonstrated in the SIR, comparing the costs of constructing the infrastructure and operating March ARB with Marine Corps rotary-wing aircraft over 20 years shows that it would cost between approximately $430 and $870 million more than if the rotary-wing assets are collocated with the fixed-wing squadrons at Miramar. The SIR also indicates that the relocation of rotary-wing aircraft to March ARB would trigger a net increase in Marine Corps requirements for approximately 780 military personnel as compared to the Miramar alternative. Since Marine Corps end-strength levels are fixed, this increase would have to come by drawing down other units, and would have an adverse effect on Marine Corps operations and readiness.

Some comments state that because March ARB is closer to MCAGCC Twentynine Palms than NAS Miramar, locating Marine Corps rotary-wing aircraft to March ARB is more advantageous to the Marine Corps for operational reasons. Predominately the rotary-wing aircraft that use MCAGCC Twentynine Palms do so as a deployment exercise in support of combined arms exercises, rather than as individual aircraft transiting to the area for routine training. During such exercises, the aircraft transit to MCAGCC, operate there for several days or weeks, then return to their home base. As such, there are no substantial savings or advantages to being closer to MCAGCC Twentynine Palms. Although March ARB is closer to MCAGCC Twentynine Palms, it is farther than

Miramar from the amphibious forces that the rotary-wing aircraft also support.

Several comments also suggested that there is a continuing need to conduct substantial training of Navy (as opposed to Marine Corps) pilots at NAS Miramar in support of the aircraft carriers homeported in San Diego. They state that this ongoing Navy training requirement would operationally preclude realignment of all of the currently proposed MCAS Tustin and MCAS El Toro assets to Miramar. These comments argue that these operational requirements can only be met using NAS Miramar and thus bar a realignment proposal that would use substantially all of Miramar's capacity for Marine Corps operations, particularly rotary-wing operations. As explained in the SIR, the Navy has determined that it can train its fleet aviation assets without relying on MCAS Miramar. Most of the individual squadron training, including practice carrier landings, is conducted in the vicinity of the Navy home bases (such as NAS Oceana and NAS Lemoore). To the extent that additional shore-side training is required after units deploy to the carriers, it can be accomplished using Navy air stations and air fields in California. Navy use of MCAS Miramar will be minimal, and has been accounted for in the analysis in the FEIS.

Very late in the process, the Department of the Navy received a comment on the independent review performed by the Deputy Secretary of Defense. The comment enclosed a report that purported to show that moving the rotary-wing assets to March ARB would be less expensive than realigning them to MCAS Miramar as proposed. Careful review of this report showed it is generally based on incorrect data, inaccurate assumptions, and inappropriate cost allocations and therefore results in faulty conclusions. For example, the report relies heavily on generalized ratios developed from personnel or aircraft loading and not on specific requirements and thus incorrectly assumes that a high percentage of new construction at MCAS Miramar can be attributed to the inclusion of rotary-wing aircraft. The Department of the Navy's cost estimates for MCAS Miramar, by way of contrast, are based on detailed project plans.

In consideration of the public comments received on the FEIS, the SIR and the independent review by the Deputy Secretary of Defense, I took a hard look at sites other than Miramar as receiving sites for realigning Marine Corps aircraft. I have concluded that no other site is operationally preferable to Miramar and that detailed analysis of other receiving sites clearly would have been inconsistent with BRAC and Marine Corps force structure plans designed to reduce infrastructure, costs and personnel requirements. The locations other than Miramar could not reasonably achieve the purpose and need for the realignment. Collocation of fixed-wing and rotary-wing aircraft at Miramar best reduces excess infrastructure; reduces construction and base operating costs; and makes use of common support assets, thereby reducing personnel requirements.

6. Implementation

Implementation of the proposed action at Miramar would include the conversion of aviation operations from Navy procedures to Marine Corps procedures, construction of necessary facilities to support Marine Corps operations, and establishment of remote landing sites in East Miramar.

a. Changes to Aviation Operations and Practices Used by the Navy

Implementation of the proposed action will involve changes in aviation operations at Miramar, beyond the simple addition of Marine Corps fixed-wing and rotary-wing aircraft and the associated personnel and maintenance and support facilities. The NW/SE runway (Runways 6L/24R) will remain the principal runway for take-off and landing. The proposed action will also allow for restricted use of the East/West runway (Runway 10/28) by rotary-wing and some fixed-wing aircraft. Although no departures for fixed-wing aircraft will be allowed on this runway, it will still be available for rotary-wing operations as a helicopter landing pad and for fixed-wing arrested gear landings only. Changes to flight corridor parameters are also planned. Aircraft departing to the north/northeast using the Julian corridor will increase altitude after takeoff at a faster rate. The fixed-wing usage rate for the Seawolf corridor will decrease from approximately 75% to 50% of total fixed-wing departures while the fixed-wing usage rate for the Julian corridor will increase from approximately 25% to 50% of total fixed-wing departures.

The following rotary-wing flight corridors will be added: Seawolf, IFR Racetrack, Yuma, I–15, GCA Box, north touch and go, and south touch and go. Based on the original proposal for realigning eleven fixed wing squadrons and ten rotary wing squadrons, the average daily use of these corridors (in operations per day) was projected to be approximately 26 for Seawolf, 3 for IFR Racetrack, 14 for Yuma, 23 for GCA Box, 14 for I–15, 36 for north touch and go, and 87 for south touch and go. The rotary-wing assets will be serviced at the West end of the airfield facilities and the fixed-wing assets will be at the East end of the airfield facilities.

b. Construction

Implementation of the proposed action will require a reconfiguration and expansion of existing aircraft aprons and pavements, flightline facilities, and associated support facilities to meet mission requirements. Major flightline expansion will occur at the west end of the hangar complex where the helicopter squadrons will be located, while moderate flightline expansion will occur to the east with the construction of a new hangar and apron for the single squadron of KC–130 aircraft. The Marine Corps plans to use the existing ground training areas, consistent with current NAS Miramar training area guidelines and procedures. A Mountainous Area Landing (MAL) site and Confined Area Landing (CAL) site will be located in East Miramar, in disturbed areas currently supporting various training and maintenance facilities. Under the proposed action, helicopter landing, takeoff and hovering activities will occur at these locations and represent a new land use.

Several construction projects have been proposed to accommodate assets relocating to MCAS Miramar from MCAS Tustin and MCAS El Toro. These projects include a new Air Traffic Control Tower, Airfield Parking Pavement (Aprons), Bachelor Enlisted Quarters, Administration and Training Facilities, Community Support and Dining Facilities, Aircraft Maintenance Complex, Ordnance Storage Facilities, Operational Support Complex, Utilities Improvements, Base Maintenance Facilities, Storage Facilities, and Tactical Van Pad Facilities.

In addition to the facilities proposed at the Main Station, the proposed action will also involve the construction of facilities defined as remote facilities, located at both the Main Station and East Miramar. Remote facilities that will be located at the Main Station include the heavy lift pad, Crash Fire Rescue training (to be conducted at the existing facility), Direct Support Stock Control, and the Defense Reutilization Marketing Office. Remote facilities that will be located in East Miramar include the ordnance facilities (ordnance complex and Explosive Ordnance Disposal (EOD) training facilities), Mountainous Area Landing site, Confined Area Landing site, and the Nuclear, Biological, and Chemical training site. The Marine

Corps plans to use the existing ground training areas in East Miramar in a manner consistent with current NAS Miramar training area guidelines and procedures.

7. Environmental Impacts and Mitigation Measures

The impacts analyzed in the EIS are grouped according to their degree of significance: residual significant impacts (those that cannot be mitigated below the threshold of significance); impacts mitigated below the threshold of significance; and impacts that are not significant. As discussed below, the Marine Corps will implement a number of mitigative measures to avoid or minimize environmental harm from the proposed action.

a. Residual Significant Impacts

i. Noise

I have taken a very close look at the issue of noise, recognizing that many members of the public are concerned about the noise of helicopter operations at a future MCAS Miramar. Although Miramar has operated as a busy master jet base for decades and has successfully managed the attendant noise, the introduction of substantial numbers of helicopter operations has raised some additional concerns among some members of the public. These concerns arise from the perceived differences in the noise and the addition of new flight corridors. As discussed below, the Department of the Navy has worked hard to assess the impact of noise and to mitigate it as much as practical. Although the mitigation measures should reduce noise impacts, the noise from aircraft operations cannot be eliminated entirely.

Noise impacts were assessed using the State of California's standard, the Community Noise Equivalent Level (CNEL), expressed in units of decibel (dB). The State of California's Title 21, Subchapter 6, Section 5006 states: ''The level of noise acceptable to a reasonable person residing in the vicinity of an airport is established as a community noise equivalent level (CNEL) value of 65 dB for purposes of these regulations. This criterion level has been chosen for reasonable persons residing in urban residential areas where houses are of typical California construction and may have windows partially open. It has been selected with reference to speech, sleep and community reaction.'' Section 5014 describes the land uses that are incompatible within the noise impact boundaries. It provides that noise exposure levels less than 65 dB CNEL are generally compatible for noise sensitive land uses, including residential areas and schools. Even after mitigation, the proposed action will result in significant on-base and off-base noise impacts related to fixed-wing aircraft operations. Noise contours defining the areas of impact in 5 dB increments were developed using the NOISEMAP model and projected operational tempo data.

The outer limits of the mapped noise contours are related to fixed-wing aircraft. Rotary-wing (helicopter) aircraft noise contours fall entirely within fixed-wing aircraft CNEL noise contours. Noise impacts based upon the 65 dB CNEL standard are therefore associated with fixed-wing aircraft. Noise contours that will result from the realignment action for only rotary-wing aircraft are provided on page F–71 of Appendix F, Volume I of the FEIS.

Further reductions in noise levels compared to the noise levels that were calculated originally (and set out below) will result from the disestablishment of one F/A–18 squadron and the transfer of another to Japan. Elimination of the CH–53D operational squadron (realigned to MCB Hawaii) and the CH–53 FRS squadron (realigned to MCAS New River, NC and MCBH, HI) will also result in a substantial reduction in touch and go operations, and consequently in the projected noise levels attributable to those aircraft.

Specific areas of concern are:

(a) *Noise Impacts to Housing.* The total acreage within the 65 dB Community Noise Equivalent Level (CNEL) contour will decrease by approximately 305 acres; however, the majority of the 65 dB CNEL acreage decreases will occur in East Miramar where no homes are located. Approximately 43 homes currently located within the existing 65 dB CNEL contour will fall outside that contour after the realignment action and will experience a decrease in noise. Conversely, approximately 128 homes currently located outside of the existing 65 dB CNEL contour will fall within that contour after the realignment action and will experience an increase in noise. Overall, the realignment action will result in a net increase of approximately 85 homes within the 65 dB CNEL contour. Even though the California CNEL is not exceeded, the Department of the Navy will continue to assess noise impacts in affected housing areas to determine what future mitigation measures may be necessary.

(b) *Noise Impacts to Schools.* The Department of the Navy has looked carefully at potential noise impacts to schools. No public school will fall within the 65 CNEL contour as a result of the realignment action. However, various San Diego area school districts commented that the increased noise from aviation operations could require sound attenuation. The California requirement for sound attenuation is based on the CNEL noise standard rather than proximity to a flight corridor. I reviewed these comments, carefully considering the importance of schools to our communities. As described above, the State of California Code of Regulations, Title 21, provides that noise exposure levels less than 65 CNEL are compatible for noise sensitive land uses, including schools. Noise levels below 65 dB CNEL do not automatically trigger a requirement for sound attenuation. Nonetheless, the Department of the Navy is fully committed to continuing to work closely with the Miramar Technical Advisory Committee. The Advisory Committee, consisting of representatives of communities surrounding Miramar, works with the Marine Corps to mitigate and/or reduce impacts from Marine Corps aviation operations on areas surrounding Miramar. The Advisory Committee is ideally suited to review Miramar's operational impacts on schools. The Advisory Committee has been meeting regularly since May 1996, and has already successfully achieved noise mitigation measures such as increasing the altitudes of Marine Corps rotary-wing air routes.

(c) *Noise Impacts to Sleep and Speech.* A concern was raised in public comments that the EIS section regarding sleep and speech disturbance did not include mitigation measures. In addition to analyzing noise impacts under the CNEL standard, the Department of the Navy also measured noise impacts using Sound Exposure Level (SEL) metrics. SEL can be used as an indicator of annoyance factors such as sleep disturbance and speech interference, but cannot be used to ''predict long-term human health impacts.'' (''Federal Agency Review of Selected Airport Noise Analysis Issues'', Federal Interagency Committee on Noise, August, 1992). There are no established noise thresholds of significance for sleep disturbance and speech interference. Unlike the case with the CNEL standard, judging sleep disturbance and speech interference is subjective. Nonetheless, the Department of the Navy recognizes that sleep disturbance and speech interference may occur in some residential areas outside the boundary of MCAS Miramar. In an effort to more fully inform the public and ensure the impacts were fully considered in the

decision-making process, the Department of the Navy voluntarily collected SEL data to provide additional analysis on sleep disturbance and speech interference. Information on the impacts to the 17 representative test locations is presented in Table 4.11–9 of the FEIS. The Marine Corps has continued to study the impacts of rotary-wing operations and to meet with community representatives to understand their concerns better. The Marine Corps has modified its procedures to accommodate these concerns. For example, as discussed below, the altitude of some flight corridors has been raised. The Marine Corps will continue to meet with community leaders and elected officials to seek ways in which noise impacts may be further reduced.

(d) *Mitigation for Noise Impacts.* A primary consideration for the Department of the Navy was to configure operations to promote land use compatibility, as defined under California CNEL standards, consistent with the City of San Diego's Comprehensive Land Use Plan (CLUP) for Miramar. In order to minimize noise exposure from aviation operations to the surrounding communities, the Marine Corps will incorporate the following noise mitigation measures into its aircraft operations procedures: (1) Reduce aircraft power settings for Ground Control Approach operations for F/A–18s (refer to Figure 4.10–4 in the FEIS); (2) discontinue use of afterburners by departing aircraft upon reaching the MCAS Miramar boundaries whenever possible; (3) limit repetitive ''pattern'' work to normal operating hours, except where necessary to meet operational requirements; (4) increase the altitude at which the aircraft are held in the Julian Standard Instrument Departure from 3,000 to 6,000 feet MSL; (5) divert some helicopter flights from neighboring communities through a flight corridor (Yuma Corridor) south of the runways to reduce the effects of helicopter noise; (6) eliminate a departure route (SVFR Yuma departure route) from the I–15 corridor to the east; (7) raise the outbound altitude on the Yuma departure from 2,600 feet to 3,000 feet and the inbound altitude from 2,100 feet to 3,500 feet; (8) raise the outbound altitude of the Interstate 15 corridor from 2,600 feet to 3,000 feet and the inbound altitude from 2,100 feet to 3,500 feet MSL; and (9) relocate the primary route between MCAS Miramar and MCAS Camp Pendleton further offshore, at a minimum distance of one mile from the coast.

These mitigation measures have already been approved by the FAA. The Marine Corps will continue to attempt to mitigate noise impacts by working with the FAA on further changes to the air routes, including a request to raise the altitude of the Seawolf corridor.

(e) *Additional Testing and Future Analysis.* Several comments requested that additional testing and future noise monitoring be accomplished. The Marine Corps will continue to examine all operational activities for ways to minimize noise impacts to the surrounding communities, perform a new noise analysis in the year 2000, and maintain a noise complaint hotline for the public. The noise analysis in the year 2000 will come shortly after the realignment of MCAS Miramar is completed.

I recognize that because noise perception is subjective and models are imperfect, some households will perceive more noise as a result of the proposed realignment regardless of what the models may indicate. Some individuals may even perceive this noise as significant. But, as explained above and discussed wtih the public in several meetings, the Department of the Navy recognizes these concerns, has already taken significant steps to mitigate the noise impacts, and will continue to analyze noise impacts and work with the public to mitigate any future problems.

ii. *Biology (Vernal Pools—Habitat).* Vernal pools consist of three distinct resources: the habitat (watershed), which is addressed here, the basins (wetlands), and the species associated with vernal pools. Both the basins and the associated species are addressed in section 7.b.(iii), below. Vernal pool habitat is the only biological resource that will be significantly impacted. The proposed action will result in the loss of approximately 4.7 acres of vernal pool habitat, which cannot be fully mitigated. Less than three percent of historical vernal pool habitat remains in San Diego County. The proposed action will result in further depletion of vernal pool habitat. The amount of habitat being impacted is considered to be significant. Mitigation measures are discussed in paragraph 7.b.(iii).

iii. *Community Services and Utilities (Schools).* Of the projected net increase of 3,875 personnel associated with the proposed action, approximately 197 will be civilians who will be housed off-base, independent of military personnel. The resulting net increase will be 3,150 enlisted and 528 officers. It is estimated that a net increase of 1,698 school-aged dependents at MCAS Miramar will be introduced to the schools of San Diego County upon implementation of the proposed action. Insofar as these additional personnel choose to purchase or rent existing homes or apartments in the local community, no impacts will occur since developer impact fees, which are used to fund school districts, were or will be paid at the time of construction.

The Department of the Navy Military Family Housing in the greater San Diego region is managed under a shared-pool system, whereby the Marine Corps will compete on an equal basis with Navy for available units in that pool, regardless of actual location within the region. If military personnel associated with the proposed action choose to live in existing Military Family Housing, their school-aged dependents will not impact the San Diego school system as these children have already been factored into the capacity of the school district. A proposal is being considered as part of the Fiscal Year 1998 budget to construct approximately 166 units of Military Family Housing on or near MCAS Miramar. This proposal is part of a regional housing plan and is not a component of the conversion of NAS Miramar to MCAS Miramar. If these 166 units of Military Family Housing are constructed on-base, up to approximately 80 school-aged dependents could be added to the schools in San Diego County. Most of the schools in the vicinity of NAS Miramar are operating either at or near enrollment capacity. Even adding only 80 children could be significant. To reduce potential cumulative impacts to school capacity, the Marine Corps will apprise potentially affected schools of any military family housing construction programs approved in the vicinity of MCAS Miramar in an effort to assist the schools in planning for an increase in student population. Any proposal to construct military family housing at MCAS Miramar will be evaluated in separate NEPA documentation.

b. Mitigated to Below the Threshold of Significance

(i) Geology and Soils

As discussed in the FEIS, the proposed action will include incorporating appropriate erosion control measures and proper excavation techniques to ensure protection of soil resources. The proposed action will not affect geologic resources as the facilities will be designed to reduce the potential for land slides and other adverse geological activities. No significant impacts to soil will occur as a result of implementing the proposed action.

(ii) Water Quality

As discussed in the FEIS, appropriate measures will be implemented to ensure that potential releases of fuels are minimized. The installation spill response plan will be updated to cover the new facilities. No significant impacts to water quality will occur as a result of implementing the proposed action.

(iii) Biology

The Department of the Navy has carefully studied the potential impacts of the proposed action on endangered species and wetlands and in consultation with the requisite agencies, has developed and will implement appropriate measures to protect these sensitive resources. As discussed in section 7.a.(ii), above, vernal pools consist of three distinct resources: The habitat (watershed) discussed in section 7.a.(ii), the basins (wetlands), and the species associated with the basins. This section discussed the basins and the associated species. The proposed action will impact vernal pool wetlands and species because of the loss of the basins. The Department of the Navy will take a number of actions to mitigate these impacts below a level of significance.

Based upon consultation with the U.S. Fish and Wildlife Service (USFWS), three federally-listed endangered/threatened species and two species proposed for listing as endangered/threatened were identified as present on NAS Miramar. These endangered species that are included are the California gnatcatcher (gnatcatcher), the endangered San Diego button-celery (button-celery), and the endangered San Diego mesa mint (mesa mint). The San Diego fairy shrimp (fairy shrimp) and the quino checkerspot butterfly (butterfly), both of which are proposed for listing as endangered, were also included in the consultation.

The Department of the Navy prepared a Biological Assessment on these five species and other biological resources. Information provided to USFWS in the Biological Assessment is summarized in the DEIS, FEIS, and SIR. Specifically, the DEIS, FEIS, and SIR discussed the existing condition of these threatened and endangered species as well as other sensitive species and their habitat in considerable detail. The DEIS, FEIS, and SIR identified the impacts associated with the proposed action and discussed mitigation measures that would reduce the potential for adverse impacts on the threatened and endangered species and their habitat.

During consultation with USFWS, the Marine Corps provided a list of 20 species and habitat conservation measures that were incorporated into the proposed action. Six measures dealt with general conservation measures (e.g., hiring a qualified project biologist, marking sensitive habitat areas, prohibiting entry into sensitive areas, conducting surveys for other species). Nine measures dealt with protecting vernal pools (e.g., seasonal restrictions on construction during the rainy season, mitigation ratios, development of plans). Five protective measures dealt with protection of the gnatcatcher and the coastal sage scrub where it lives (e.g., seasonal restrictions on clearing gnatcatcher habitat during the breeding season, mitigation ratios, revegetation, a study of the potential impact of helicopter noise, and an explicit commitment to re-initiate formal consultation if the helicopter study finds significant impacts).

On April 11, 1996, the USFWS issued a Biological Opinion in which it concluded that the proposed action is not likely to jeopardize the continued existence of the gnatcatcher, button-celery, mesa mint, or fairy shrimp. The USFWS also concluded that the quino checkerspot butterfly is unlikely to occur on the Station and therefore any adverse effect on the butterfly is unlikely. The USFWS Biological Opinion describes the potential effects, direct and indirect, that the proposed action would have on the species. In rendering the Biological Opinion, the USFWS determined that the Marine Corps will undertake the mitigation measures described in the FEIS and the Biological Opinion and that the Marine Corps has committed to developing and implementing a Multi-Species Habitat Management Plan (MHMP) for MCAS Miramar consistent with the requirements of the Sikes Act. The MHMP, which the Marine Corps will develop in conjunction with the USFWS, the U.S. Army Corps of Engineers (ACOE), and the California Department of Fish and Game (CDFG), will be designed to conserve natural resources onboard MCAS Miramar on a day-to-day basis. The MHMP will deal with all natural resources, but is especially concerned with threatened and endangered species and their habitat. The MHMP is to be submitted to the USFWS, ACOE and CDFG by October 1998. The MHMP is designed to enhance biological diversity on the Station, while simultaneously supporting the Marine Corps mission at MCAS Miramar.

The Biological Opinion also includes an Incidental Take statement which describes taking that is incidental to and not intended as part of the agency action. The Incidental Take statement includes three Reasonable and Prudent Measures that the USFWS determined are necessary and appropriate to minimize incidental take: (i) The Marine Corps shall minimize destruction of gnatcatcher and fairy shrimp habitat and provide compensation for unavoidable impacts; (ii) the Marine Corps shall minimize impacts to occupied gnatcatcher territories during construction activities; and (iii) the Marine Corps shall obtain a permit from the ACOE, pursuant to section 404 of the Clean Water Act, prior to any filling of vernal pools. The Marine Corps will comply with all terms and conditions associated with this permit.

The Incidental Take statement also contains detailed terms and conditions that implement the Reasonable and Prudent Measures. These parallel and sometimes strengthen the mitigation measures described in the FEIS. The terms and conditions will be incorporated into the final Biological Mitigation and Monitoring Plan, which must be approved by the USFWS and the ACOE. The list of terms and conditions is set out in the Incidental Take statement, which is part of the Biological Opinion. The Marine Corps will comply with all terms and conditions articulated in the Biological Opinion.

Two comments addressed the reduction in the width of the wildlife corridor in Rose Canyon as a result of sewer line installation as part of the proposed action. After review of a number of factors, the Department of the Navy determined that the impact will not be significant. Corridors narrower than 400 feet are less likely to be used by wildlife, as indicated by the Baldwin Otay Ranch Wildlife Corridor Studies prepared by Ogden. The portion of Rose Canyon that may be affected is toward the head of the canyon. Wildlife that utilize this canyon must cross Kearny Villa Road and go underneath Interstate 15 (via a tunnel). The current corridor width of 250 feet provides limited habitat opportunities to wildlife. Reduction of Rose Canyon is not expected to adversely affect wildlife. In accordance with the Biological Opinion, the Marine Corps is considering construction methods to reduce impacts to Rose Canyon.

Some comments suggested the discussion of the potential effects of the proposed action on endangered and threatened species was deficient because the FEIS did not include the biological information in the Biological Opinion and the MHMP. These comments expressed concern that the decision maker should have the

information in the Biological Opinion and MHMP before reaching a final decision. The Marine Corps received a draft Biological Opinion prior to publishing the FEIS, and consequently the FEIS contained all of the significant biological impacts and a majority of the mitigation and monitoring requirements contained in the Final Biological Opinion issued by the USFWS on April 11, 1996. The Biological Opinion was discussed in the SIR and I have fully considered it in making the decision on realigning Marine Corps aviation assets.

Some comments suggested that the study of effects of helicopter noise on gnatcatchers should be completed before a decision to proceed is made. Given the information already known, the USFWS no jeopardy determination, and the mitigation agreed upon and set out in the USFWS Biological Opinion, I have concluded that the proposed action can safely proceed pending further study. As set out in the SIR, the Marine Corps is committed to studying the effects of noise on gnatcatchers and has already begun the research. The study is expected to last five years and will cost approximately $600,000. Given the commitment of the Marine Corps to immediately undertake formal consultation if significant impacts are discovered, the incomplete information is not essential to a reasoned choice among the alternatives at this time.

(iv) Traffic

One off-base intersection and five on-base intersections will experience higher traffic volumes resulting in a significant impact as a result of the proposed action. Increases in off-base traffic will occur at the intersection of Miramar Road and Mitscher Way at the North Gate, which will worsen the Level of Service (LOS) rating from D to E in the evening peak hours.

The Department of the Navy will implement the traffic mitigation measures discussed in the FEIS (4.12–9 & 10) and SIR to mitigate the impacts to below the threshold level of significance. The Department of the Navy has decided to install a traffic signal without the delay associated with conducting further studies. Construction traffic represents a temporary and nominal increase in traffic volumes; therefore, impacts to the off-base and on-base circulation system will not occur during construction.

The California Department of Transportation's comments to the FEIS included a request for additional traffic studies. The technical traffic study, as discussed in Section 4.12 of both the DEIS and FEIS, was conducted using the most current traffic counts available, approved trip generation and trip distribution assumptions, and the Highway Capacity Manual methodology for intersection analysis. The study was sufficient to determine the proposed action's off-base impacts. Although one comment on the SIR suggested that another computerized study of traffic is necessary, I have concluded that the methods the Department of the Navy used, which were specifically tailored to the Miramar area, were more accurate than the suggested study would be and thus additional traffic studies are not warranted.

(v) Community Services and Utilities (Potable Water)

The demand on the potable water distribution system is expected to increase as a result of the proposed action. The existing system is not adequate to accommodate the demands of the proposed action. To provide an adequate water supply, the Marine Corps will use the backup connection from the San Diego water system as a full-time connection. The City of San Diego has not stated a concern regarding the use of this connection.

c. Impacts That Are Not Significant

i. Air Quality

The San Diego Air Basin is federally classified as a serious ozone non-attainment area and a moderate carbon monoxide (CO) non-attainment area. Pursuant to Section 176(c) of the Clean Air Act, US EPA promulgated a final rule ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans'' (General Conformity rule), 58 F.R. 63214 (Nov 30, 1993) (40 C.F.R. Parts 51 and 93). A conformity applicability analysis of the air emissions associated with the proposed action was conducted. As elaborated on in the SIR, the conformity applicability analysis determined that air emissions associated with the proposed action (reduced by the amount of emissions associated with the departing U.S. Navy aircraft) are: (1) Below de minimis levels (i.e., the net changes in emissions of criteria pollutants do not exceed threshold levels established in the General Conformity Rule); and, (2) not regionally significant (they do not exceed 10% of the San Diego Air Basin's total emissions inventory for any applicable criteria pollutant). Consequently, the proposed action is not subject to the General Conformity Rule. (FEIS, § 4.2 and FEIS Appendix B)

Although the General Conformity rule does not require publication of an applicability analysis that demonstrates emissions are de minimis, the Department of the Navy published a summary of its conformity applicability analysis in both the DEIS and FEIS to more fully inform the public. (DEIS/FEIS, § 4.2 and DEIS/FEIS Appendix B).

Several comments expressed concerns regarding the Department of the Navy's conformity applicability analysis and air quality impact analysis under NEPA. Particular issues of concern included: (1) The selection of 1990 for use in calculation of the net emissions for the conformity applicability analysis; (2) why the emissions in the FEIS differed from the emissions budget in the San Diego State Implementation Plan (SIP); (3) why emission estimates in the DEIS and the FEIS for helicopter emissions differed; (4) whether all appropriate types of emission sources were included in the applicability analysis; and (5) whether the methodologies used to calculate emissions were proper. In its comments on the SIR and in response to a public inquiry, EPA Region 9 requested additional information to resolve several issues on how the total of the direct and indirect emissions for the proposal were calculated.

Use of 1990 to determine net emissions. In conducting a conformity applicability analysis for the proposed action, the Department of the Navy selected 1990 as the most appropriate year to reflect Navy aircraft operations and activities at Miramar as a fully operational Naval Air Station in normal circumstances. As such, 1990 was used as a basis to calculate emissions increases and decreases caused by the proposed action; i.e., the ''net'' emissions considering all incoming and outgoing direct and indirect emissions. The ''netting'' of emissions in this manner appropriately accounts for the total direct and indirect emissions associated with the proposed action and is in accordance with provisions of the General Conformity Rule. The Department of the Navy's use of 1990 to analyze net emissions is also consistent with the San Diego Air Pollution Control District's (APCD) use of 1990 for determining emissions inventories.

Difference between the FEIS and the SIP—use of best available data instead of SIP estimates. In conducting its conformity applicability analysis, the Department of the Navy did not use emission estimates found in the San Diego SIP air emissions budget. With San Diego APCD's concurrence, the Department of the Navy calculated the emissions for 1990 that more accurately estimated emissions at NAS Miramar than those found in the San Diego SIP. Table B–1 in the FEIS, ''1990 Annual Air Quality Emissions at NAS

Miramar,'' identified the specific Navy and EPA technical sources (which did not include the SIP) that the Department of the Navy used to calculate emissions. The section of that table entitled ''Aircraft Emissions'', explains how the Department of the Navy calculated aircraft emissions for the year 1990. Operational data were based on definitive studies, specific aircraft types, and defined aircraft operating characteristics. The proposed realignment does not violate any emission reduction targets for military aircraft, since no reduction targets exist in the SIP.

Differences in emissions figures for helicopters between the DEIS and FEIS. Some comments questioned why estimates for emissions from helicopters varied between the DEIS and the FEIS. The San Diego APCD responded during the public review period of the Draft EIS with questions regarding rotary-wing emissions and the inversion layer height, which is at 2,000 feet for six months and 3,000 feet for six months of the year. The FEIS addressed these concerns by calculating rotary-wing aircraft emissions up to 3,000 feet year-round and no further comments were received from the SDAPCD on this issue. This change in altitude of the inversion layer accounts for the difference in rotary-wing aircraft emission estimates found in the DEIS and FEIS.

Inclusion of direct and indirect emissions in conformity applicability analysis. In performing either a conformity determination or an analysis to determine the applicability of the requirement for a conformity determination, an agency does not have to include every indirect emission that could be associated with a project. Implementing regulations reasonably limit the reasonably foreseeable indirect emissions that must be considered to those that practicably are subject to control by the agency in the normal course of its mission. The Department of the Navy calculated the direct and indirect emissions associated with the proposed realignment that were both reasonably foreseeable and practicably controlled under the Department of the Navy's use of Miramar as a military airfield. The Department of the Navy has no ''continuing program responsibility'' for most offbase indirect emissions within the meaning of the regulations governing conformity determinations.

Appropriate methodologies. I carefully reviewed the public comments on the air analysis and conformity applicability analysis in the DEIS, FEIS and SIR. In view of these comments, I reviewed and took a hard look at the Department of the Navy's method for estimating air emissions and the supporting data and calculations. The Department of the Navy's method for calculating aircraft emissions applies the following elements: number of aircraft operations; type or mode of operation (power setting); number and type of aircraft engines per aircraft; time in mode; and, corresponding emission factors. The emission factors were obtained from studies conducted by the Navy Aircraft Environmental Support Office (AESO) that are referenced in the EPA ''Compilation of Air Pollutant Emission Factors (AP–42).''

After receipt of comments on the SIR, the Department of the Navy reviewed the applicability analysis and found that the original analysis assumed that the E–2/C–2 Navy aircraft currently stationed at NAS Miramar would leave the air basin. No final decision has been made, however, on relocation of the E–2/C–2 aircraft and they potentially could remain in the air basin. To determine the impact if the E–2/C–2 aircraft remain, the emissions were recalculated including the E–2/C–2 emissions. Even with these emissions included, the analysis showed that emissions would still be below de minimis thresholds established by the General Conformity Rule. This analysis was very conservative, because it did not reduce projected emissions to account for four Marine squadrons that were moved outside the air basin. The original analysis included eleven fixed-wing and ten rotary-wing squadrons. Subsequently, two fixed-wing and two rotary-wing squadrons were decommissioned or relocated to other sites outside the air basin. Thus emissions can reasonably be expected to be lower still.

In response to its comments on the SIR, the Department of the Navy provided EPA Region 9 with a letter providing additional explanation, summarized above, clarifying the way it conducted the applicability analysis, addressing the issues that EPA felt it was unable to resolve, and offering to provide the underlying data for the analysis. On November 14, 1996, EPA Region 9 responded that although the applicability determination is the responsibility of the action proponent, it had reviewed the information provided by the Department of the Navy's letter and determined that the methods used by the Department of the Navy to determine the ''total of direct and indirect emissions'' from the proposed action was appropriate. The San Diego Air Pollution Control District had indicated its concurrence in the methods used by the Department of the Navy in earlier correspondence.

A further comment on the air quality analysis was received on November 22, 1996. It continued to challenge the accuracy of the Department of the Navy's estimates of air emissions. The comment argues that the realignment will result in significant impacts to San Diego's air quality, that the action violates the Clean Air Act and EPA rules and regulations, and that the action will result in pollution in excess of SIP milestone goals, thereby potentially limiting commercial expansion in the area. The comment revealed no new significant environmental information or changed circumstances but relied on incorrect assumptions and methods to reach a much different, and faulty, result. A thorough review of the Department of the Navy's applicability analysis confirmed that it is accurate.

In summary, the Department of the Navy has conducted a thorough review of the data and methods used to analyze whether the requirement for a conformity determination applies to this proposed action. My review of the record indicates that the proposed realignment of Miramar represents a net decrease in air pollution and will contribute to San Diego's reasonable further progress toward attainment.

ii. Hydrology

As discussed in the FEIS, the proposed action will not have any significant impacts on the local or regional hydrology. (FEIS, § 4.3)

iii. Cultural

In accordance with 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, it was determined that three cultural sites are eligible for inclusion in the National Register of Historic Places (NRHP). The State Historic Preservation Officer (SHPO) agrees with this determination. Similarly, the SHPO has concurred with the determination that the proposed action will not affect historic properties FEIS, § 4.5). The proposed realignment of NAS Miramar will not significantly impact cultural resources listed or determined eligible for listing on the NRHP.

iv. Visual Resources

As discussed in the FEIS, the proposed action will not have any significant impacts on the visual resources (FEIS, § 4.6).

v. Land Use

As discussed in the FEIS, the proposed action will not have any significant impacts on land use as

designated in San Diego's CLUP for Miramar (FEIS, § 4.7). Land use compatibility in the context of aircraft and airfield operations is evaluated on the basis of Accident Potential Zones (APZ) and noise contours. Both the APZ analysis and the noise analysis using California CNEL standards indicate that current land uses surrounding MCAS Miramar are compatible with the proposed aircraft and airfield operations.

Some comments raised concerns that the proposed project will have significant impacts on existing and planned land uses in the surrounding communities. The analysis of land use impacts were based on the San Diego Association of Governments (SANDAG) Series VIII forecast data, which were updated by the Department of the Navy to reflect 1994 conditions. The State of California has adopted the CNEL as the state-wide standard for land use planning around airports within the state. This standard is consistent with the adopted CLUP for NAS Miramar and Lindbergh Field, and is endorsed by the County of San Diego. SANDAG develops and maintains regional land use databases as part of its charter to track land use trends and forecast population growth. The most recent (1990) existing land use GIS database available from SANDAG was obtained to analyze land use compatibility in the FEIS. SANDAG updates the database every five years, and is currently working on the 1995 update. In order to update the database to 1994 (the baseline or existing conditions year for the FEIS), the Marine Corps, in cooperation with SANDAG, reviewed aerial photographs from the 1994 Thomas Brothers Aerial Photo Map Book. The photos were reviewed primarily to identify new housing development within the 65 dB CNEL noise contour surrounding NAS Miramar. In addition, SANDAG maintains a database of proposed site specific projects which was used as a guide for the 1994 update process. The Department of the Navy used this updated data in evaluating noise impacts.

vi. Public Health and Safety

A number of comments were received dealing with safety. Some of these comments discussed concerns about the safety of operating rotary- and fixed-wing aircraft at the same airfield. Some of these focused on the perceived risks during repetitive training operations at the field, especially Field Carrier Landing Practice (FCLP) approaches. Others discussed potential risks of operating military aircraft in an area characterized as the second busiest in the country. The Department of the Navy takes aviation safety very seriously and recognizes that the public has legitimate concerns that those who use the nation's airspace must do so in a safe manner. After carefully looking at the issues and as discussed in the FEIS and the SIR, I have determined that the proposed action will not have any significant impacts on the local or regional public health and safety.

Measures to ensure safety of flight. Some comments raised the issue of mixing rotary-wing and fixed-wing aircraft, especially combining close-in patterned FCLPs by fixed-wing aircraft and rotary-wing take-offs and landings. The Marine Corps will be one of numerous users of the airspace above and adjacent to MCAS Miramar. Consequently, the Marine Corps has a vested interest in maintaining safe operations and will make maximum use of appropriate control measures and operating procedures to ensure proper time, distance, and altitude separation between aircraft. The Marine Corps has operated rotary- and fixed-wing aircraft at a number of other air stations, relying on a combination of redundant measures to ensure safety of flight at its air stations and the air corridors nearby. These measures include extensive pilot training and briefing, established traffic separation schemes, and watchful air traffic controllers in constant communication with aircraft. These measures have allowed the Marine Corps to operate safely in the past in circumstances at least as severe as those its pilots will face operating from MCAS Miramar.

At MCAS Miramar, traffic patterns have been designed to provide the necessary separation between aircraft. Fixed-wing and rotary-wing aircraft will be based at opposite ends of the airfield. This separation will occur on the parking apron, fuel pits, aircraft movement areas and the landing/departure surfaces. Most rotary-wing aircraft arrivals and departures and all pattern work will be done on the north pads while fixed-wing FCLP's are in progress on the 24L runway located to the south side of the air station. Consequently, to improve safety, fixed- and rotary-wing aircraft will be laterally separated and deconflicted while FCLP operations are in progress. Entry into the patterns is carefully controlled by air traffic controllers. The air traffic controllers maintain visual and/or radar surveillance of all aircraft in the vicinity of the field, have communications with all aircraft in the patterns, and can warn them of dangerous situations.

MCAS Miramar will use the rules set forth in FAA Handbook 7110.65 to operate rotary- and fixed-wing aircraft while they are within controlled airspace and under the control of air traffic controllers. These rules contain separation and sequencing requirements for operating all types of aircraft and will be applied to all operations at MCAS Miramar as required. All air traffic controllers are trained and qualified to provide safe and expeditious handling of all aircraft under their control. Also, unique operating procedures are developed at each air station to accommodate the unique mix of aircraft at that air station and are published in the Air Field Operations Manual. A revised Air Field Operations Manual will be published for MCAS Miramar to address the planned mix of aircraft. Most of the aircraft stationed at MCAS Miramar will also provide some advantages over typical commercial aircraft and many general aviation aircraft. The helicopters are dual seat aircraft, allowing one of the pilots to help maintain a visual scan of the area. The helicopters also have broad windscreens and better cockpit visibility than many commercial aircraft. The F/A–18s have clear canopies and are designed to provide excellent all around visibility. Although nothing can guarantee absolute safety, these measures provide a substantial margin of safety. Finally, the Marine Corps is committed to sacrificing efficiency if necessary to ensure that safety is maintained.

Marine Corps success in operating safely in congested uncontrolled airspace. Several comments raised the issue of safety and the operation of rotary-wing aircraft in ''uncontrolled airspace.'' The Department of the Navy has safely integrated rotary wing aircraft with general aviation aircraft for many years in the existing San Diego airspace structure. The comments received have not offered any evidence to the contrary that would lead me to conclude that the proposed operations in San Diego can not be conducted safely. The Marine Corps has worked closely with the Federal Aviation Administration (FAA), the Southern California Terminal Radar Approach Control Facility (SC TRACON), and the San Diego Airspace Users Group (SAUG) to ensure that the proposed action will be compatible with the existing airspace structure. Rotary wing aircraft operate at approximately the same speeds as small general aviation aircraft and this contributes to these two types of aircraft operating safely in a VFR environment. Currently, Marine Corps rotary-wing aircraft

operate safely in ''uncontrolled airspace'' in other areas, including equally congested airspace, without incident. For example, over 90% of the USMC rotary-wing operations in the vicinity of MCAS Tustin in 1995 were VFR operations (95,525 of 104,171), and of those, nearly 20% were in uncontrolled VFR airspace. This demonstrates the ability of the Marine Corps to operate rotary-wing aircraft in congested uncontrolled airspace safely.

Compared with the airspace around NAS Miramar, the airspace around MCAS Tustin and John Wayne/Orange County Airport is far more congested with approximately 21,971 operations per square mile (three mile radius) in 1994, compared to nearly 4,927 operations per square mile (five mile radius) in 1994 between NAS Miramar and Montgomery Field. If the area under consideration at Orange County is expanded to include the operations of MCAS El Toro (a radius of seven miles), the congestion (approximately 4,675 operations per square mile) is nearly equal to that experienced near Miramar in 1994. The SC TRACON, as well as the Marine Corps, is equipped to handle the air traffic volume in these areas. Thus, the history of operating rotary-wing aircraft at MCAS Tustin and fixed-wing aircraft at MCAS El Toro in congested airspace, both controlled and uncontrolled, demonstrates that the impacts of these operations on general aviation can be managed safely.

Coordination with the Federal Aviation Administration and local groups. Some comments also raised an issue regarding the operation of fixed-wing and rotary-wing aircraft in the same airspace. The realignment of NAS Miramar to MCAS Miramar necessarily involves a change in the aviation operations at Miramar. The change in aviation operations was fully considered in studies associated with the EIS. The Marine Corps and the Department of the Navy have worked closely throughout the planning process with the FAA, SC TRACON, and the SAUG to deal with the change in aviation operations. Of note, the FAA is charged with overall responsibility for the safe and expeditious handling of all aircraft in the National Airspace System. As such, the FAA is responsible for determining whether airspace should be uncontrolled or controlled (unregulated or regulated). The Department of the Navy has worked with these agencies to plan for the realignment, and none of these agencies has submitted an objection to the proposed action.

Interface with Class B airspace. An issue was raised regarding the impacts of flight operations for the proposed realignment on Class B airspace. A comment also argued that the proposed mitigation measures are insufficient. The point was made that San Diego TRACON is the second busiest facility in the United States and is predicted to grow in complexity and congestion. For clarification, the San Diego TRACON was consolidated into SC TRACON in September, and is now referred to as the San Diego Sector of the SC TRACON. As described above, the San Diego Sector of SC TRACON is appropriately equipped for the workload. The Marine Corps has been working with SC TRACON to ensure compatibility. The introduction of rotary-wing aircraft will not have a significant impact on Class B airspace because most helicopter operations will not be required to operate in Class B airspace. The SIR explains that 60% of the rotary-wing operations will take place within the confines of MCAS Miramar, thus these operations will have no impact except at MCAS Miramar. Further, the impact on Class B airspace will be reduced as the USMC will conduct fewer total operations in Class B airspace than the Navy because it will have fewer fixed-wing aircraft at Miramar than the historic Navy levels. The Marine Corps will continue to work with the FAA and the Miramar Technical Advisory Committee, providing an ongoing dialogue to promote regional airspace safety.

vii. Hazardous Material and Wastes

As discussed in the FEIS, the proposed action will not have any significant impacts related to hazardous materials or wastes (FEIS, § 4.9).

viii. Aircraft Operations

As discussed above and in the FEIS, the proposed action will not have any significant impacts on commercial or private aircraft operations within the San Diego region. The Airfield and Airspace Operational Study for MCAS Miramar was prepared by ATAC Corporation in 1995, and is incorporated in the FEIS by reference. The study encompassed current and projected future operations and considered impacts upon both military and civilian users of the airspace in the greater San Diego area. This study, through the use of the Naval Aviation Simulation Model (NASMOD), demonstrated that the proposed quantity of fixed-wing and rotary-wing aircraft can be safely collocated while operating effectively and efficiently at Miramar.

ix. Socio-Economics

As discussed in the FEIS, the proposed action will not have any significant local or regional socio-economics impacts (FEIS, § 4.13). In compliance with Executive Order 12898, an analysis was conducted to determine if minority or low-income populations would suffer disproportionately high and adverse environmental impacts as a result of the proposed action (FEIS, p. 4.13–3). It was determined that these populations would not suffer disproportional impacts. Two community planning groups raised questions regarding compliance with Environmental Justice guidelines with respect to Mira Mesa. The impacts on Mira Mesa were reexamined and it was confirmed that residents of Mira Mesa are not being disproportionately affected.

8. Conclusion

On behalf of the Department of the Navy, I have decided to realign NAS Miramar into MCAS Miramar. I have carefully considered all of the comments, including those urging further analysis. After reviewing the administrative record and information received during the environmental review process, I have determined that no new significant environmental information or circumstances exist. Consequently, I have determined that a supplemental EIS is not warranted. I have decided to implement this action using the West-Ramp configuration (Alternative B), which was both the Preferred Alternative and also the Environmentally Preferred Alternative.

9. Where To Obtain Further Information

For further information, contact Lieutenant Colonel George Martin at (619) 537–6679.

Duncan Holaday,

Deputy Assistant Secretary, Installations and Facilities.

Dated: December 2, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–31024 Filed 12–5–96; 8:45 am]

BILLING CODE 3810–FF–P

Record of Decision for the Disposal and Reuse of Naval Training Center, Orlando, Florida

Summary

The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to

dispose of Naval Training Center (NTC) Orlando, Florida.

Navy intends to dispose of the property in a manner that is consistent with the Naval Training Center Orlando Reuse Plan that was submitted by the City of Orlando, the Local Redevelopment Authority (LRA) for the Naval Training Center, described in the Final Environmental Impact Statement as the preferred alternatives. The Reuse Plan proposed a mixed use approach of business, educational, governmental, residential, recreational, retail, warehouse, multimodal transportation, and open space land uses.

In deciding to dispose of the Naval Training Center in a manner consistent with the Reuse Plan, Navy has determined that mixed land use will meet the goals of local economic redevelopment and creation of new jobs, while also maintaining the City of Orlando's character, limiting adverse environmental impacts, and ensuring land uses that are compatible with surrounding properties. This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the mixed use redevelopment to the acquiring entity and the local zoning authority.

Background

The 1993 Defense Base Closure and Realignment Commission recommended closure of Naval Training Center Orlando. This recommendation was then approved by President Clinton and accepted by the One Hundred Third Congress in 1993. With the exception of the Naval Nuclear Power Training School, operations at the Naval Training Center ceased on August 30, 1996, and the property has been in caretaker status since that date. The Naval Nuclear Power Training School will realign to the Naval Weapons Station at Charleston, South Carolina, by September 30, 1999.

The Naval Training Center is located in Orange County, Florida, within the corporate limits of the City of Orlando. The Naval Training Center properties consist of the Main Base and facilities at three other sites in Orlando, that are known as the McCoy Annex, Area C, and the Herndon Annex. The Naval Hospital, which is situated on the Main Base, was associated with the Naval Training Center.

The Main Base is located 3.5 miles from Orlando's central business district and has an area of about 1,093 acres. This property includes about 254 acres in three lakes situated on the property.

The McCoy Annex occupies about 842 acres of land located seven miles south of the Main Base and adjacent to the Orlando International Airport. The Annex served as a family housing and community support area for those serving at the Naval Training Center.

Area C is located one mile southwest of the Main Base and occupies about 46 acres, including 4.6 acres of Lake Druid. This property served as a supply complex with warehouses and also provided space for the Defense Reutilization and Marketing Office and the Naval Training Center's laundry and dry cleaning plant.

The Herndon Annex is located one mile south of the Main Base and occupies about 54 acres adjacent to the Orlando Executive Airport. This Annex provided space for facilities that supported the nearby Naval Air Warfare Center's Training Systems Division, *i.e.,* the technical services laboratory and the research laboratory.

Navy has approved the requests of several Federal agencies for interagency transfers of base closure property at NTC Orlando. Navy will transfer the Navy Hospital and 44 acres of property at the Main Base to the Department of Veterans Affairs for use as a medical facility. Navy will transfer Building 325 and 4 acres of property at the Main Base to the Department of the Treasury for use by the United States Customs Service as the National Law Enforcement Communications Center. Navy will transfer 1.89 acres at the Main Base and 18.1 acres at the McCoy Annex to the Department of the Army for use by Army Reserve; and Navy will transfer 16 acres of property and two buildings at the McCoy Annex to the Departments of the Army and Air Force for use by the Florida National Guard. The remaining property is surplus to the needs of the Federal Government and can be conveyed.

Navy published a Notice of Intent in the Federal Register on August 5, 1994, announcing that Navy would prepare an Environmental Impact Statement (EIS) that would analyze the impacts of disposal and reuse of the land, buildings, and infrastructure at the Navy Training Center. A 30-day public scoping period was established, and Navy held a scoping meeting on August 25, 1994, in the City of Orlando.

On May 12, 1995, Navy distributed a Draft Environmental Impact Statement (DEIS) to Federal, State, and local agencies, elected officials, special interest groups, and interested persons. Navy held a public hearing on June 15, 1995, in the City of Orlando. The forty-five day public comment period on the DEIS concluded on June 26, 1995. Federal agencies, Florida State agencies, local governments, and the general public commented on the DEIS. These comments and Navy's responses were incorporated in the Final Environmental Impact Statement (FEIS), which was distributed to the public on August 30, 1996, for a review period that concluded on September 30, 1996. Navy received two letters commenting on the FEIS.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for disposal and reuse of this Federal property. In the NEPA process, Navy analyzed the environmental impacts of various proposed land uses that could result from disposal of the Naval Training Center properties. Navy also evaluated a ''No Action'' alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

As the basis for its analysis, Navy relied upon the reuse and redevelopment alternatives identified by the Naval Training Center Reuse Commission which was established by the City of Orlando to plan future uses of the closing facilities. The Commission analyzed various redevelopment scenarios and land uses, prepared the Reuse Plan, and presented it to the Department of the Navy on January 5, 1995.

The Preferred Alternative identified in the FEIS is the City's proposed Naval Training Center Orlando Reuse Plan. On the Main Base, this plan would provide pedestrain-oriented and residential uses surrounded by offices and educational institutions, a business park, governmental activities, and recreational areas. Additionally, there would be an extensive lakefront park and open space system that would connect other parts of the Orlando community with the Naval Training Center property. The existing nine-hole gold course at Lake Baldwin would be redeveloped as single family housing.

The McCoy Annex property would be used for housing and, in the area adjacent to Orlando International Airport, as a multimodal transportation port with related services. The area along the Bee Line Expressway at the northern edge of the McCoy Annex would provide space for retail stores and offices. The Reuse Plan would preserve the existing nine-hole golf course in the southern section of the property as well as recreational areas located throughout the Annex.

The property known as Area C would continue to be used for warehouse facilities and open space. The Herndon Annex property would be used for

warehouse facilities serving the adjacent Orlando Executive Airport.

In the NEPA process, Navy considered a second alternative, designated Alternative 2, which was characterized by high intensity redevelopment of the Naval Training Center properties. This alternative would concentrate residential, retail, and office uses near the center of the Main Base and establish higher density residential use in the northwestern and eastern sections of the Main Base. In contrast with the Reuse Plan, the nine-hole golf course adjacent to Lake Baldwin would be preserved.

Under this second alternative, the northern part of the McCoy Annex property would be used for retail stores, hotels and offices. The central and southern parts of the property would be converted for use as warehouses and industrial facilities. The existing recreational facilities would be removed, but the nine-hole golf course would be preserved. The property at Area C would be converted for use as family residences, and the Herndon Annex property would be used for warehouses.

Navy also considered a third alternative in the NEPA process, designated Alternative 3, which proposed low intensity redevelopment of the Naval Training Center properties. This alternative would provide low density single family residences in the northwestern and eastern sections of the Main Base and retail stores, governmental activities, educational facilities, and a business park in the central and southern areas. Alternative 3 would preserve the nine-hole golf course adjacent to Lake Baldwin.

Under this third proposal, the McCoy Annex property would continue to be used primarily as a residential area. The northern part of the property would be converted for use as hotels, offices, and retail stores. Some sections in the center of the Annex would be redeveloped for use as warehouses and industrial facilities. The existing recreational areas would be used as open space, and the golf course in the southern section would also be preserved.

The Area C property would be redeveloped in Alternative 3 for use as single family residences. At Herndon Annex, the warehouse located in the southern section of the property would be used as a commercial warehouse, but the other buildings would be demolished to permit construction of recreational facilities including athletic fields and courts.

Environmental Impacts

Navy analyzed the potential impacts of the three redevelopment alternatives for their effects on earth resources, air resources, noise, water resources, hazardous materials and wastes, biological systems (including terrestrial systems), aquatic systems, threatened and endangered species, socioeconomic resources (including economic activity), transportation, community facilities and services, and historical and archaeological resources. This Record Of Decision focuses on the impacts that would likely result from implementing the Naval Training Center Orlando Reuse Plan proposed by the City of Orlando.

No significant impacts to earth resources would result from implementation of the Reuse Plan. Most of the topography and soils at the Naval Training Center properties have been altered as a result of previous construction activities.

The potential impacts on air quality were analyzed by applying Federal Ambient Air Quality Standards (40 CFR Part 50) and Florida Ambient Air Quality Standards (Fla. Admin. Code R. 62–272.100). The Reuse Plan would not adversely affect regional air quality, because the kinds of activities that would be conducted after implementation of the Reuse Plan would be similar to those that had occurred on the military properties.

Construction activities associated with the Reuse Plan, however, would generate intermittent localized air quality impacts on all of the Navy properties, and the Reuse Plan's proposed redevelopment would also cause impacts from both stationary and mobile sources. The long term impact on air quality that would arise out of stationary sources depends upon the nature and extent of activities conducted on the property. Florida's Department of Environmental Protection (Florida DEP) has jurisdiction over these emission sources, and it will be necessary for each source to comply with Florida DEP's regulations government stationary source emissions. See Fla. Admin. Code Ch. 17–292 and 62–213.

The impact on air quality arising out of mobile source emissions would result from activities associated with people commuting to and from facilities and traffic associated with the warehouse facilities. The redevelopment proposed in the City's Reuse Plan would increase traffic in the vicinity of the Main Base, with a resultant slight increase in carbon monoxide levels at some congested intersections and roadway links. It is not likely, however, that these small increases in concentrations of carbon monoxide would result in any violation of applicable standards.

In a recent ambient air quality study of heavily traveled intersections in Orlando, including that of Colonial Drive and Interstate Highway 4 near the Main Base, the University of Central Florida found that ambient air concentrations of carbon monoxide were well below applicable standards. Similarly, data collected from air quality monitoring stations in downtown Orlando revealed that the concentrations of carbon monoxide do not even approach these standards. Additionally, the geometry of intersections and turning movements as well as the timing of traffic lights could be applied in a way that would mitigate emissions that may exceed Federal or State Ambient Air Quality Standards at particular locations.

Section 176(c) of the Clear Air Act, 42 U.S.C. 7506(C), as amended, requires that before major Federal actions may be undertaken in nonattainment or maintenance areas, the Federal agency must demonstrate conformity with air pollutant emissions policies and controls in the relevant State Implementation Plan. The General Conformity Rule (40 CFR Part 93), however, has been interpreted by the United States Environmental Protection Agency. (EPA) to exclude maintenance areas that were so designated before enactment of the Clean Air Act Amendments of 1990, Public Law 101–549. See 85 FR 63238, November 30, 1993. Since Orange County was designated as a maintenance area in 1987, the requirements of the General Conformity Rule do not apply to Federal actions within the county.

It is not likely that the land uses proposed for the Main Base, Area C, and the Herndon Annex would result in significant new sources of noise. Construction noise during redevelopment, however, would affect communities adjacent to all of the Naval Training Center properties. This potential impact would be limited to areas near the active construction projects during working hours.

At the McCoy Annex property, however, implementation of the Reuse Plan would result in an increase in environmental noise. As the point of convergence for air, rail and truck traffic, redevelopment there would generate localize noise. It is likely, however, that noise from aircraft at the adjacent Orlando International Airport would diminish the perception of noise from rail and truck activity at the multimodal facility.

Implementation of the Reuse Plan would not result in any significant impacts on surface waters. All new construction and any alteration of land must conform to the treatment and runoff control requirements of the local stormwater management districts and the Orlando Urban Storm Water Management Manual (OUSWMM). Additionally, under the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251, *et seq.*, any source of new discharges of wastewater would be required to comply with the National Pollutant Discharge Elimination System's (NPDES) program as well as state and local wastewater discharge regulations. See Fla. Admin. Code Ch. 62–4, 62–320, 62–312, and 62–600. As a result, the acquiring entity would be required to introduce stormwater controls during the construction phase of any redevelopment.

The type and amount of hazardous waste that would result from implementation of the Reuse Plan depends upon the nature and extent of future activities at the Naval Training Center properties. Industrial or commercial facilities that may produce regular quantities of hazardous waste must, of course, register with Florida's Department of Environmental Protection in accordance with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901, *et. seq.*, and Florida DEP regulations governing identification of hazardous waste. Fla. Admin. Code Ch. 62–730. Additionally, these industries and commercial activities would be responsible for obtaining the necessary permits and establishing the required hazardous waste management facilities and procedures.

The terrestrial systems found on the Navy properties include both undeveloped areas and urban lands. The undeveloped areas contain native vegetation in the form of trees and groundcover. The urban lands are areas dominated by buildings and ornamental landscaping. Under the Reuse Plan, an isolated 3.6 acre pine forest located in an undeveloped area at the Main Base would be eliminated. This action would not, however, have a significant impact on regional natural habitats, because the area is so small.

The City's proposed redevelopment of the McCoy Annex property may disturb up to 76.9 acres of undeveloped land but the plan would preserve 13.6 acres of land that has not been developed. While the City's Reuse Plan would not have a significant impact on the terrestrial systems of the Area C property, it may disturb 10.5 acres of undeveloped land at Herndon Annex.

The aquatic systems on the Navy properties include both wetlands and open water systems. Wetlands are areas that are saturated frequently enough to support certain types of vegetation that thrive in saturated soil, *e.g.*, swamps and wet prairies. Open water systems are lakes and reservoirs. Under the Reuse Plan for the Main Base, up to 3.0 acres of wetlands and open water may be eliminated or disturbed by the redevelopment of office, educational, and residential structures, leaving 17.1 acres of wetlands undisturbed. These wetlands and 254 acres of open water in the three lakes on the Main Base would be designated as a lakefront park and preserved.

At the McCoy Annex property, the City's proposed redevelopment may alter up to 48.7 acres of the total 80.2 acres of wetlands located there, but 31.5 acres of cypress wetlands would be preserved. At area C, the wetlands and open water systems would be preserved. At Herndon Annex, the construction of warehouse facilities could eliminate up to 4.4 acres of wetlands.

The City will have an opportunity to reduce the impact of redevelopment on wetlands when it engages in final site planning, which will include conformance with the conservation element of the City of Orlando's Growth Management Plan (GMP). Furthermore, the acquiring entity will be required to obtain permits from the U.S. Army Corps of Engineers under Section 404 of FWPCA, 33 U.S.C. 1344, and must comply with Florida DEP's wetlands regulations, Fla. Admin. Code Ch. 17–301, 17–302 and 17–312, as well as regulations of the St. Johns River Water Management District and the South Florida Water Management District. The stringent requirements of these laws should provide adequate mitigation for the loss of wetlands.

There are no threatened or endangered species listed under the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, that have been observed on or are likely to occur on the Naval Training Center properties. One State-designated threatened plant species, the threadroot orchid, and one State-designated endangered plant species, the yellow fringeless orchid, may be found in wetland areas on the Main Base, McCoy Annex, and Herndon Annex. Thus, the dredging or filling of wetlands could have impacts on these species.

Southeastern American kestrels, a State-designated threatened species, were observed during a visit to Area C. Accordingly, before clearing potential nesting trees on the Area C property, the acquiring entity would be required to conduct a survey for the kestrels and implement mitigation mandated by the Orlando Growth Management Plan, Title XI, Fla. Stat. Chapter 163, Part II, and the Florida Game and Freshwater Fish Commission's regulations. Because it forages in urban land and open space areas, it is likely that the southeastern American kestrel will benefit from the proposed redevelopment. Other State-listed species of special concern such as the gopher tortoise may also be affected by redevelopment.

The City's Reuse Plan would have a long term positive impact on economic activity, income, and employment in the Orlando region. The number of persons residing at the Main Base would decrease, but the number residing at the McCoy Annex property would remain essentially unchanged compared with the number of residents there before the Base was closed. The City's Reuse Plan would not cause any significant adverse impacts on utilities or community facilities and services.

If the employment goals set forth in the Reuse Plan were realized, both the Main Base and the McCoy Annex property would become employment centers for the Orlando region. By the year 2015, direct employment there would amount to more than 15,500, and total employment, including direct and indirect, would reach 30,040 persons.

The traffic associated with redevelopment of the Main Base under the Reuse Plan would increase from 49,800 trips per day to 85,400 trips per day by the year 2010. These trips would be distributed to the local roadway network and would increase daily traffic volumes from the northern and southern approaches by about 7 percent and from the eastern approach by 16 percent, resulting in an average traffic increase of 9 percent.

At the McCoy Annex property, traffic would decrease from 55,000 trips per day to 26,200 trips per day under the Reuse Plan. The City's plan would not significantly change traffic levels at the Area C and Herndon Annex properties, because the proposed reuses are similar to the historical Navy uses of those properties. It is not likely that the Reuse Plan would have an adverse impact on other modes of transportation in the Orlando region.

Through its Trip Allocation Program, the City of Orlando could mitigate the impacts of increased traffic by limiting the allowable number of average daily trip ends for particular traffic performance districts. Such limitations could achieve and maintain acceptable levels of service on local roadways by linking future development to road capacity. For example, if the allocation

of trip ends for a traffic performance district became encumbered, development in that district could be deferred until adequate road capacity was available.

To address the potential for increased traffic on neighborhood streets, the City's Reuse Plan also provides a Neighborhood Traffic Mitigation Policy. This policy requires the imposition of traffic mitigation measures that would reduce speeds and volumes on neighborhood streets if the average daily traffic on Merritt Park Drive, Ibis Drive, Falcon Drive, Chelsea Street, or Plaza Terrace were to exceed by 10 percent the volume of traffic projected for the year 2010.

The residential housing proposed for the Main Base would introduce about 1,301 new students to the Orange County public school system by the year 2015. This increase would create the need for an additional 47 teachers in the Orange County public schools. The Reuse Plan also sets aside 4 acres to permit an expansion of Winter Park High School, which is located adjacent to the Main Base Property, and 8 acres for construction of an elementary school at the Main Base.

At the McCoy Annex property, Navy families contributed 759 students to the Orange County public school system. Reuse of this housing by private sector families would contribute about 630 children to local public schools, or 129 less than when the Naval Training Center was active. The Area C and Herndon Annex properties would not contain residential units under the Reuse Plan and, therefore, would not have an impact on Orange County's educational resources.

The redevelopment associated with the Reuse Plan would not have a significant impact on the provision of police and fire protection, emergency medical services, or health care in the Orlando region.

It is likely that the Reuse Plan would have a beneficial impact on parks and recreational open space resources in the vicinity of the Naval Training Center properties. The total recreational space provided under the Reuse Plan for active recreation and open space is about 500 acres of approximately 19 times the amount of recreational area recommended by the City's Growth Management Plan. The Orlando Community and Youth Services Department would manage these properties for both active and passive recreational activities.

Building 2078 is the only building or site on the Naval Training Center properties that is eligible for listing on the National Register of Historic Places. Under the City's Reuse Plan, this building would be demolished to permit residential development on the property. On July 9, 1996, Navy, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer entered into a Memorandum Of Agreement (MOA) that provided mitigation for the disposal and demolition of Building 2078. This mitigation, which has been completed, consisted of recordation that included preparation of sketches, a brief history, and photographs of the building.

Navy also analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321 note. There would be no disproportionately high and adverse human health or environmental effects on minority and low-income populations. All groups would experience equally any impact related to reuse of the Naval Training Center properties within the regional population.

Mitigation

Implementation of Navy's decision to dispose of the Naval Training Center properties does not require Navy to perform any mitigation measures. Absent statutory authority, Navy cannot impose restrictions on the future use of this surplus Federal property. Navy will, however, include appropriate notifications in the deeds for any parcels that are inhabited by endangered or threatened species protected under State law, any parcels that contain wetlands, or any parcels that lie within floodplains protected under Federal and State laws.

Navy's FEIS identified and discussed the actions that would be necessary to mitigate the impacts associated with reuse and redevelopment of the Naval Training Center properties. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

The fact that the Reuse Plan conforms with the City of Orlando's Growth Management Plan provides additional assurance that sensitive areas will be protected from development. The GMP amendment process and the City of Orlando's land development regulations require extensive review of any proposed development of the Naval Training Center properties. These procedures ensure that protection will be afforded during all phases of the land development process, including post-development monitoring.

Local governments in Florida are also required to adopt comprehensive plans pursuant to the State Growth Management Act, Title XI, Fla. Stat. Chapter 163, Part II. After adopting such plans, each local government must also adopt land development regulations that implement the comprehensive plan. In addition, all decisions that have the effect of permitting development must be consistent with the comprehensive plan. Title XI, Fla. Stat. § 163.316, *et seq*.

The comprehensive plan must contain eleven elements, each of which has goals, objectives, and policies that the acquiring entity would be required to follow when redeveloping the Naval Training Center properties. The required elements of the comprehensive plan include future land use, conservation (wetlands and wildlife habitat), traffic circulation, housing, sanitary sewer, solid waste, potable water, natural groundwater aquifer recharge, and capital improvements. The implementing land development regulations would govern subdivisions, land use, wellfield protection, flooding and drainage, environmentally sensitive land, signs, traffic flow, public facilities, and other infrastructure.

Additionally, the County and Municipal Planning and Land Development Standards, Title XI, Fla. Stat. § 163.316, *et seq*., introduce the land use concept of concurrency. This requirement ensures that public facilities are adequate and available concurrent with the impacts of development by requiring local governments to control the timing of development. Similarly, Rule 9J–5 of the Florida Administrative Code requires local governments to adopt Level Of Service (LOS) standards for roads, potable water, sanitary sewers, solid waste disposal, drainage, parks and recreation, and mass transit. These public facilities and services must meet concurrency requirements before development orders may be issued. Finally, the capital improvements element of the comprehensive plan must set forth a financially feasible plan (on a five-year schedule) that demonstrates the local government's ability to achieve and maintain adopted LOS standards.

Comments Received on the FEIS

Navy received comments from the United States Environmental Protection Agency and one State agency. These comments did not raise new issues

concerning potential problems with implementation of the Reuse Plan or purpose mitigation measures other than those addressed in the FEIS.

Although acknowledging that the potential for undetected radiological materials on the Navy properties is unlikely, EPA suggested the Navy coordinate the closure process with Florida's Office of Radiation Control. Navy is coordinating the closure of NTC Orlando with this State agency.

Florida's Department of Transportation (DOT) expressed interest in participating in the formulation and adoption of transportation components of the City's Reuse Plan. The existing concurrency requirements of the State Growth Management Act, Title XI, Fla. Stat. Chapter 163, Part II, and the City of Orlando's Concurrency Management Ordinance (Chapter 59, Part 3, Section 59.308) will ensure the Florida DOT is involved in future phases of redevelopment of the Naval Training Center properties.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note, selection of the City of Orlando's Reuse Plan as the preferred alternative was based upon the environmental analysis in the FEIS and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 90 and 91.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the highest and best use of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth at Sections 101–47.1 through 101–47.8 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of DBCRA, may Navy apply disposal procedures other than the FPMR's prescriptions.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in § 90.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, *e.g.*, reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, § 91.7(d)(3) of the DoD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action. The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–8); and by competitive sale (FPMR Sec. 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The Reuse Plan proposed by the City of Orlando presents the highest and best use of the Naval Training Center properties. The City of Orlando, as the LRA, has determined in its Reuse Plan that the properties should be used for several purposes, including commercial, educational, governmental, residential, recreational, retail, warehousing, multimodal transportation, and open space land uses. The properties' physical characteristics and past use and the current uses of adjacent lands make them appropriate for this mixed use redevelopment.

The Reuse Plan responds to local economic conditions, promotes rapid economic recovery from the impact of

the Naval Training Center's closure, and is consistent with President Clinton's Five-Part Plan for revitalizing base closure communities, which emphasizes local economic redevelopment of the closing military facility and creation of new jobs as the means to revitalize these communities. 32 CFR Parts 90 and 91, 59 FR 16,123 (1994). Under the direction of Federal, State and local regulatory authorities, the acquiring entity can mitigate the resultant environmental impacts.

The City's proposed Reuse Plan strikes a reasonable balance between the redevelopment proposals advanced in Alternatives 2 and 3, in its impact on the environment, its compatibility with the current uses of adjacent property, and its use of the existing physical characteristics of the Naval Training Center properties. Although the ''No Action'' alternative has less potential for causing adverse environmental impacts, this alternative would not constitute the highest and best use of the Naval Training Center properties. It would not take advantage of the properties' physical characteristics and the current uses of adjacent properties. It is not compatible with the LRA's Reuse Plan. It would not foster local economic redevelopment of the Naval Training Center properties and would not create new jobs.

Accordingly, Navy will dispose of Naval Training Center Orlando in a manner that is consistent with the City of Orlando's Reuse Plan for the properties.

Dated: November 15, 1996.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).

[FR Doc. 96–31030 Filed 12–5–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Building Energy Standards Program: Determination Regarding Energy Efficiency Improvements in the 1995 CABO Model Energy Code for Low-Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy (DOE or Department) today determines that the 1995 version of the Council of American Building Officials (CABO) Model Energy Code (Model Energy Code or MEC) would achieve greater energy efficiency in low-rise residential buidings than the 1993 version of the MEC. This Notice also provides guidance and procedures covering State Certifications, Statements of Reasons and Requests for Extensions of Deadlines.

DATES: Certifications, Statements of Reasons, or Requests for Extensions with regard to the 1995 Model Energy Code are due on or before December 6, 1998.

ADDRESSES: Certifications, Statements of Reasons, or Requests for Extensions of Deadlines for Certification Statements by States should be directed to the Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, D.C. 20585–0121. Envelopes or packages should be labeled, ''State Certification of Residential Building Codes Regarding Energy Efficiency''.

FOR FURTHER INFORMATION CONTACT: Stephen Turchen, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, Phone: 202–586–6262, FAX: 202–586–4617.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for the Building Energy Standards Program. 42 U.S.C. 6831–6837.

ECPA requires each State, not later than October 24, 1994, to certify to the Secretary of Energy (Secretary) that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise its residential building code provisions to meet or exceed the 1992 Model Energy Code. The determination is to be: (1) made after public notice and hearing; (2) in writing; (3) based upon findings included in such determination and upon evidence presented at the hearing; and (4) available to the public. 42 U.S.C. 6833(a)(1) and (a)(2). In addition, if a State makes a determination that it is not appropriate to revise its residential building code, the State is required to submit to the Secretary, in writing, the reasons for that determination, which is to be made available to the public. 42 U.S.C. 6833(a)(4).

ECPA also provides that whenever the 1992 Model Energy Code, or any successor to that code, is revised, the Secretary must make a determination, not later than 12 months after such revision, whether the revised code would improve the energy efficiency of residential buildings and to publish notice of such determination in the Federal Register. 42 U.S.C. 6833 (a)(5)(A). If the Secretary determines that the revision of the 1992 Model Energy Code, or any successor thereof, improves the energy efficiency in residential buildings, then not later than two years after the date of the publication of such determination, each State is required to certify that it has reviewed the provisions of its residential building code regarding energy efficiency with respect to the revised or successor code, and has made a determination as to whether it is appropriate for the State to revise its residential building code to meet or exceed the provisions of the revised or successor code. 42 U.S.C. 6833(a)(5)(B). A previous Federal Register notice (59 FR 36173, July 15,1994) provided notice of the Secretary's determination that the 1993 Model Energy Code was an improvement over the 1992 version.

ECPA authorizes the Secretary to permit extensions of the deadlines for filing the certification described above if the State can demonstrate that it has made a good faith effort to comply with the requirements and that it has made significant progress in doing so. 42 U.S.C. 6833(c).

II. Discussion.

A. Improvements in Energy Efficiency for Low-Rise Residential Buildings as Reflected in the 1995 CABO Model Energy Code

DOE Determination of Improved Energy Efficiency From a Revised Model Energy Code

DOE believes, the significant differences between the 1995 version and the 1993 version are as follows: (1) the 1995 MEC incorporates revised U_o[1] values for metal-framed walls; (2) the 1995 MEC includes revised air infiltration control requirements; (3) the 1995 MEC provides additional instructions for performing whole building energy analyses in accordance with Chapter 4 of the MEC; and (4) the 1995 MEC provides improved guidance for dealing with thermal performance of

[1] U_o=the area-weighted average thermal transmittance of the gross area of the building envelope; i.e., the exterior wall assembly including fenestration and doors, the roof and ceiling assembly, and the floor assembly, British thermal unit/(hour×square feet×degrees Fahrenheit).

fenestration products, air distribution ducts, and crawl space foundations. The 1995 MEC also includes several minor technical changes that improve energy efficiency in low-rise residential buildings. These differences, and their impacts on energy efficiency, are discussed in further detail below. Based on a review of the differences between the 1993 and 1995 versions of the MEC, as discussed below, the Department has determined that the 1995 MEC would improve the energy efficiency of low-rise residential building codes.

B. Specific Changes in the 1995 Model Energy Code

Inputs for Energy Simulation Analyses

Chapter 4 of both the 1993 and 1995 MEC allows the code user to perform an energy simulation analysis of the proposed building and the ''standard design'' building (a hypothetical building which meets the MEC requirements). If the energy consumption of the proposed building is less than or equal to that of the standard design building, then the proposed building complies with the MEC. Since this analysis is complex and often requires the use of computerized energy simulation tools, Chapter 4 is not widely used in practice.

Chapter 4 in the 1995 MEC specifies assumptions for design parameters such as air infiltration, distribution system efficiency, window shading and orientation, internal heat gains, and domestic hot water consumption that did not appear in the 1993 MEC. Previously, the selection of input values for these parameters, which are usually required when performing an energy analysis, was left to the discretion of the user. Depending on the user's assumptions, the energy consumption of the proposed and standard design buildings could be significantly affected.

The 1995 MEC changes in Chapter 4 limit the users' ability to manipulate many of the required input values, thereby preventing artificial reductions in the stringency of the code. As an example, window area and orientation are now specifically addressed. The 1995 MEC stipulates that the window area of the standard design building must equal the area of the proposed building, with the area equally distributed on the north, south, east, and west exposures. Since the 1993 MEC had no such stipulations, a Chapter 4 user could assume that the windows in the standard design could be oriented primarily on the north side, a high energy use orientation. A large energy ''credit'' towards compliance could then be obtained simply by placing the windows in the proposed orientation; placing most windows on the south side results in a low energy use configuration. Thus the Chapter 4 changes serve to improve the energy efficiency of the 1995 version by ensuring that reasonable assumptions for the standard design building and proposed building are made before performing the energy analyses, and an artificially high ''target'' for energy consumption in the standard design does not appear.

Recessed Lighting Fixtures

The 1995 MEC limits heat loss and air infiltration through recessed lighting fixtures located in the building envelope. For buildings using recessed lighting fixtures, this requirement will improve energy efficiency. Recessed lighting fixtures were not explicitly addressed in the 1993 MEC.

Thermal Performance Ratings of Windows and Doors

Windows and doors are a large source of heat loss in today's insulated residences. Even a small change in window or door U-values (their proclivity for transmitting heat energy) can have a significant effect on the energy use in the house. According to a study in 1993 by the Department's Lawrence Berkeley Laboratory, heating and cooling energy lost through residential windows alone accounts for 3 percent of the nation's energy use.

The 1995 MEC incorporates a consistent test procedure that can be used to determine the thermal performance of fenestration products. Accurate thermal performance ratings are necessary to ensure that when these products are claimed to be energy efficient, there is a standardized, widely recognized test procedure that can substantiate the claim. Just as there are standardized methods for rating the R-value of insulation products, the fenestration product U-value test helps to ensure that the new home does in fact comply with the MEC.

The 1995 MEC includes a testing and rating procedure developed by the National Fenestration Rating Council (NFRC) pursuant to Section 121 of EPACT. 42 U.S.C. 6292. EPACT assigned the NFRC the responsibility for developing a window rating system. Specifically the 1995 MEC requires that:

- Fenestration products, if tested for thermal performance, shall use the NFRC testing and simulation procedure;
- If tested for thermal performance, fenestration products shall have their U-value determined by ''an accredited, independent laboratory'';
- If tested, fenestration products shall be ''labeled and certified by the manufacturer'' with their U-value rating; and
- If the NFRC procedure is not used to test certain fenestration products, a limited default table appearing in the 1995 MEC shall be used to determine the U-value of those products.

The 1995 MEC will therefore help eliminate intentional and unintentional discrepancies in tested U-values by referencing only one test procedure, NFRC 100–91, *Procedure for Determining Fenestration Product Thermal Properties.* Previously, the use of different thermal performance tests by the various fenestration product manufacturers often resulted in different U-values for the same tested fenestration products. When fenestration products were ''rated'' based on various procedures, tests, and assumptions, the meaning of the U-value obtained using those previous methods was not always clear. For example, some windows were rated given a ''center-of-glass'' U-value while others were given ''whole unit'' U-values. Since the former only addressed heat transmission through the glass at the center of the window, while the latter evaluated overall performance of the glass, frame, and sash components, the two values obtained did not represent the same type of thermal performance and are thus were not comparable. Since the whole window assembly is clearly the available ''path'' for heat transfer in the building envelope, the whole window U-values are more appropriate.

The NFRC test procedure is based on a whole unit U-value test procedure. By referencing this procedure, the 1995 MEC encourages the use of the whole unit U-value as a measure of window and door performance, instead of just the center-of-glass U-value.

When specific fenestration product U-values were not available in the past, the products were often given ''rule-of-thumb'' or arbitrary ratings. For example, in California, the energy code required a maximum U-value for windows of 0.65. Until NFRC ratings were required in California, an operable aluminum framed, dual glazed window was deemed to satisfy this requirement. After the NFRC rating procedures were established, these windows were found to have U-values of approximately 0.90.

Because not all windows and doors are NFRC-rated at this time, and because the 1995 MEC does not require that they be tested using the NFRC procedure, a default fenestration U-value table is provided for products which are not NFRC rated. The default table appearing in the 1995 MEC is based on whole-

product U-values taken from the 1993 ASHRAE Handbook of Fundamentals. This table accounts for field verifiable fenestration options only, such as frame construction material, number of panes of glass, or presence of storm doors when determining the appropriate default U-value. In this manner, the table ensures that the efficiency of the windows is not overstated if a default value is used.

The 1995 MEC provision for an accredited, independent laboratory to perform the U-value tests reduces the potential for inaccurate testing and ensures unbiased results. Labeling and certification by the manufacturers will help builders, code officials, and home buyers recognize the energy efficiency of the fenestration products. Window labels and certified product directories also simplify compliance and code enforcement, thereby ensuring that the energy efficiency claimed for proposed designs will actually be built into the new house.

Overall, the new fenestration product rating, certification, and labeling procedures in the 1995 MEC will increase energy efficiency of low-rise residences by ensuring that the thermal performance of the fenestration products, reflected in their U-value ratings, are based on a common accurate rating procedure or a field-verifiable default table, so that the claimed thermal performance is achieved, and by increasing MEC compliance, awareness, and enforcement through product labeling.

Metal Framed Walls

The 1995 MEC includes criteria that specifically correct for metal stud framing when calculating the thermal performance of walls using the ''Design by Component Performance Approach'' of Chapter 5. Because metal conducts heat more rapidly than wood, metal stud framing results in a less thermally efficient wall compared to wood framing. Metal framed walls must increase the wall cavity insulation levels or utilize insulated sheathing to meet the equivalent efficiency of a wood framed wall. For example, when R–19 insulation is placed in a wood framed wall with non-insulated sheathing, the resulting wall U-value is approximately 0.05. For the same insulation in a metal framed wall the U-value is approximately 0.10. (A higher U- value means poorer thermal performance.) Since the wall assembly must still achieve a required U-value, the metal framed wall will require more installed insulation than the wood framed wall.

The 1995 MEC will result in improved energy efficiency in buildings with metal framing by ensuring that the thermal performance of metal framed walls are calculated accurately when evaluating component performance under Chapter 5.

Ventilated Crawlspaces

The 1995 MEC requires insulation in the floor above a ventilated crawl space. When the crawl space wall is insulated and the crawl space is ventilated, the effectiveness of the crawl space wall insulation is very limited because outdoor air is allowed into the space through the vents, thereby bypassing the insulation. Requiring floor insulation for ventilated crawlspace will improve the energy efficiency of residential buildings by ensuring that conditioned space is truly thermally isolated from outside air or unconditioned spaces.

Air Infiltration

The 1995 MEC enhances the air infiltration control provisions related to caulking and sealing of openings and joints in the building shell. Provisions are added requiring sealing around tubs and showers, at attic and crawl space access panels, and around plumbing and electrical penetrations through the exterior envelope of the building. The new code clarifies acceptable sealing methods.

Infiltration significantly affects the energy efficiency of any residential building by allowing unconditioned air into the conditioned space. This additional outside air must be either heated or cooled, requiring additional energy consumption. Application of the additional 1995 MEC provisions will increase energy efficiency by decreasing unwanted air infiltration.

Duct Sealing

The 1995 MEC strengthens the duct sealing provisions of the earlier code by applying them to all supply and return ducts, allowing the use of mastic with backing tape only for sealing of non-fiberglass ducts, and excluding the use of ''duct tape.''

Studies have shown that improper duct sealing significantly increases energy consumption in houses with forced-air distribution systems. Conditioned air on the supply side can leak into unconditioned spaces and dissipate to the outdoors. Leaks on the return duct systems will draw unconditioned air into the intake of the heating or air-conditioning equipment, requiring additional energy to heat or cool the air to the desired delivery temperature. For example, the Appliance Doctor Project in California (Home Energy, March/April 1991 and May/June 1991) found that duct leaks increased heating and cooling loads by 16 and 25 percent, respectively, as compared to well-sealed distribution systems.

Because the majority of residential buildings have air transport ducts for their heating and cooling distribution system, the new duct sealing provisions will help to reduce energy consumption attributable to duct leaks and thereby increase the energy efficiency of new residential buildings being built to comply with the 1995 MEC.

Miscellaneous Additional Technical Changes

Insulation marking

This new provision requires that all insulation placed in walls, ceilings, and floors must be installed so that the manufacturer's R-value marking can be inspected. Additionally, loose-fill insulation blown into attics must be accompanied by depth markers affixed to the roof/ceiling structure. These markers will help to ensure that the certified depth of loose- fill insulation, which is critical for providing the claimed R-value, has actually been installed by the builder or subcontractor.

Definition of basement wall

Under the 1993 and 1995 MEC editions, the required thermal performance of basement walls differs from that of exterior walls which are totally above grade. The 1993 and all earlier MEC editions state that ''* * * basement walls with an average below-grade area less than 50% of the total wall area * * *'' must be considered part of the gross (exterior) wall area. MEC users have often asked if this refers to the total area of all basement walls lumped together, or each individual wall section. The 1995 MEC clarifies that each individual wall enclosing the basement, i.e., each colinear wall section, must be addressed separately for purposes of evaluating which wall sections must be treated as exterior walls. This approach avoids the possibility of aggregating all basement wall sections together before determining if they are ''exterior walls.'' Basement walls mistakenly evaluated as exterior walls negatively impact energy efficiency because the thermal performance of exterior walls is less stringent than that for basement walls in all climates.

Heating degree day data

The thermal performance requirements of ceilings or roofs, walls, floors, and foundations are solely a function of ''Heating Degree Days''

(HDD), a measure of the severity of the heating load at a particular geographic location, under all MEC editions. MEC Chapter 3, ''Design Conditions,'' does not state where the HDD value for the building location shall be obtained. The 1995 MEC corrects this oversight by referring to reliable sources of HDD data. These sources include the National Oceanic and Atmospheric Administration, ASHRAE, nearby military installations with long-term weather data, or any other data source acceptable to the Building Official. In view of the criticality of the HDD parameter for determining the ultimate energy efficiency performance of the residential building, the 1995 MEC can improve energy savings by ensuring that thermal performance requirements are not understated by using inappropriate HDD data.

Foundations Supporting Masonry Veneers

In low-rise residential buildings, masonry veneer construction generally occurs in two situations: A basement foundation wall or a monolithic slab foundation is often built with a horizontal ''ledge'' on the exterior edge that will be used to support a brick veneer on the outside face of the building. If the builder or designer chooses to insulate either foundation on the exterior perimeter, then, under the 1993 MEC requirements, insulation (usually rigid plastic foam) should be placed on the ledge to provide a continuous thermal barrier around the foundation. (Ledge insulation is not at issue if the basement wall is insulated on the interior side or if a non-monolithic slab foundation is insulated on the interior side.) However, the weight of 1 to 3 stories of brick veneer bearing on a small thickness of foam insulation will normally cause the foam to compress and deform, resulting in unacceptable settlement of the veneer. To address this problem, the 1995 MEC specifically exempts that portion of the foundation wall that supports the veneer from insulation requirements.

Of all substantive differences between the 1993 and 1995 MEC, this change is the only one, in the Department's opinion, which has the potential for marginally increasing energy consumption in a residential building using a masonry veneer in combination with particular foundation types. Nonetheless, the possible increase in energy consumption does not alter DOE's determination that the 1995 MEC, taken as a whole, improves energy efficiency in low-rise residential buildings.

C. Filing Certification Statements with DOE

1. Determination

On the basis of today's DOE determination, each State is required to make its own determination as to the appropriateness of revising its residential building code to meet or exceed the provisions of the CABO Model Energy Code, 1995 edition. Section 304(a)(5)(B). This determination must be made not later than two years from the date of today's notice, unless an extenstion is provided. The State determination shall be: (1) Made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. The States have considerable discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing in newspapers of general circulation.

The Department recognizes that some States do not have a State residential code or have a code that does not apply to all newly constructed residential buildings. If local building codes regulate residential building design and construction rather than a State code, the State must provide for review of those local codes and determine whether it is appropriate for each of its units of general purpose local government to revise the provisions of its residential building code regarding energy efficiency to meet or exceed the 1995 MEC. States may base their determinations and certifications on reasonable preliminary determinations by units of general purpose local government. Each such State must still hold an adequate public hearing to review the information obtained from the local governments and to gather any additional data and testimony for its own determination.

States should be aware that the Department considers high-rise (greater than three stories) multi-family residential buildings and hotel, motel, and other transient residential building types of any height as commercial buildings for energy code purposes. Consequently, residential buildings, for the purposes of certification, would include one- and two-family detached and attached buildings, duplexes, townhouses, row houses, and low-rise multi-family buildings (not greater than three stories) such as condominiums and garden apartments.

2. Certification

Section 304(a) of ECPA requires each State to certify to the Secretary of Energy that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise the provisions of such residential building code to meet or exceed the 1995 MEC. The certification must be in writing and submitted within two years from the date of publication of this notice. If a State intends to certify that a residential building code already meets or exceeds the requirements of the 1995 MEC, it would be appropriate for the State to provide an explanation of the basis for this certification, e.g., the 1995 MEC is incorporated by reference in the State's building code regulations. The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official, such as the Director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for residential building codes, to provide the certification to the Secretary. Such a designated State official could also provide the certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

3. Statement of Reasons

ECPA Section 304(a)(4) requires that if a State makes a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code to meet or exceed the 1995 MEC, the State must submit to the Secretary, in writing, the reasons for this determination. The statement of reasons should define and summarize the pertinent issues regarding the determination and provide an explanation for the State's conclusion. If local building codes are applicable in the absence of a State code, the State may rely on reasons provided by the units of general purpose local government. Upon receipt, the Department will publish in the Federal Register a notice of availability, stating that a copy has been placed in its Freedom of Information Reading Room in the Forrestal Building in Washington, DC, so that members of the public may inspect it.

4. Submission of Certification Statements

A previous DOE determination (59 FR 36173, July 15, 1994) requires States to file a certification statement regarding

the 1993 MEC by July 15, 1996. States that have not yet made substantial progress in reviewing the energy efficiency provisions of their residential building codes with respect to the 1993 MEC may wish to proceed directly with review and certification of their codes with respect to the 1995 MEC. States that have made substantial progress in reviewing the energy efficiency provisions of their residential building codes in light of the 1993 Model Energy Code may wish to complete their review and submit an appropriate certification before considering the 1995 MEC.

5. Request for Extensions

Section 304(c) of ECPA requires that the Secretary permit an extension of the deadline for complying with the certification requirements described above if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. Such demonstrations could include one or more of the following: (1) A plan for response to the requirements stated in section 304; (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of section 304; or (3) a notice of public hearing.

In the event that a State has not met the July 15, 1996 deadline for certifying to the 1993 MEC, and has not filed a request for extension, it must do so. Alternatively, some States may desire to promptly certify to the 1995 MEC in response to this notice, in lieu of certifying to the 1993 MEC. In this latter instance, if a State can demonstrate that it is making significant progress towards early certification with respect to the MEC 1995, the Department will consider such a demonstration as a basis to grant a State's request for certification to the 1995 MEC in lieu of certification to the 1993 MEC.

States should submit separate requests for extension of deadline for certification to the 1995 MEC.

6. Submittals

When submitting any certification documents in response to this notice, the Department requests that the original documents be accompanied by one copy of the same.

Issued in Washington, DC, on November 29, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–31065 Filed 12–5–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research and Office of Environmental Management; Energy Research Financial Assistance Program Notice 97–03; Environmental Management Science Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Energy Research (ER) and Environmental Management (EM), U.S. Department of Energy, hereby announce their interest in receiving grant applications for performance of innovative, fundamental research to support the management and disposal of DOE radioactive, hazardous chemical, and mixed wastes; the stabilization of nuclear materials and spent nuclear fuel; remediation of contaminated sites; and the decontamination and decommissioning of facilities.

The DOE Environmental Management program currently has ongoing applied research and engineering efforts under its Technology Development program. These efforts must be supplemented with basic research to address long-term technical issues crucial to the EM mission. Basic research can also provide EM with near-term fundamental data that may be critical to the advancement of technologies that are under development but not yet at full scale nor implemented. Proposed basic research under this notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge. This program is designed to inspire ''breakthroughs'' in areas critical to the EM mission through basic research and will be managed in partnership with ER. ER's well-established procedures, as set forth in the Energy Research Merit Review System, as published in the Federal Register, March 11, 1991, (56 FR 10244), will be used for merit review of applications submitted in response to this notice. This information is also available on the World Wide Web at http://www.er.doe.gov/production/grants/merit.html.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained at http://www.em.doe.gov/science.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 97–03, should be received by DOE by 4:30 P.M. E.S.T., January 15,1997. A response encouraging or discouraging a formal application generally will be communicated to the applicant within three weeks of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.D.T., April 16,1997, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1997.

ADDRESSES: All preapplications, referencing Program Notice 97–03, should be sent to Dr. Roland F. Hirsch, ER–73, Mail Stop F–240, Office of Health and Environmental Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, telephone: (301) 903–5349. Preapplications will be accepted if submitted by United States Postal Service, including Express Mail, commercial mail delivery service, or hand delivery, but will not be accepted by fax, electronic mail, or other means.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications using the instructions in the Office of Energy Research Application Guide and in the Supplementary Information in this notice. Applications must be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, Attn: Program Notice 97–03. The above address for formal applications must also be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Awards

Multiple-year funding of grant awards is anticipated, contingent upon the availability of funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three year grant. Applications for collaborative projects involving several research groups or more than one institution may receive larger awards if merited. Investigators considering submitting collaborative projects are encouraged to prepare a single application incorporating the entire research program and a combined

budget as well as separate budgets for each collaborating institution. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, ER–73, Mail Stop F–240, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, telephone: (301) 903–5349, fax: (301) 903–0567, electronic mail: roland.hirsch@oer.doe.gov, or Dr. Carol J. Henry, Office of Science and Technology, Office of Environmental Management, 1000 Independence Ave. SW, Washington, D.C. 20585, telephone: (202) 586–7150, electronic mail: carol.henry@em.doe.gov.

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Energy Research, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996.

Purpose

The need to build a stronger scientific basis for the Environmental Management effort has been established in a number of recent studies and reports. Among the important observations and recommendations made by the Galvin Commission (''Alternative Futures for the Department of Energy National Laboratories,'' February 1995) are the following:

> There is a particular need for long term, basic research in disciplines related to environmental cleanup * * *. Adopting a science-based approach that includes supporting development of technologies and expertise * * * could lead to both reduced cleanup costs and smaller environmental impacts at existing sites and to the development of a scientific foundation for advances in environmental technologies.

The objectives of the Environmental Management Science Program are to:

- Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly reduce future costs, schedules, and risks; and
- ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Energy Research and needs-driven applied technology development that is conducted in EM's Office of Science and Technology; and
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Representative Research Areas

Basic research is solicited in all areas of science with the potential for addressing one or more of the areas of concern to the Department's Environmental Management program. The scientific disciplines relevant to the program include, but are not limited to, biology (including cellular and molecular biology, ecology, bioremediation, genetics, biochemistry, and structural biology; plant sciences are listed as a separate category below), chemistry (including analytical chemistry, catalysis, heavy element chemistry, inorganic chemistry, organic chemistry, physical chemistry, and separations chemistry), computational sciences (including research and development of mathematical/numerical, informatics, and communication procedures and software technology, for example for deterministic simulations and optimization), engineering sciences (including control systems and optimization, diagnostics, transport processes, thermophysical properties and bioengineering), geosciences (including geophysical imaging, physicochemical dynamics and chemical transport in fluid-rock systems, and hydrogeology), health sciences, materials science (including condensed matter physics, metallurgy, ceramics, waste minimization, welding and joining, degradation mechanisms, and remote sensing and monitoring), physics (including atomic, molecular, optical, and fluid physics) and plant science (including mechanisms of mineral uptake, intercellular transport, and concentration and sequestration).

Projects in bioremediation that fall within the scope of Notices issued by the Natural and Accelerated Bioremediation Research (NABIR) Program of the Office of Energy Research (such as Notice 97–04) should be submitted to that program rather than to the Environmental Management Science Program. Projects outside the scope of NABIR but within the scope of this Notice may be submitted to the EMSP.

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, the DOE National Laboratories, and/or other Federal Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Applicants are encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Major Environmental Management Challenges

The following is an overview of the major technical challenges facing the Environmental Management program that are the focus of this announcement. More detailed descriptions of the specific technical needs and areas of emphasis associated with these problem areas can be found in the background section of this Notice.

The Department is the guardian of over 300 large storage tanks containing over 100 million gallons of highly radioactive wastes, which include organic and inorganic chemical compounds, in solid, colloidal, slurry, and liquid phases. The environment within the tanks is highly radioactive and chemically harsh. A few of the tanks have leaked to the environment while others are corroding. The contents of these tanks need to be characterized, removed from the tanks, treated, and converted to safe forms for disposal.

The Department is the custodian of several thousand metric tons of spent nuclear reactor fuels, resulting primarily from weapons fabrication activities during the Cold War, but also including fuel from research and naval reactors. The long-term containment performance of the fuel under storage and disposal conditions is uncertain. Such uncertainties affect the ability to license disposal methods.

The Office of Environmental Management is the custodian of large quantities of fissile materials which were left in the manufacturing and processing facilities after the United States halted its nuclear weapons production activities. These materials include plutonium solutions, plutonium metals and oxides, plutonium residues and compounds, highly enriched uranium, and nuclides of other actinides. Additional scientific information is required to choose processes for converting these materials to stable forms.

The Department currently has on its sites over one hundred sixty thousand cubic meters of waste containing both radioactive and hazardous materials. This mixed waste contains a wide variety of materials, as varied as protective clothing, machining products and wastes, packaging materials, and process liquids. Fundamental scientific data are needed to improve processes associated with treatment systems, such as characterization, pre-treatment, and monitoring.

The Department is committed to the safe disposal of all radioactive wastes, including high-level wastes, mixed wastes, and fissile materials. Safe disposal of these materials requires that the wide range of potential waste streams be converted into insoluble materials for long term storage. Some radioactive material-containing forms have been successfully developed and are being produced; however, at present, research challenges still exist in developing suitable forms for each material to be stored.

The Department is currently conducting cleanup activities at many of its sites, and is preparing plans for additional remediation work. There is much scientific uncertainty about the levels of risk to human health at the end stages of the DOE clean-up effort.

The aforementioned areas of emphasis do not preclude, and DOE strongly encourages, any innovative or creative ideas contributing to solving EM challenges mentioned throughout this Notice.

Application Evaluation and Selection

- Scientific Merit. The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project

2. Appropriateness of the Proposed Method or Approach

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources

4. Reasonableness and Appropriateness of the Proposed Budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

- Relevance to Mission. Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. These objectives were established in the Conference Report for the Fiscal Year 1996 Energy and Water Development Appropriations Act, and are published in the Congressional Record—House, October 26, 1995, page H10956.

DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Research funded in the Environmental Management Science Program in Fiscal Year 1996 can be reviewed at http://www.doe.gov/em52/science-grants.html.

Application Format

Applicants are expected to use the following format in addition to following instructions in the Office of Energy Research Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- ER standard face page (DOE F 4650.2 (10–91))
- Application classification sheet (see below for list of categories)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget Explanation
- Budgets and Budget explanation for each collaborative subproject, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages)

Goals
Significance of Project to the EMSP
Background
Research Plan
Preliminary Studies (if applicable)
Research Design and Methodologies

- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

While the original application and seven required copies must be submitted, applicants are encouraged to also provide a 3.5-inch diskette containing the application in electronic format. The label on the diskette must clearly identify the institution, principal investigator, title of application, and the computer system and program used to prepare the document.

Application Categories

In order to properly classify each preapplication and application for evaluation and review, the documents must indicate the applicant's preferred scientific research field and environmental category, selected from the following lists. More than one environmental category may be indicated if desired.

Field of Scientific Research

1. Biology, not including plant science
Chemical Sciences (2–6):
2. Analytical Chemistry and Instrumentation
3. Catalysis
4. Heavy Element Chemistry
5. Separations Chemistry
6. Other Topics in Chemistry
7. Computer and Mathematical Sciences
8. Engineering Sciences
Geosciences (9–11):
9. Geophysics
10. Geochemistry
11. Hydrogeology: Flow Modeling and Subsurface Science
12. Health Sciences
13. Materials Science
14. Physics
15. Plant Science
16. Other

Environmental Category:

A. Decontamination/Decommissioning
B. Health/Ecology/Risk
C. High-level Radioactive Waste
D. Waste Disposal Forms
E. Fissile materials
F. Spent Nuclear Fuel
G. Subsurface Characterization
H. Subsurface Contaminant Treatment
I. Waste Characterization & Separations
J. Waste Treatment & Destruction
K. Other

Program Schedule

Preapplications must be received by DOE on or before January 15, 1997, and full applications on or before April 16, 1997, at the times and addresses noted above. It is anticipated that awards will be made no later than September 30, 1997.

Program Funding

Up to a total of $20,000,000 of Fiscal Year 1997 Federal funds is expected to be available for new Environmental Management Science Program awards resulting from both this Notice and a parallel announcement to government laboratories and Federally Funded Research and Development Centers, including the DOE national laboratories. All projects will be evaluated using the same criteria, regardless of the submitting institution. The program will be competitive and offered to investigators in universities or other institutions of higher education, other

non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. Apart from this notice, the program also will be offered to DOE national laboratories and other Federal laboratories.

Preapplications

A brief preapplication may be submitted. The original and five copies must be received by January 15, 1997, to be considered. The preapplication should identify on the cover sheet the institution, name, address, telephone, fax and electronic mail address for the principal investigator, title of the project, and the field of scientific research and category(ies) of environmental application to which the project is responding (using the list above). The preapplication should consist of up to three pages of narrative describing the research objectives and the plan for accomplishing them, and should also include a paragraph describing the research background of the principal investigator and key collaborators if any. A 3.5 inch diskette containing the preapplication in any common word processing format may also be submitted in addition to the required printed copies.

Preapplications will be evaluated relative to the scope and research needs of the DOE's Environmental Management Science Program by qualified DOE program managers from both ER and EM. Preapplications are strongly encouraged but not required prior to submission of a full application.

Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Energy Research, ER–73, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–5349. Electronic access to ER's Financial Assistance Application Guide and forms is possible via the World Wide Web at http://www.er.doe.gov/production/grants/grants.html.

Background

The United States involvement in nuclear weapons development for the last 50 years has resulted in the development of a vast research, production, and testing network known as the nuclear weapons complex. The Department has begun the environmental remediation of the complex encompassing radiological and nonradiological hazards, vast volumes of contaminated water and soil, and over 7,000 contaminated structures. The Department must characterize, treat, and dispose of hazardous and radioactive wastes that have been accumulating for more than 50 years at 120 sites in 36 states and territories. By 1995, the Department had spent about $23 billion in identifying and characterizing its waste, managing it, and assessing the remediation necessary for its sites and facilities. Over the next ten years at current budget projections, another $60 billion will be spent. The DOE cleanup of the Cold War legacy is the largest cleanup program in the Federal Government, even larger than that of the Department of Defense legacy. The Office of Environmental Management (EM) is responsible for waste management and cleanup of DOE sites. The EM operations have been historically compliance-based and driven to meet established goals in the shortest time possible using either existing technologies or those that could be developed and demonstrated within a few years. Environmental Management is also responsible for conducting the program for waste minimization and pollution prevention for the Department.

The variety and volume of the Department's current activities make this effort a challenge itself. In some cases, fundamental science questions will have to be addressed before a technology or process can be engineered. There is a need to involve more basic science researchers in the challenges of the Department's remediation effort. The Office of Energy Research (ER) addresses fundamental, frequently long-term, research issues related to the many missions of the Department. The Environmental Management Science Program will use ER's experience in managing fundamental research to address the needs of technology breakthroughs in EM's programs.

This research agenda has been developed for Fiscal Year 1997, along with a development process for a long term program within EM, with the objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. The following are descriptions of the technical challenges in addressing many of these issues, in areas which are of particular interest for this notice.

High-level Radioactive Waste Tanks. The Department is the guardian of over 300 large storage tanks containing over 100 million gallons of highly radioactive wastes, which include organic and inorganic chemical compounds, in solid, colloidal, slurry, and liquid phases. The environment within the tanks is highly radioactive and chemically harsh. A few of the tanks have leaked to the environment while others are corroding.

Specific areas of emphasis in technology needs and research challenges related to high-level waste tank problems include, but are not limited to:

- The characterization and safe removal of the contents of these tanks, with the contents converted into forms suitable for long-term storage. Particular challenges include the need for improved characterization and separation methods of these wastes, including pretreatment, and methods to reduce the total volume of waste requiring long-term storage, which will reduce the large disposal costs associated with these wastes. Problems exist in the plugging of transport lines, mobilizing waste sludge, leak detection, process control, and conversion to final waste forms.
- The separation of complex chemical and radioactive waste to minimize the final volume of high level waste remaining after processing. The removal of liquid from sludges is a difficult challenge. There is not yet sufficient understanding of the factors that control the selectivity and efficacy of chemical and physical interactions, including structure-function relationships, and the effect of particle shapes and kinetics. In pretreatment unit operations there is a need to understand waste behavior and effects at waste processing interfaces, as well as how pretreatment processes affect the ability to transport waste between unit operations. Difficulties also exist in separating radioactive species from high ionic strength, multi-component aqueous solutions of salts dominated by species such as sodium nitrate, nitrite, carbonate, and phosphate. Separation of radionuclides and hazardous substances from solid (e.g. calcined) waste streams is also of interest.
- The physical state of the wastes in storage tanks. Some tanks contain distinct layers of sludge, salt cake and supernatant, and these layers may also not be homogeneous. There is evidence that much of the solid waste exists as colloidal particles that may remain suspended, settle out of solution, or gel and solidify with changes in conditions. Fine solids or colloidal particulates can

carry a large fraction of contaminant and can interfere with subsequent processing. Important unknown factors which inhibit the remediation of tank wastes include the effects of temperature, pH, particle chemistry and morphology on agglomeration, sedimentation, viscosity, partitioning, dissolution, and speciation.

- The optimization of waste conversion processes. The presence of radionuclides results in radiation-induced, high-energy chemical reactions and in waste heating, which can accelerate chemical reactions. Some of these reactions may be catalyzed by extreme pH conditions and an array of active surface sites on the solids suspended in the waste. These processes lead to considerable variability in the chemical composition of the waste and therefore to difficulties in treatment process design. Some wastes or processes include byproducts which are unacceptable for long-term storage (e.g. organics, nitrates, nitrites, ferrocyanides, nitrogen oxides, chlorinated hydrocarbons) and which therefore must be destroyed or eliminated from the system. Treatment of both acidic and alkaline (up to several molar hydroxide) aqueous solutions is required.

Spent Nuclear Fuel. The Department is the custodian of several thousand metric tons of spent nuclear reactor fuels which resulted primarily from weapons fabrication activities during the Cold War, but also include fuel from research and naval reactors. The long-term containment performance of the fuel under storage and disposal conditions is uncertain. Such uncertainties affect the ability to license disposal methods.

Specific areas of emphasis in technology needs and research challenges related to spent nuclear fuel problems include, but are not limited to:

- Mechanisms which may adversely affect the performance of the fuel package during storage must be identified. Deleterious effects which are incompletely characterized include: radiolytic effects of the radiation field on surrounding materials; corrosion, degradation, and radionuclide release mechanisms and rates for the representative fuel matrices; mechanisms which may lead to accelerated degradation of containers; dissolution characteristics of the matrices; and the effects of microbes on fuel packages. Some fuel storage pools have water clarity problems during fuel movement which affect safe operations.
- A technical basis is required for other steps in the spent fuel program, including: mechanisms of pyrophoricity and combustion parameters for various fuel types; gas generation during processing; determination of moisture content of fuel and maximum acceptable amount of moisture; degradation mechanisms and kinetics of spent fuel in a dry storage environment over a period of several decades; fissile and radioisotopic content of some spent fuel types; segregation behavior of elements; control of criticality in the very long term; and synergistic effects. Methods to remove moisture without damage to the structure of fuel elements are required.
- Some spent fuel types require additional characterization, such as fission and/or gamma ray nondestructive assay or evaluation, before disposal activities can be commenced. Current characterization methods are either extremely expensive or may not yield the necessary information for performance criteria for safe interim storage, transportation, and repository deposition. Thermodynamic and kinetic properties of miscellaneous spent fuel types, such as mixed oxide fuels, are not known to the level of detail needed to include them in a general purpose treatment process. Online measurement of fissile content and nuclear poisons during stabilization must be developed.

Fissile Materials. The Office of Environmental Management is the custodian of large quantities of fissile materials which were left in the manufacturing and processing facilities after the United States halted its nuclear weapons production activities. These materials include plutonium solutions, plutonium metals and oxides, plutonium residues and compounds, highly enriched uranium, and nuclides of other actinides.

Specific areas of emphasis in technology needs and research challenges related to fissile material problems include, but are not limited to:

- Gaps exist in the information base needed for choosing among the alternate processes to be used in safe conversion of various types of fissile materials to optimal forms for safe interim storage, long term storage, and ultimate disposition. Necessary information includes accurate determination of thermodynamic redox potentials and heterogeneous electron transfer kinetics of selected actinides and actinide complexes; characterization of plutonium compound solubility in aqueous phosphate and sulfate media; actinide chemical thermodynamics and kinetics; behavior of mixed oxidation states of plutonium-containing materials; plutonium diffusion and corrosion behavior; the application of acid solution separation processes to neutralized and alkaline residues and wastes; the nature and effect of actinide interactions with organometallics, surfaces, and organic residues; and the performance of various analytical methods, including x-ray tomography, digital radiography, acoustic resonance spectroscopy, and actinide self-fluorescence.

Mixed hazardous and radioactive low-level waste. The term ''mixed waste'' refers to waste containing both radioactive and hazardous materials. There is currently estimated to be about 167,000 cubic meters of mixed waste in storage awaiting treatment and disposal. There are over 1,400 different mixed waste streams in inventory, located at 38 separate sites in 19 states. This inventory will be increased with newly generated mixed waste resulting from DOE's ongoing activities in environmental restoration, facility decontamination, and transition processes. Existing treatment and disposal capacities are presently too limited to allow the treatment and disposal of this inventory of mixed wastes. Research at a fundamental scientific level could lead to innovative processes or technologies, or could provide data to permit the advancement of technologies currently under development.

Specific areas of emphasis in technology needs and research challenges related to mixed waste problems include, but are not limited to:

- Characterization technologies for non-destructive evaluation of drum and box contents for the presence of materials defined by the Resource Conservation and Recovery Act as hazardous in the waste, and for segregating and routing incoming waste streams to appropriate treatment processes, are lacking. Effluent monitoring must be improved to optimize treatment operations, and to ensure compliance with applicable environmental requirements.
- Sorting of the large volume of wastes is impractical without improved nondestructive, noninvasive measurement techniques. Long-term performance of advanced waste forms still must be ascertained. To support equipment design and permitting of high-temperature treatment processes, more information is needed on the thermodynamics, transport and generation of regulated hazardous materials and radionuclides in these processes. Real time monitors for heavy metals, dioxins, and volatile organic compounds are also not available. Alternatively, nonthermal treatment processes could be used, but major

technical issues remain unresolved. Methods for direct removal of radioactive material are also of interest.

- Monitoring for the presence of mercury and other toxic metals in wastes, and removal of mercury from wastes, are high priorities but large-scale techniques are not yet available. Relative to mercury containing wastes, methods are required for the stabilization of mercury and for the amalgamation of bulk, non-recyclable mercury to meet Universal Treatment Standards and leachability testing standards. Improvements are required in techniques for identifying alpha-emitting radionuclides.
- Removal of radioactive components from waste in solid forms. These wastes include sludges from defense reprocessing activities, metals and concrete from decontamination and decommissioning activities, and calcined wastes. Highly radioactive sludges are typically metal oxides with large amounts of potentially soluble materials such as sodium or aluminum. A method for direct removal of the small radioactive fraction of these materials would greatly reduce disposal costs, but such methods are lacking.

Waste Disposal Forms. Safe disposal of radioactive wastes requires that a wide range of potential waste streams be converted into insoluble materials for long term storage. Some radioactive material-containing forms have been successfully developed and are being produced; however, the forms must be developed and optimized for each material to be stored, including high-level wastes, low-level wastes, mixed wastes, and fissile materials.

Specific examples of technology needs and research challenges relating to waste forms include, but are not limited to:

- Borosilicate glass is a waste form which is currently used for the storage of some high level waste and is considered a candidate for disposal of other high and low level wastes. It is unclear whether all waste types can be dissolved in borosilicate glass. Many common waste components, such as phosphates, sulfates, and chromates, are thought to have low solubilities. Some extractant materials, such as crystalline silicotitanate, may have limited solubilities as well.
- A better understanding of waste form leaching performance is required, including the hydrodynamics of fluids in cracked media, transport phenomena and phase separation at surfaces, and radiation-enhanced dissolution at interfaces. Validated chemical and thermodynamic models are required to predict leaching and gas bubble formation. The structure and bonding of waste components in waste forms, as well as the effect of the waste and the radiation field on stability, solubility, durability, and processing of the host, must be elucidated.
- Waste forms for mixed waste which have higher waste loading, improved stability and chemical durability than current forms are required to reduce disposal costs and facilitate waste acceptance. Evaluation of the long-term performance is required to ensure that disposal satisfies stakeholder concerns and regulatory requirements.
- Vitrification of certain plutonium-contaminated waste materials may be preferred to cementation due to the lower volume of the final waste form. Vitrification has not been as highly developed for actinide residues or wastes as for fission product wastes. For other actinide wastes, mineral waste forms may be preferred; however, an enhanced technical basis for alternate waste forms for stabilizing plutonium is needed before mineral compositions can be used as intermediate- and long-term storage materials.

Risk, Quantitative Methodologies, Human and Environmental Health Analyses. There is much scientific uncertainty about the levels of risk to human health at the end stages of the DOE clean-up effort. Research challenges in the area of risk, quantitative, and health analyses include, but are not limited to:

- Accurate risk analyses require thorough knowledge of contaminant characteristics, basic ecological processes and principles, rates at which contaminants move through ecosystems, and health and ecological effects. In particular, better knowledge of radionuclide and toxic chemical transport dynamics and the potential effects of long-term exposure to low levels of radionuclides, in combination with other contaminants, is essential.

—There is a need for health and environmental research to support adoption of performance standards that present quantifiable criteria for the levels to which high level waste tanks must be cleaned prior to closure.

- Research is required to improve understanding of threatened and damaged ecosystems and processes to restore the viability and quality of these ecosystems.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by Environmental Management Program can be found on the World Wide Web at http://www.em.doe.gov and at the extensive links contained therein. These programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

References for Background Information

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Dr. Carol J. Henry at the address listed in the contacts section.

DOE. 1996. Estimating the Cold War Mortgage: The 1996 Baseline Environmental Management Report. March 1996. U.S. Department of Energy Office of Environmental Management, Washington, D.C. http://www.em.doe.gov/bemr96/index.html

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DOE. 1996. Office of Science and Risk Policy EM–52 and Environmental Management Science Program. http://www.em.doe.gov/science/

DOE. 1996. Office of Science and Technology EM–50. http://www.em.doe.gov/menu/?techdev.html

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DOE. 1996. Spent Nuclear Fuel. DOE-Owned SNF Technology Integration Plan. U.S. Department of Energy, Washington, DC. DOE/SNF-PP–002, May 1996.

DOE. 1996. Taking Stock: A Look at the Opportunities and Challenges Posed by Inventories from the Cold War Era. The U.S. Department of Energy, Office of Environmental Management, Washington, DC. http://www.em.doe.gov/takstock/index.html

DOE. 1996. Tank Waste Information Network System. http://twins.pnl.gov:8001/refmain.html

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Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, D.C. http://www.em.doe.gov/circle/index.html

DOE. 1995. Environmental Management 1995: Progress and Plans of the Environmental Management Program. The U.S. Department of Energy, Office of Environmental Management, Washington, D.C. http://www.em.doe.gov/em95/

DOE. 1995. Risks and the Risk Debate: Searching for Common Ground ''The First Step''. The U.S. Department of Energy, Office of Environmental Management, Washington, D.C. http://raleigh.dis.anl.gov:81/cgi-bin/dispdoc—return.pl?rrd+1

DOE. 1995. Technology Summary Reports, June 1995 (Rainbow Books) http://www.em.doe.gov/rain/

Idaho National Engineering Laboratory. 1996. Mixed Waste Focus Area Integrated Technical Baseline Report. Volumes 1 and 2. U.S. Department of Energy, Idaho Operations Office, Idaho Falls, Idaho. DOE/ID–10524. http://wastenot.inel.gov/mwfa/doe—id-10524.html

National Commission on Superfund Members. Final Consensus Report of the National Commission on Superfund. March 1994. Keystone Center and the Environmental Law Center of Vermont Law School.

National Environmental Technology Strategy. Bridge to a Sustainable Future. April 1995. National Science and Technology Council, Washington, D.C. http://www.gnet.org/gnet/gov/usgov/whitehouse/bridge/bridge.html

National Research Council. 1996. Building an Environmental Management Science Program: Initial Assessment. National Academy Press, Washington, DC. http://www.nap.edu/readingroom/books/envmanage/

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, D.C. http://www.nap.edu/readingroom/books/doeemp/

Pacific Northwest National Laboratory. Hanford Tank Cleanup: A Guide to Understanding the Technical Issues. R.E. Gephart, R.E. Lundgren. Pacific Northwest National Laboratory, Richland, Washington. NTIS Order number: DE96004127. Report Number: PNL–10773. To order, call the NTIS sales desk at (703) 487–4650.

Pacific Northwest National Laboratory. Tanks Focus Area FY 1996 Site Needs Assessment. Pacific Northwest National Laboratory, Richland, Washington. PNL–11091.

Secretary of Energy Advisory Board. Alternative Futures for the Department of Energy National Laboratories. February 1995. Task Force on alternative Futures for the Department of Energy National Laboratories, Washington, D.C. http://www.doe.gov/html/doe/whatsnew/galvin/tf-rpt.html

U.S. Congress, Office of Technology Assessment. Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production, February 1991. U.S. Government Printing Office, Washington, D.C. NTIS Order number: PB91143743. To order, call the NTIS sales desk at (703) 487–4650.

U.S. Environmental Protection Agency. 1996. Availability of 1997 Grants for Research. http://es.inel.gov/ncerqa/rfa97/eparfa97.html

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605)

Issued in Washington, DC on December 2, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 96–31071 Filed 12–5–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–116–000]

Columbia Gas Transmission Corporation; Notice of Application To Abandon Service

December 2, 1996.

Take notice that on November 22, 1996, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599 filed in Docket No. CP97–116–000 under Section 7(b) of the Natural Gas Act to abandon its interest in the Boldman Extraction Plant to MarkWest Hydrocarbon, Inc. (Mark West), and to sell its Cobb Extraction Plant to MarkWest.

This application is filed contingent upon approval of a proposed settlement of Applicant's Section 4 rate proceeding in Docket No. RP95–408–000. In accordance with the proposed settlement, Applicant proposes to cancel its lease of the Boldman Extraction Plant in Pike County, Kentucky (which is owned by MarkWest) and abandon the products extraction service performed there to MarkWest. Applicant also proposes to sell the Cobb Extraction Plant to MarkWest in Kanawha County, West Virginia, at net book value and abandon the services performed there to MarkWest.

Any person desiring to be heard or make any protest with reference to said application should on or before December 23, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (1 8 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31023 Filed 12–5–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5660–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Requirements for Boilers and Industrial Furnaces, (OMB Control Number: 2050–0073), expiring January 30, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

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

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1361.06.

SUPPLEMENTARY INFORMATION:

Title: Information Requirements For Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements, (OMB Control No. 2050–0073; EPA ICR No. 1361.06) expiring January 30, 1997. This is a request for extension of a currently approved collection.

Abstract: On February 21, 1991 and August 25, 1992, EPA expanded controls on hazardous waste combustion to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces (BIFs), which were previously unregulated. 40 CFR Part 266, Subpart H established standards for the burning of hazardous waste in BIFs under the authority of the Resource Conservation and Recovery Act (RCRA). 40 CFR 270.22 established Part B application information requirements for BIFs burning hazardous waste, and § 270.66 established permit requirements for BIFs. Owners and operators of BIF facilities must comply with these regulations in addition to other regulations applicable to all hazardous waste facilities.

EPA requires this mandatory information collection to demonstrate that facilities meet necessary regulatory requirements and to ensure that the environment is adequately protected. Regulations covering BIFs and general hazardous waste facilities are promulgated under authority of RCRA sections 1006, 2002, 3001 through 3007, 3010, and 7004, as amended. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 29, 1996 (61 FR 39448); two comments were received. Because of the small number of comments received, EPA consulted with industry on the hourly burden estimates made in this ICR. These consultation responses were incorporated into the ICR. A response to the comments and a summary of the industry consultations are included in the docket (see docket number F–96–FBIP-FFFFF).

Burden Statement: The average reporting and recordkeeping burdens for facilities with new BIF units are approximately 2,303 hours and 2,408 hours per year, respectively. The average reporting and recordkeeping burdens for facilities with newly permitted BIF units are approximately 2,041 hours and 2,402 hours per year, respectively. The average reporting and recordkeeping burdens for facilities with existing permitted BIF units are approximately 472 hours and 2,374 hours per year, respectively. The average reporting and recordkeeping burdens for facilities with existing interim status BIF units are approximately 615 hours and 2,458 hours per year, respectively. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: boilers and industrial furnaces.

Estimated Number of Respondents: 117.

Frequency of Response: on occasion, depending on requirement.

Estimated Total Annual Hour Burden: 145,759 hours.

Estimated Total Annualized Cost Burden: $50,241,119.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1361.06 and OMB Control No. 2050–0073 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 25, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–31123 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5660–8]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources (NSPS) Secondary Lead Smelters (40 CFR Part 60, Subpart L) Reporting and Recordkeeping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507 (a)(1)(D)), this notice announces that the Information Collection Request (ICR) for the New Source Performance Standards for Secondary Lead Smelters (40 CFR Part 60, Subpart L) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

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

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1128.05.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Secondary Lead Smelters (40 CFR Part 60, Subpart L), Reporting and Recordkeeping Requirements OMB Control No: 2060–0080, EPA ICR No: 1128.05.

This information collection is a reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: New Source Performance Standards for Secondary Lead Smelters were developed to ensure that air emissions from these facilities do not cause ambient concentrations of lead and non-lead particulate matter to exceed levels that may reasonably be anticipated to endanger public health and the environment. Owners or operators of secondary lead smelters subject to NSPS must notify EPA of construction, reconstruction, modification, anticipated and actual startup dates, and results of performance tests. These facilities must also maintain records of performance test results, startups, shutdowns, and malfunctions. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Responses are mandatory under 40 CFR Part 60. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 11, 1996 [61 FR 29551].

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 23.

Estimated Number of Responses: 23.

Frequency of Response: 1/yr/respondent.

Estimated Total Annual Hour Burden: 35 hours.

Estimated Total Annualized Cost Burden: $1,225.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1128.05 and OMB Control No. 2060–0080 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 27, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–31125 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5660–5]

Investigator-Initiated Grants on Health Effects of Arsenic

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public comment on the four research topics in the draft Request for Applications (RFA) on the health effects of low levels of arsenic in drinking water. EPA staff and academic researchers identified these arsenic research topics as important for reducing the uncertainty regarding the health risks of ingested arsenic at low levels. The Safe Drinking Water Act Amendments of 1996 directed EPA to develop a plan for study to support arsenic rulemaking that would reduce the uncertainty of health risks of arsenic. Congress directed EPA to consult with Federal Agencies and interested public and private entities in conducting the study and authorized EPA to work with interested parties to carry out the study plan. At a later date, EPA will hold a public meeting(s) on the arsenic study plan.

DATES: Comments are requested on the wording, scope of the topics, and the appropriateness of the research topics presented in this draft RFA. Comments must be received on or before January 6, 1997. EPA plans to issue the RFA a month after the close of the comment period.

ADDRESSES: Comments must be submitted to Dr. Sheila Rosenthal at EPA, (8723), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding the solicitation process, contact Dr. Sheila Rosenthal, telephone number (202) 260–7334, EPA (8723), 401 M Street, SW., Washington, DC 20460, electronic mail address: rosenthal.sheila@epamail.epa.gov. For questions or comments regarding the arsenic research topics, contact Ms. Irene Dooley, telephone number (202) 260–9531, EPA (4607), 401 M Street, SW., Washington, DC 20460, electronic mail address: dooley.irene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA's National Center for Environmental Research and Quality Assurance (NCERQA) is preparing to issue a joint solicitation for research on the health effects of low levels of arsenic in drinking water. Funding for this joint solicitation will be provided by EPA, the American Water Works Association Research Foundation (AWWARF), and the Association of California Water Agencies (ACWA) for a total of approximately $3 million. Any proposal submitted will be considered for an EPA grant or AWWARF contract, unless the proposal stipulates otherwise. EPA will fund approximately $2 million worth of grants, and AWWARF/ACWA will fund approximately $1 million worth of contracts. It is expected that three to six applications, each with a project period of up to 3 years, will be funded under this joint solicitation.

NCERQA will receive, process, and distribute the proposals to the peer reviewers; convene the peer review sessions in conformance with existing EPA and AWWARF guidelines; and record the review discussion for each proposal. No EPA or ACWA or AWWARF employees will serve as peer reviewers. The funding parties will discuss their respective research agendas for the sole purpose of ensuring that any one proposal is not funded by both EPA and AWWARF. The funding parties will ensure annual review of

projects being funded separately by the parties, and promote dissemination of results and communication of research findings to appropriate regulatory bodies and other stakeholders.

The description of the request for applications is as follows:

ARSENIC HEALTH EFFECTS RESEARCH

Background

Risk management policies for arsenic in the United States (U.S.) have changed with increases in knowledge, as evidenced by the U.S. Environmental Protection Agency's (EPA's) divergent guidance for arsenic under the Safe Drinking Water Act and the Clean Water Act. EPA's drinking water standard, or maximum contaminant level (MCL), of 50 µg/l was developed by the Public Health Service in the mid-1940s. In 1980, EPA established a human health water quality criterion for arsenic at 0.018 µg/l for a one in a million (10^{-6}) cancer risk level under the Clean Water Act. Researchers have since developed a substantial amount of data (toxicologic, epidemiologic, and some mechanistic) about the potential human health effects of arsenic (As) following ingestion.

The existing information has been used to develop a risk assessment. EPA's 1988 arsenic risk assessment (Special Report on Ingested Inorganic Arsenic: Skin Cancer; Nutritional Essentiality EPA/625/3–87/013) has undergone peer review, inside and outside the Agency. The risk assessment has led to the identification of several areas of uncertainty. Given the high costs associated with reducing the level of arsenic in drinking water systems, it has been decided that research to reduce the uncertainty in the risk assessment is warranted.

The EPA, American Water Works Association Research Foundation (AWWARF), and Association of California Water Agencies (ACWA) are jointly requesting grant and contract applications for research on human health effects associated with low level arsenic exposure via ingestion.

While there are several possible approaches to improving our understanding of the molecular basis of the carcinogenicity of arsenic, additional data on the baseline exposure, metabolism of arsenic, and role of arsenic in carcinogenesis are critical research priorities. Exposure data on arsenic from dietary sources other than drinking water would help determine the relative significance of arsenic from drinking water. This would be important information in future risk assessments for arsenic in drinking water and provide much needed exposure information for future epidemiological studies. Furthermore, on-going epidemiological feasibility studies being funded by EPA and AWWARF plus several studies in Mexico, South America, and Asia should provide needed health effects data and improve future epidemiological study designs. This is the reason epidemiological studies are not requested as a part of this RFA. Understanding the mechanism of arsenic carcinogenesis and the variability in arsenic metabolism may ultimately be used to determine the shape and slope of dose response curves, including possible threshold effects, and reduce the uncertainty in these curves. Research proposals in the following four topic areas are invited. Proposals may address one or more than one topic area.

1. Contribution of Arsenic From Dietary Sources

In order to understand the possible health impacts of exposure to arsenic from drinking water ingestion, it is essential to know the relative contributions from different media. Since air exposures typically are low, the amount and variability of exposures from food and beverages need to be quantified for various populations, taking into account demographic variabilities. This could be done by using market-basket surveys for U.S. populations, as well as analyses of dietary intakes for specific individuals. In conducting these studies it is also essential to address availability of arsenic absorption from ingested foods, as well as arsenic speciation (chemical form and oxidation state). Information on specific food sources should be determined in addition to total dietary contributions.

2. Determinants of Variability in Arsenic Metabolism

Given the critical role of methylation in the disposition of arsenic, further characterization of the enzymatic basis of arsenic methylation is required. To date, human arsenic methyltransferase has not been isolated, but transferases are generally polymorphic. Understanding the factors affecting human sensitivity would improve the arsenic risk assessment. The objective of this section is to evaluate variations in arsenic metabolism as reflected in variations in urinary metabolites or other biomarkers of exposure as associated with the exposure level, nutritional status, genetic factors, and other variables. Included in this area are studies to improve mass balance data on typical human metabolism of arsenic at various doses and chemical forms. There is a need for the development and refinement of assay procedures to characterize arsenic methyltransferases in human tissues. In addition, these studies would compare biomarkers of arsenic metabolism in individuals exposed to varying levels of arsenic with differences that include, but are not limited to, nutritional status, age, sex, and genetic variations.

3. Development of Animal Models for Determining Mechanisms for Arsenic Carcinogenesis

Currently, EPA's cancer risk assessment is based on a low-dose linearity and multistage extrapolation model, because there is not enough information on the mechanism of arsenic to do otherwise. In order to understand how arsenic causes cancer, it is first necessary to have a model system in laboratory animals. This model system can then be dissected to determine the molecular mechanism of the carcinogenesis. Understanding of the mechanism can often be used to identify biomarkers that would be useful for developing dose-response relationships, including possible threshold effects, and for detecting human populations sensitive to arsenic.

4. Biologically Based Quantitative Models

Quantitative models are key to extrapolation issues. They are critical not only to the description of experimental results but also in the generation of additional research. Physiologically based pharmacokinetic (PBPK) models, which incorporate measurable physiological and biochemical parameters, can be used to describe the bioavailability, uptake, tissue distribution, metabolism, and excretion of a chemical. By varying the biological parameters, one can predict across routes, exposure scenarios, high-to-low doses, and even species. The relationships among readily measured endpoints (e.g., blood levels, urinary metabolites, etc.) can be described. PBPK models can be linked to response models to predict how a specific tissue concentration can result in biological effect.

A major question in arsenic health effects is the relationship among exposure, dose, and response. PBPK models should be developed using either animal or human data and appropriately validated. Exposure via one route should be modeled and validated for another route. The ability to back-predict exposure, as well as tissue concentration, from readily

measured surrogates should be investigated.

Funding

Funding for this joint solicitation is provided by the U.S. EPA, AWWARF, and ACWA for a total of approximately $3 million. Any proposal submitted will be considered for an EPA grant or AWWARF contract, unless the proposal stipulates otherwise. EPA will fund approximately $2 million worth of grants, and AWWARF/ACWA will fund approximately $1 million worth of contracts. It is expected that three to six applications, each with a project period of up to 3 years, will be funded under this joint solicitation.

Eligibility

Academic and not-for-profit institutions located in the U.S. and state or local governments are eligible under all existing EPA authorizations. Profit-making firms are not eligible to receive assistance from EPA under this program, but are eligible to receive funding from AWWARF. Researchers in federal agencies other than EPA may submit applications, but federal employees may not request salary reimbursement. Federal employees may cooperate or collaborate with other eligible applicants within the limits imposed by applicable legislation and regulations.

Researchers who are late in any ongoing AWWARF sponsored studies without an approved no cost extension will not be eligible for funding by AWWARF; however, they may be eligible for funding by EPA. Potential applicants who are uncertain of their eligibility for an AWWARF contract should contact their AWWARF project manager.

AWWARF and EPA have a policy of non-discrimination and abide by all laws, rules, and executive orders governing equal employment opportunity. All entities receiving funding under this solicitation will be required to agree not to discriminate on the basis of age, sex, race, religion, color, national origin, handicap or veteran status. AWWARF expects its contractors to be equal opportunity employers who accept the goal of having a workforce that generally reflects the minority composition of the community in which it is located. It is the policy of AWWARF to encourage proposals from qualified minority owned or directed institutions.

Funding Mechanism

The funding mechanism for all awards issued under this solicitation will consist of grants from EPA and contracts from AWWARF and depends on the availability of funds. In accordance with Public Law 95–224, the primary purpose of a grant is to accomplish a public purpose of support or stimulation authorized by Federal statute rather than acquisition for the direct benefit of the Agency. In issuing a grant agreement, EPA anticipates that there will be no substantial EPA involvement in the design, implementation, or conduct of the research funded by the grant. However, EPA will monitor research progress, based in part on annual reports provided by awardees. ACWA and AWWARF will receive the annual progress reports for the EPA grants.

The mission of AWWARF is to ''advance the science of water to improve the quality of life.'' Contracts with AWWARF are managed by an assigned AWWARF project manager and a volunteer Project Advisory Committee (PAC). PACs are organized by AWWARF for each funded project to provide guidance, review all reports and significant materials, and generally monitor project performance on behalf of AWWARF and the water utility industry. EPA will appoint a member to each AWWARF project advisory committee funded from this joint solicitation. Periodic reports for AWWARF are required every four months. In addition, a final report and intellectual property rights as outlined in the ''Standard AWWARF Funding Agreement'' are required under all AWWARF contracts. The ''Standard AWWARF Funding Agreement'' is available on the AWWARF home page at http://www.awwarf.com. For general information regarding the ''Standard AWWARF Funding Agreement,'' contact Kathy Garretson at 303–347–6118 or by E-mail at kgarretson@awwarf.com.

The final RFA will also include instructions to potential applicants on the specific format to be used for applications. These instructions will be similar to such instructions found in other EPA/ORD solicitations which may be reviewed on the Internet at http://www.epa.gov/ncerqa.

Dated: November 27, 1996.

Approved for publication:

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 96–31058 Filed 12–05–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5475–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 11, 1996 Through November 15, 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 the Federal Register dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–AFS–L65271–AK Rating EO2, South Lindenberg Timber Sale(s), Timber Harvesting, Tongass National Forest, Stikine Area, Kupreanof Island, AK.

Summary: EPA expressed environmental objections due to potential impacts to water quality and fish habitat. EPA requested that more information and mitigation be provided in the final EIS.

ERP No. D–BLM–K65188–CA Rating EC2, Eagle Mountain Landfill and Recycling Center Project, Land Exchange, Right-of-Way Grants and COE Section 404 Permit Issuance, Riverside County, CA.

Summary: EPA expressed environmental concerns based on the need for more specific protection of resources on the offered lands as well as avoiding nighttime lighting, and a commitment to compensate for loss of bat habitat. EPA also requested additional information regarding management of the offered lands, the visibility analysis, and alternatives to reduce nighttime lighting impacts to the nearby Wilderness Area.

ERP No. D–COE–E90015–00 Rating EC2, Pearl River in the Vicinity of Walkiah Bluff, Wetland Restoration, Implementation, Picayune, Pearl River County, MS and St. Tammany Parish, LA.

Summary: EPA expressed environmental concerns about whether closure of the four distributaries will adversely affect wetlands in their present drainways and requested additional information regarding future hydrology.

ERP No. D–COE–K01008–CA Rating EO2, Santa Maria and Sisquoc Rivers Specific Plan, Mining and Reclamation Plans (MRPs), Coast Rock Site and S.P.

Milling Site, Conditional Use Permits, Approval of Reclamation Plans, and Section 404 Permits, Santa Barbara and San Luis Obispo County, CA.

Summary: EPA expressed environmental objections due to potential impacts to wetlands, groundwater supplies, air quality and wildlife habitat. EPA requested additional information and mitigation of these issues.

ERP No. D–FEM–E36160–GA Rating LO, Albany Flood Recovery Activities, Replacement of Damaged Public Schools, Housing and Businesses, Albany and Dougherty Counties, GA.

Summary: EPA had no objections to the action as proposed.

ERP No. D–FHW–K40220–CA Rating 3, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Funding and COE Section 404 Permit, San Diego County, CA.

Summary: EPA found the information provided in the DEIS inadequate to fully evaluate the impacts of the proposal although significant environmental impacts to air and water resources may be realized should the proposed project be constructed. A full analysis of alternatives and an assessment of cumulative impacts was lacking.

ERP No. D–USN–L11030–ID Rating LO, Naval Surface Warfare Center (NSWC), Acoustic Research Detachment (ARD), Carderock Division (CD), Capital Improvements Plan, Implementation, in the Town of Bayview, Kootenai County, ID.

Summary: EPA had no objections to the action as proposed.

ERP No. DS–AFS–L61181–OR Rating EC2, Mount Hood Meadows Ski Area Additional Development and Expansion to the Skiing and Summer Areas, Construction to Forest Road 3555, Special Use Permit and NPDES Permit, Hood River Ranger District, Mount Hood National Forest, Hood River County, OR.

Summary: EPA expressed environmental concerns regarding the permittee's proposed action due to potential water quality impacts.

Final EISs

ERP No. F–AFS–K65177–00 North Shore Ecosystem Management Project, Implementation, Lake Tahoe Basin Management Unit, Washoe and Placer Counties, CA and NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L61206–OR Upper Deschutes Wild and Scenic River and State Scenic Waterway, Management Plan, Implementation, Deschutes National Forest, Deschutes County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40182–CA CA–30 Improvements, CA–66/Foothill Boulevard to I–215, Funding and COE Section 404 Permit, Los Angeles and San Bernardino Counties, CA.

Summary: EPA had no objections to the project as proposed. FHWA adequately addressed all of EPA's comments in the final EIS.

ERP No. F–USN–E11036–FL Naval Training Center Orlando Disposal and Reuse, Implementation, Orange County, FL.

Summary: EPA comments made at the Draft EIS stage were adequately addressed in this final EIS.

ERP No. FS–GSA–L40195–WA Pacific Highway Port of Entry (POE) Facility Expansion, Updated Information, Construction of WA–543 in Blaine, near the United States/Canada Border in Blaine, Whatcom County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: December 3, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–31126 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5475–5]

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 25, 1996 Through November 29, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960546, FINAL EIS, COE, DE, NJ, Broadkill Beach Erosion Study, Implementation, Condition and Shore Protection, Delaware Bay Coastline, Delaware and New Jersey, Sussex County, DE and NJ, Due: January 26, 1997, Contact: Barbara Conlin (215) 656–6555.

EIS No. 960547, FINAL EIS, AFS, WY, Jackson Hole Ski Area Master Development Plan Revision, Implementation, Bridger-Teton National Forest, Jackson Ranger District, Teton County, WY, Due: January 06, 1997, Contact: John Kuzloski (307) 739–5568.

EIS No. 960548, FINAL EIS, NPS, AK, WA, Klondike Gold Rush National Historical Park, General Management Plan, (GMP), Implementation, Skagway, Alaska and Seattle, WA, Due: January 06, 1997, Contact: Clay Alderson (907) 983–2921.

EIS No. 960549, DRAFT EIS, USA, MA, Massachusetts Military Reservation Facilities Upgrade, Implementation, 10 Projects, Towns of Bourne, Sandwich, Falmouth and Mashpee, Barnstable County, MA, Due: January 21, 1997, Contact: Capt. James L. Boggess (703) 607–7983.

EIS No. 960550, DRAFT EIS, AFS, MT, Beaverhead Forest Plan Riparian Amendment, Implementation, Beaverhea—Deerlodge National Forest Beaverhead, Madison, Silver Bow, Deer Lodge and Gallatin Counties, MT, January 31, 1997, Contact: Peri Suenram (406) 683–3967.

EIS No. 960551, DRAFT EIS, EPA, MS, FL, AL, Eastern Gulf of Mexico Offshore Oil and Gas Extraction, Issuance of National Pollutant Discharge Elimination System Permitting for Wastewater Discharge General Permit for Exploration and Development/Production, MS, AL and FL, Due: February 14, 1997, Contact: Lena Scott (404) 562–9607.

EIS No. 960552, FINAL SUPPLEMENT, EPA, CA, International Wastewater Treatment Plant and South Bay Ocean Outfall, Updated Information, Interim Operation, Tijuana River, San Diego, CA, Due: January 06, 1997, Contact: Elizabeth Boroweic (415) 744–1165.

EIS No. 960553, FINAL EIS, GSA, GA, Clifton Road Campus of the Centers for Disease Control and Prevention, Acquisition of Additional Property, DeKalb County, GA, Due: January 06, 1997, Contact: Phil Youngberg (404) 331–1831.

EIS No. 960554, DRAFT EIS, COE, NJ, Townsends Inlet to Cape May Inlet Feasibility Study, New Jersey Shore Protection Study, Storm Damage Reduction and Ecosystem Restoration, with in the Communities of Avalon, Stone Harbor and North Wildwood, Cape May County, NJ, Due: January 22, 1997, Contact: Beth Brandeth (215) 656–6558.

Amended Notices

EIS No. 960389, FINAL EIS, FHW, PA, Danville-Riverside Bridge Replacement Project, Construction and Road Construction, across the North Branch of the Susquehanna River, Funding and Section 404 Permit, Appalachian Mountain, Montour and Northumberland Counties, PA , Due: December 30, 1996, Contact: Manuel A. Marks (717)

782–3461. Published FR—08–23–96—Review Period Reopened.

EIS No. 960429, DRAFT EIS, FAA, CA, Metropolitan Oakland International Airport (MOIA), Airport Development Program (ADP), Airport Layout Plan Approval, Funding and COE Section 404 and 10 Permits Issuance, Port of Oakland, Alameda County, CA, Due: December 30, 1996, Contact: Elisha Novak (415) 876–2928. Published FR 09–24–96—Review Period extended.

Dated: December 3, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–31127 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5657–7]

Clean Water Act Proposed Administrative Penalty Assessment

EPA is providing notice of a proposed Administrative Penalty Assessment against Richard Posey, Gravois Mills, Missouri for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Clean Water Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

EPA is initiating a Class II penalty proceeding against Richard Posey, Gravois Mills, Missouri. Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 30, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kanss City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Richard Posey, Gravois Mills, Missouri, Docket No. VII–96–W–0008.

The Complaint proposes a penalty of Thirteen Thousand Six Hundred Fifty Dollars ($13,650) for the discharge of pollutants from a point source into the waters of the United States without permit in accordance with 40 CFR part 22, in violation of Sections 301 and 404 of the Clean Water Act.

For Further Information: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Richard Posey, Gravois Mills, Missouri is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in the proceeding prior to thirty (30) days from the date of this notice.

Dated: November 21, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–30741 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5659–1]

Massachusetts Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Massachusetts requesting a determination of the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Stage Harbor Complex in the Town of Chatham, County of Barnstable, State of Massachusetts, to qualify as a ''No Discharge Area'' (NDA). The areas covered under this petition include Stage Harbor, north of a line drawn across its mouth at Nantucket Sound, and the following tributaries: Little Mill Pond, Mill Pond, Mitchell River, Oyster Pond River, and Oyster Pond. The proposed area encompasses approximately 620 acres of water-sheet in the southeast corner of the town of Chatham. The latitude and longitude defining the boundaries of the Stage Harbor Complex are—Oyster Pond 41° 40′ 84″–069° 57′ 84″, Little Mill Pond 41° 40′ 6″–069° 57′ 3″, and at the mouth of Stage Harbor 41° 39′ 4″–069° 59′ 0″.

The State of Massachusetts has certified that there will be two public pump-out facilities located within the proposed area to service vessels in Stage Harbor Complex. The facilities will be self-service with oversight provided by personnel from the Chatham Harbormaster's office.

The pump-out located at the town owned Old Mill Boatyard (OMBY) facility is a shore based facility and has a 60 gallon per cycle capacity with discharge to a 2,000 gallon tight tank. The facility provides access for vessels up to 50 feet in length and a draft of 5 feet at mean low water. This facility is available daily from June 20 through Labor Day from approximately 0900 to 1700 (9:00 a.m.–5:00 p.m.). During the spring and fall the pump-out facility is available by contacting the Harbormaster's office by phone (508) 945–5185 or VHF radio channel 16.

The portable pump-out located at Stage Harbor Marine (SHM) has a 225 gallon capacity and is discharged directly to the Chatham Water Pollution Control Facility for treatment. This unit is accessible via the fuel dock which provides services to vessels of up to 40 feet and draft of 6 feet at mean low water. The facility is available daily from Memorial Day to Thanksgiving from 0800 to 1630 (8:00 am—4:30 pm). The pump-out may also be available from Thanksgiving to mid-December and mid-April to Memorial Day, Monday to Friday from 0800 to 1630 (8:00 am—4:30 pm). These dates are variable due to winter weather. Stage Harbor Marine can be contacted at (508) 945–1860 or VHF radio channel 9.

In addition to these pump-out facilities, the Stage Harbor Complex area has six on shore toilet facilities. Four are available to the public and two are private and restricted to marina patrons and their guests. The four on shore facilities available to the public are located at the Stage Harbor Road bathing beach, Barn Hill Road Town Landing, and the Old Mill Boatyard, and are open form June 21 to September 1 between the hours of 0800 and 1600 (8:00 am—4:00 pm). The fourth facility at the Stage Harbor Marina is open to the public but privately maintained and is open approximately from May 1 until November.

The waste from the Old Mill Boatyard facility is collected and stored in the existing, Department of Environmental Protection approved, 2,000 gallon tigh tank. This tank is fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The town of Chatham has an annual agreement with a licensed waste hauler and septage is transported to the Chatham Water Pollution Control Facility for treatment.

The number of mooring permits indicate that 1,161 vessels reside within the Stage Harbor Complex and 972 are identified as recreational and 189 are commercial vessels. Stage Harbor Complex is primarily a ''parking lot'' harbor and 90% of the total vessel population is under 25 feet in length, and therefore do not have any type of marine sanitation device. There are a number of locations in the Complex with public launching ramps, however, the size and condition of the ramps and the depth of the water limit use to vessels 25 feet and under. In addition to the vessels that reside in the Complex, there is a transient population estimated at 110 vessels which have marine sanitation devices.

The resources of the Stage Harbor Complex are recreational and commercial. One of the Towns most used public bathing beach is located on Stage Harbor Road at the head of Oyster Pond. The northern tip of the Monomoy National Wildlife Refuge abuts the proposed No Discharge Area and provides recreational opportunities in addition to its wildlife role. The Stage Harbor Complex is also used by both recreational and commercial shell fishermen for the harvest of quahogs, soft-shell clams, mussels, oysters, and bay scallops and is the site of the Town's only commercial aquaculture operations.

Comments and reviews regarding this request for action may be filed on or before January 21, 1997. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, Strategic Planning Office (CSP), JFK Federal Building, Boston, MA 02203. Telephone: 617–565–4885.

Dated: November 24, 1996.

John P. DeVillars,

Regional Administrator.

[FR Doc. 96–30870 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2167]

Petition for Reconsideration of Action in Rulemaking Proceedings

December 3, 1996.

A Petition for reconsideration has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by December 23, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Honor, MI) (MM Docket No. 95–135, RM–8681).

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31040 Filed 12–5–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Solicitation for Grant Applications; National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA is soliciting applications for membership in the National Urban Search and Rescue Response System. This solicitation is to add two heavy search and rescue task forces to the 25 urban search and rescue task forces currently sponsored by the Agency. Selectees will be eligible for grant funding from FEMA for urban search and rescue training and equipment required to meet program standards.

DATES: Interested organizations should request an application package from FEMA as soon as possible. Grant applications must be submitted to the appropriate FEMA Regional office before January 14, 1997. Selections will be announced by March 26, 1997. Grant funds will be awarded before September 30, 1997.

ADDRESSES: Requests for application packages should be addressed to US&R Program Manager, Federal Emergency Management Agency, 500 C Street SW., room 609, Washington, DC 20472, or by facsimile to (202) 646–4684.

FOR FURTHER INFORMATION CONTACT: Mark R. Russo, US&R Program Manager, Emergency Services Branch, Operations and Planning Division, Response and Recovery Directorate, (202) 646–2701.

SUPPLEMENTARY INFORMATION: Notice of Solicitation is hereby given that funding for Urban Search & Rescue (US&R) equipment and training will be available through the Federal Emergency Management Agency (FEMA) in order to augment the existing capabilities of heavy search and rescue teams sponsored by local jurisdictions. The intention is to strengthen local teams with existing capability in search and rescue at the heavy operational level (as defined in National Fire Protection Association Standard 1470) and bring these teams into the FEMA National Urban Search and Rescue Response System. Currently, there are 25 US&R task forces that make up the FEMA National Urban Search & Rescue Response System. Two new task forces will be selected as a result of this solicitation. Each new task force selected will be sponsored by a local jurisdiction, endorsed by a State, and recommended by a national panel of technical experts to FEMA headquarters. Following the initial screening process, FEMA will sponsor on-site visits by technical experts to those teams that the technical review process indicates are highly qualified. Task forces selected to enter the National System will be provided grants in the amount of $500,000 each during Fiscal Year 1997, for equipment and training necessary to meet program standards. Funds will be provided through amendment of the State's Performance Partnership Agreement with its respective FEMA Region, and then sub-allocated by the State to the sponsoring jurisdiction. Further details on grant procedures will be provided after task force selections have been made. All applications for this program must be submitted to and endorsed by the State emergency management agency of the sponsoring organization.

A technical review panel selected by FEMA and consisting of individuals with expertise and experience in the urban search and rescue field will review and assess, among other items, each local jurisdiction's personnel qualifications and on-hand equipment

against criteria contained in a solicitation package that will be provided to applicants by FEMA upon request.

Personnel qualifications are to address one or several staff in the following positions: Task Force Leader, Safety Officer, Planning Officer, Search Team Manager, Canine Search Specialist, Technical Search Specialist, Rescue Team Manager, Rescue Squad Officer, Rescue Specialist, Medical Team Manager, Medical Specialist, Technical Team Manager, Structures Specialist, Hazardous Materials Specialist, Heavy Rigging Specialist, Technical Information Specialist, Communications Specialist, and Logistics Specialist.

Equipment lists contained in the solicitation package address the following types of equipment: Rescue, medical, technical, communications, and logistical support. In addition to reviewing the capabilities of the local jurisdiction against the listed criteria, FEMA will also consider the geographical location of the applicants to ensure a capability broadly distributed across the United States.

Local capabilities will be evaluated on how well they currently meet the required criteria of the 25 FEMA recognized US&R task forces in the National US&R Response System. Evaluation for acceptance into the National US&R Response System will be based on, but not limited to, the following factors:

1. Is there a local and/or regional need for a US&R task force?
2. Is there State or local sponsorship for a task force?
3. Is there a financial commitment on the part of State and local government sponsors to fund local training and administrative costs associated with a US&R task force?
4. Is there local administrative/finance infrastructure in place which will allow for development and maintenance of a US&R task force?
5. Are there sufficient management level personnel within the sponsoring organization with experience in managing large, complex operations who will be involved in the management of the task force?
6. Are there adequate local personnel resources to staff a US&R task force fully (62 positions with three personnel rostered for each position), including such specialized positions as structural engineers, canine handlers, and emergency medicine board certified physicians, without adversely affecting the ability of the sponsoring organization to respond to local emergencies?
7. Do personnel in the sponsoring organization have experience in collapsed structures and search and rescue operations, i.e., search, rescue, medical and technical operations?
8. Does the sponsoring organization have the financial commitment to develop and maintain an extensive, dedicated, equipment cache which includes specialized communications, medical care, search, safety, rescue, technical operations, and logistics equipment? Are there currently adequate, secure facilities for storage and maintenance of the equipment cache?
9. Does the sponsoring organization have the capability to be self-sufficient, both personnel and equipment, for 72 hours to sustain a 10-day operation?
10. Is there an ongoing training/exercise certification program in structural collapse search and rescue operations?
11. Are adequate US&R training facilities available?
12. Does the sponsoring organization have access to an appropriate airlift facility that will accommodate wide-body military aircraft?

In addition to the review for technical merit by a panel of national experts, FEMA will consider the following geographic factors in the final selections for funding: A balanced geographic distribution of task forces throughout the nation; seismic hazard, including the historic occurrence of damaging earthquakes, as well as probable seismic activity; hurricane potential, including the historic occurrence of damaging hurricanes; total population and major urban concentrations exposed to such risks; and other factors including the loss, damage, or disruption of which by man-made or natural means would have serious national impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

The project for which the grant application is made is for the augmentation of training and equipment needed by the applicant, as determined by comparing their existing resources and capabilities with the criteria of current FEMA US&R task forces. Federal funds made available through this program to organizations sponsoring task forces selected to become part of the National Urban Search and Rescue Response System must be directed at a specific list of objectives intended to eliminate the shortfall of equipment and training and provide a direct benefit to the capability of the task force.

Grant application packages must be submitted by the endorsing State emergency management agency to the appropriate FEMA Regional Office, Attention: Regional Director.

James L. Witt,

Director.

[FR Doc. 96–31074 Filed 12–5–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 202–010689–062.

Title: Transpacific Westbound Conference.

Parties: American President Lines, Ltd., Hapag Lloyd AG, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nedlloyd Lijnen B.V., Neptune Orient Container, Nippon Yusen Kaisha, Ltd., Orient Overseas Container, Sea-Land Service, Inc., P&O Containers.

Synopsis: The proposed modification makes several nonsubstantive changes to correct errors in the Agreement. It also makes a substantive change by extending the expiration date for shortened (3-day) notice in the case of IAs on out of gauge cargo. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–31014 Filed 12–5–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should

not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

K&M International Co., 8066 Thurston Drive, Cicero, New York 13039, Magdoleen T. Ierlan, Sole Proprietor.

AA Freight Forwarders, Inc., 2618 NW 112 Avenue, Miami, FL 33172, Officers: Edward J. Lee, President; Byron Lee, Jr., Secretary/Treasurer.

Trans Freight Services Inc., 145–32 157th Street, Suite 205, Jamaica, NY 11434, Officer: Chris Young Cha, President.

Akemi & Co., Inc., 9111 South LaCienega Blvd., Suite 209, Inglewood, CA 90307, Officer: Akemi Kitahara, President.

Dated: December 3, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–31063 Filed 12–6–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Louis E. Prezeau, Newark, New Jersey; to acquire an additional 1.9 percent, for a total of 11.8 percent, of the voting shares of City National Bancshares Corporation, Newark, New Jersey, and thereby indirectly acquire City National Bank of New Jersey, Newark, New Jersey.

Board of Governors of the Federal Reserve System, December 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31061 Filed 12-5-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1996.

A. Federal Reserve Bank of Philadelphia, (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire 100 percent of the voting shares of Independence Bancorp, Inc., Ramsey, New Jersey, and thereby indirectly acquire Independence Bank of New Jersey, Ramsey, New Jersey.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Whitney Holding Corporation, New Orleans, Louisiana; to merge with First National Bankshares, Inc., Houma, Louisiana, and therby indirectly acquire First National Bank of Houma, Houma, Louisiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. New London Bancshares, Inc., New London, Missouri; to become a bank holding company by acquiring 96 percent of the voting shares of Behrens Bancshares, Inc., New London, Missouri, and thereby indirectly acquire Ralls County State Bank, New London, Missouri.

2. Union Planters Corporation, Memphis, Tennessee; to acquire at least 19.8 percent and up to 100 percent of the voting shares of First National Bank, Pontotoc, Mississippi.

Board of Governors of the Federal Reserve System, December 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31059 Filed 12-5-96; 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 20, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire J & S Leasing, Inc., Knoxville, Tennessee, and thereby indirectly engage in leasing personal or real property, pursuant to § 225.25(b)(5)(i) of the Board's Regulation Y. Notificant will acquire the shares of J&S Leasing and transfer them to Notificant's existing subsidiary, NBC Bank, FSB, Knoxville, Tennessee.

Board of Governors of the Federal Reserve System, December 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31060 Filed 12-5-96; 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 11, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Cost of Federal Reserve Bank notes in 1997.

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) regarding qualification requirements for bank employees who sell mutual funds and certain other securities.

3. Proposed 1997 Federal Reserve Bank budgets.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31216 Filed 12–4–96; 11:02 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:00 a.m., Wednesday, December 11, 1996, following a recess at the conclusion of the open meeting.

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: December 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31217 Filed 12–4–96; 11:02 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 19, Supplement 2]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Per Diem Localities Impacted by the 1996 Atlanta, Georgia, Olympic Games

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of an addition to the special actual subsistence expense ceilings described in GSA Bulletin FTR 19 (61 FR 28211, June 4, 1996) and GSA Bulletin FTR 19, Supplement 1 (61 FR 36731, July 12, 1996) for official travel to certain localities due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. The Departments of Agriculture, Commerce, Defense, Justice, and Transportation requested establishment of the increased rates to accommodate employees who performed temporary duty in either of the States of Georgia or Tennessee and who experienced a temporary but significant increase in lodging costs due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. This addition is in Cartersville (Bartow County), Georgia.

EFFECTIVE DATES: This special rate is applicable to claims for reimbursement covering travel to Cartersville (Bartow County), Georgia, during the period July 17 through August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Department of Defense, increased the maximum daily

amount of reimbursement that may be retroactively approved for actual and necessary subsistence expenses for official travel to Cartersville (Bartow County), Georgia, during the period July 17 through August 5, 1996. The attached GSA Bulletin FTR 19, Supplement 2 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: November 27, 1996.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

November 27, 1996

[GSA Bulletin FTR 19, Supplement 2]

TO: Heads of Federal agencies

SUBJECT: Reimbursement of higher actual subsistence expenses for official travel to per diem localities impacted by the 1996 Atlanta, Georgia, Olympic Games

1. *Purpose.* This supplement informs agencies of an additional location subject to a special actual subsistence expense ceiling for official travel to Cartersville (Bartow County), Georgia, due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. Special actual subsistence expense ceilings were previously established for several areas in the States of Georgia and Tennessee due to the 1996 Atlanta Olympic Games (see GSA Bulletin FTR 19 (61 FR 28211, June 4, 1996) and GSA Bulletin FTR 19, Supplement 1 (61 FR 36731, July 12, 1996)). These special rates apply to claims for reimbursement covering travel during periods as specified.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Departments of Agriculture, Commerce, Defense, Justice, and Transportation requested establishment of such rates for areas in the States of Georgia and Tennessee to accommodate employees who performed temporary duty there and experienced a temporary but significant increase in lodging costs due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. These circumstances justify the need for higher subsistence expense reimbursement during the designated periods.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be retroactively approved for actual and necessary subsistence expenses for official travel to Cartersville (Bartow County), Georgia, during the period July 17 through August 5, 1996. Agencies may retroactively approve actual subsistence expense reimbursement not to exceed $126 ($100 maximum for lodging and a $26 meals and incidental expenses allowance) for official travel to Cartersville during this time period.

4. *Expiration date.* This bulletin expires for administrative tracking purposes on March 31, 1997.

5. *For further information contact.* Jane E. Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–31011 Filed 12–5–96; 8:45 am]

BILLING CODE 6820–34–P

[GSA Bulletin FTR 23]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Per Diem Localities Impacted by the Hurricane Fran Disaster in Greensboro and Wilmington, North Carolina

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Greensboro (Guilford County) and Wilmington (New Hanover County), North Carolina, due to the escalation of lodging rates caused by the Hurricane Fran disaster. These special rates apply to claims for reimbursement covering travel during the period September 6 through October 5, 1996.

EFFECTIVE DATE: These special rates are applicable to claims for reimbursement covering travel to Greensboro and Wilmington during the period September 6 through October 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Federal Emergency Managment Agency, increased the maximum daily amount of reimbursement that agencies may approve for actual and necessary subsistence expenses for official travel to certain North Carolina areas impacted by the recent Hurricane Fran Presidentially declared disaster. The attached GSA Bulletin FTR 23 is issued to inform agencies of the establishment of these special actual subsistence expense ceilings.

Dated: November 27, 1996.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

November 27, 1996

[GSA Bulletin FTR 23]

TO: Heads of Federal agencies

SUBJECT: Reimbursement of higher actual subsistence expenses for official travel to per diem localities impacted by the Hurricane Fran disaster in Greensboro and Wilmington, North Carolina

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Greensboro (Guilford County) and Wilmington (New Hanover County), North Carolina, due to the escalation of lodging rates caused by the Hurricane Fran disaster. These special rates apply to claims for reimbursement covering travel during the period September 6 through October 5, 1996.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Federal Emergency Management Agency requested establishment of such a rate for areas located in the State of North Carolina impacted by the Hurricane Fran Presidentially declared disaster to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates. These circumstances

justify the need for higher subsistence expense reimbursement for Greensboro and Wilmington during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Greensboro (Guilford County) and Wilmington (New Hanover County), North Carolina, for travel during the period September 6 through October 5, 1996. Agencies may retroactively approve actual subsistence expense reimbursement for Federal employee travel not to exceed $153 ($123 maximum for lodging and a $30 allowance for meals and incidental expenses (M&IE)) to Greensboro (Guilford County), North Carolina, and $157 ($127 maximum for lodging and a $30 allowance for M&IE) to Wilmington (New Hanover County), North Carolina, during this time period.

4. *Expiration date.* This bulletin expires for administrative tracking purposes on March 31, 1997.

5. *For further information contact.* Jane E. Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–31012 Filed 12–5–96; 8:45 am]

BILLING CODE 6820–34–P

[GSA Bulletin FTR 24]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Burlington, Vermont

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Burlington (Chittenden County), Vermont, due to the escalation of lodging rates during Vermont's peak fall foliage season. This special rate applies to claims for reimbursement covering travel during the period October 2 and 3, 1996.

EFFECTIVE DATE: This special rate is applicable to claims for reimbursement covering travel to Burlington during the period October 2 and 3, 1996.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Department of the Treasury, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Burlington, Vermont during the period October 2 and 3, 1996. The attached GSA Bulletin FTR 24 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: November 27, 1996.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

November 27, 1996

[GSA Bulletin FTR 24]

TO: Heads of Federal agencies

SUBJECT: Reimbursement of higher actual subsistence expenses for official travel to Burlington (Chittenden County), Vermont

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Burlington (Chittenden County), Vermont, due to the escalation of lodging rates during Vermont's peak fall foliage season. This special rate applies to claims for reimbursement covering travel during the period October 2 and 3, 1996.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Department of the Treasury requested establishment of such a rate for Burlington to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates. These circumstances justify the need for higher subsistence expense reimbursement for Burlington during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Burlington (Chittenden County), Vermont, for travel during the period October 2 and 3, 1996. Agencies may retroactively approve actual subsistence expense reimbursement for Federal employee travel not to exceed $159 ($129 maximum for lodging which includes the tax and a $30 allowance for meals and incidental expenses) to Burlington, Vermont, during this time period.

4. *Expiration date.* This bulletin expires for administrative tracking purposes on March 31, 1997.

5. *For further information contact.* Jane E. Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–31013 Filed 12–5–96; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of the following special emphasis panel scheduled to meet during the month of December 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: December 20, 1996, 10:00 a.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open December 20, 1996, 10:00 a.m. to 10:10 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on December 20, from 10:00 a.m. to 10:10 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant

applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: November 27, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–31044 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 96N–0429]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for parties seeking an advisory opinion from the Commissioner of Food and Drugs (the Commissioner).

DATES: Submit written comments on the collection of information by February 4, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Advisory Opinions—21 CFR 10.85 (OMB Control Number 0910–0193—Reinstatement)

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a), provides that an interested person may request an advisory opinion from the Commissioner on a matter of general applicability. Section 10.85 sets forth the format and instructions for making an advisory opinion request. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested and a full statement of the facts and legal points relevant to the request. An advisory opinion represents the formal position of FDA on a matter of general applicability.

Respondents to this collection of information are parties seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

FDA estimates the burden of the collection of information provisions for these regulations as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.85	8	1	8	16	128

There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on agency data received on this administrative procedure for the past 3 years. Agency personnel responsible for the processing of requests for an advisory opinion, estimate approximately eight requests are received annually by the agency, each requiring an estimated 16 hours of preparation time.

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31050 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0405]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for filing a notice of participation with FDA.

DATES: Submit written comments on the collection of information by February 4, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of Participation—21 CFR 12.45 (OMB Control Number 0910–0191—Reinstatement)

Under the part 12 (21 CFR part 12) regulations issued under sections 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393), any interested person may participate in a formal evidentiary hearing, either personally or through a representative by filing a notice of participation under § 12.45. Section 12.45 requires that any person filing a notice of participation state the person's specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in § 12.85 or, in the case of a hearing before a Public Board of Inquiry, in 21 CFR 13.25, concerning disclosure of data and information by participants. A participant's appearance can be struck by the presiding officer in accordance with § 12.45(e).

The information obtained is used by the presiding officer and other participants in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation.

The affected respondents are individuals or households, State or local governments, not-for-profit institutions and businesses or other for-profit groups and institutions.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	92	1	92	3	276

There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate on fiscal year 1995 data in which each notice of participation filed took an estimated 3 hours to complete.

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31051 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0406]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for the filing of citizen petitions with FDA.

DATES: Submit written comments on the collection of information by February 4, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Citizen Petition—21 CFR 10.30 (OMB Control Number 0910–0183—Reinstatement)

The Administrative Procedures Act (5 U.S.C. 553(e)), provides that every agency shall accord any interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) provides that any person may submit to the agency a citizen petition requesting the Commissioner of Food and Drugs to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The information is used by the agency to determine the need or desirability of the requested action and also to determine if the submitted information is sufficient to support the action. FDA determines whether or not to grant the petition based on the information submitted.

The affected respondents are individuals or households, state or local governments, not-for-profit institutions and businesses or other for-profit institutions or groups.

FDA estimates the burden resulting from the requirements of § 10.30 as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	120	1	120	12	1,440

There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate of burden on fiscal year 1995 data in which there were 120 petitions filed that each took an estimated 12 hours to complete.

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31052 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0426]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing objections and requests for a hearing on a regulation or order.

DATES: Submit written comments on the collection of information by February 4, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Filing Objections and Requests for a Hearing on a Regulation or Order, 21 CFR Part 12, (OMB Control Number 0910–0184—Extension)

Under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), within 30 days after publication of a regulation or order, any person adversely affected by such regulations or order may file objections and request a public hearing. The implementing regulations for these statutory requirements are found at 21 CFR 12.22, which sets forth the format and instructions for filing objections and requests for a hearing. Each objection for which a hearing has been requested must be separately numbered and specify with particularity the provision of the regulation or the proposed order objected to. In addition, each objection must include a detailed description and analysis of the factual information to be presented in support of the objection as well as any report or other document relied on, with some exceptions. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis only for the purpose of determining whether a hearing request is justified. The description and analysis do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

FDA estimates the burden of the collection of information provisions for these regulations as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.22	60	1	60	20	1,200

There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on agency data received on this administrative procedure for the past 3 years. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order, estimate approximately 60 requests are received by the agency annually, with each requiring approximately 20 hours of preparation time.

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31054 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0261]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 6, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Judy Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reclassification Petitions for Medical Devices—21 CFR Part 860—(OMB Control Number 0910–0138—Reinstatement)

Under sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and 21 CFR part 860, subpart C, FDA has the responsibility to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a medical device from any one of three classes (I, II, and III) to another class. The reclassification procedures regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting classification from class III to class II or class I, if approved, provide an alternative route to the market in lieu of premarket approval for class III devices.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
860.123	11	1	11	500	5,500

There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends, FDA anticipates that 11 petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31049 Filed 12–05–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0410]

Betty J. Pendleton; Filing of Food Additive Petition (Animal Use) Sodium Stearate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betty J. Pendleton has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium stearate as an anticaking agent in animal feed.

DATES: Written comments on the petitioner's environmental assessment by February 4, 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.

FOR FURTHER INFORMATION CONTACT: Henry E. Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2236) has been filed by Betty J. Pendleton, 15505 Country Ridge Dr., Chesterfield, MO 63017. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of sodium stearate as an anticaking agent in animal feed.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 4, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: November 15, 1996.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 96–31048 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96P–0090]

Determination That Testosterone Propionate 2% Ointment Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

Note: This document was originally published at 61 FR 59233, on Thursday, November 21, 1996. The document was inadvertently published with an incorrect signature. For the convenience of the reader, the document is being republished in its entirety.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that testosterone propionate 2% ointment (Perandren Ointment) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for testosterone propionate 2% ointment.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act)

(21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On March 19, 1996, Richard Hamer Associates, Inc., submitted a citizen petition (Docket No. 96P–0090/CP1) under 21 CFR 10.25(a), 10.30, and § 314.161(b), requesting that the agency determine whether testosterone propionate 2% ointment was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to relist the drug in the Orange Book. Testosterone propionate 2% ointment (Perandren Ointment) was the subject of approved NDA–0499 held by Ciba Pharmaceutical Co. In the Federal Register of September 23, 1971 (36 FR 18885), FDA withdrew approval of NDA– 0499 for Perandren Ointment based on the applicant's failure to submit required annual reports (section 505(e) of the act (21 U.S.C. 355(e)) and 21 CFR 314.80 and 314.81).

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that testosterone propionate 2% ointment was not withdrawn from sale for reasons of safety or effectiveness and will relist testosterone propionate 2% ointment in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to testosterone propionate 2% ointment may be approved by the agency.

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31119 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0413]

Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides.'' The draft guidance provides specific directions to manufacturers regarding information and data that should be submitted to FDA in a premarket notification (510(k)) submission for a liquid chemical germicide. This draft guidance, dated April 26, 1995, replaces a previous version dated January 31, 1992.

DATES: Written comments by March 6, 1997.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597 (toll free outside of MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 2085O, 301–443–8913.

SUPPLEMENTARY INFORMATION: FDA regulates the introduction of medical devices into interstate commerce. A person intending to market a liquid chemical germicide medical device must submit a premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) to FDA before introducing the device into interstate commerce. Regulations governing the general content and format of 510(k) submissions (21 CFR part 807) and other regulatory requirements are discussed in guidance documents available from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (address above). The intent of this draft guidance is to provide 510(k) applicants with specific directions regarding information and data that should be submitted to FDA in a 510(k) submission for a liquid chemical germicide medical device.

The effective use of chemical germicides is important in preventing nosocomial infections. Comprehensive, scientifically sound criteria for the evaluation of chemical germicides is essential to help ensure that these agents are safe and effective for their intended use when used according to their labeling. FDA recognizes the importance of providing applicants, and other interested parties, with the agency's 510(k) submission criteria for chemical germicides in order to facilitate assembly of necessary data, to maintain consistency of review, and to provide for a more efficient regulatory process. The draft guidance is predicated upon the legal principles of the 510(k) process. It also draws upon the longstanding regulatory and scientific basis for evaluation of germicides by the Federal government. It is a product of interactions with interested parties in industry, government, and academia as well as with infection control and other health care professionals.

This is a draft guidance document, and as such does not create or confer any rights for or on any person and does not operate to bind FDA or others; however, it does represent FDA's recommendations at this time. The draft guidance is not static and, thus, will be periodically revised to remain current with the state of the art in this fast changing area.

Interested persons may on or before March 6, 1997, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. 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. The draft guidance and received comments may

be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1996.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 96–31053 Filed 12–05–96; 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:

HRSA Competing Training Grant Application, Instructions and Related Regulations (OMB No. 0915–0060)—Extension and Revision

The Health Resources and Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. This is a request for renewed clearance with several changes in the form. The form will be distributed electronically via the Internet, the budget will be negotiated for all years of the project period based on this application, and program-specific instructions will include greater standardization of content for the project summary and the detailed description of the project. Applications for selected programs must include data specified in statute. The statutory requirements are included in this clearance request.

Regulations which authorize the application form and other reporting, disclosure and recordkeeping requirements for various programs are also cleared in this package. No changes were made to the regulations.

The estimated annual burden for the application and associated regulations is as follows:

Requirement	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Basic application	1,787	1	61.25	109,454
Statutory reporting requirements	1,131	1	150	169,650
Regulatory requirements (see detailed table below):				
Reporting	45	1.7	1	75
Disclosure	168	1.1	3.4	622
Recordkeeping	86	1.2	1.7	168
Total	1,787			279,969

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 27, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–31118 Filed 12–5–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–15]

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: December 6, 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 26, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–30765 Filed 12–5–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–73975]

Notice of Coal Lease Offering by Sealed Bid

U.S. Department of the Interior, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155. Notice is hereby given that at 1:00 p.m., December 18, 1996, certain coal resources in lands hereinafter described in Carbon County, Utah, will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair

market value as determined by the authorized officer. A company or individual is limited to one sealed bid. If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

This lease is being offered for sale under the provisions set forth in the regulations for Leasing on Application at 43 CFR 3425.

The lease sale will be held in the Bureau of Land Management Conference Room, 324 South State Street, Suite 302, Salt Lake City, Utah, at 1:00 p.m. on December 18, 1996. At that time, the sealed bids will be opened and read. No bids received after 10:00 a.m., December 18, 1996, will be considered.

Coal Offered

The coal resource to be offered consists of all coal recoverable in the following lands located in Carbon County, Utah, approximately 10 miles north of Price, Utah:

T. 12 S., R. 9 E., SLM, Utah
Sec. 25, lots 1–4, W2E2, W2 (all);
Sec. 26, E2E2.
T. 12 S., R. 10 E., SLM, Utah
Sec. 28, E2, E2W2, SWNW, W2SW;
Sec. 29, N2N2, S2NW, NWSW, E2SE;
Sec. 30, lots 1–4, NE, E2W2, N2SE, SWSE.
Containing 2,299.40 acres

Three economically recoverable coal beds, the C Seam, Kenilworth, and D Seams are found in this tract. The seams are all greater than 6 feet in thickness. This tract contains an estimated 22.1 million tons of recoverable high volatile B bituminous coal.

The estimated coal quality using weighted average of samples on an as-received basis is:

12,776–12,889 BTU/lb.; 2.88–3.78 Percent Moisture; .53–.57 Percent sulphur; 7.03–8.07 Percent ash; 47.02–48.48 Percent fixed carbon; 40.36–42.03 Percent volatile matter.

(Totals do not equal 100% due to rounding)

Rental and Royalty

A lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

Notice of Availability

Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (room 400), 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (room 400) of the Bureau of Land Management.

Douglas M. Koza,

Deputy State Director, Natural Resources.

[FR Doc. 96–31045 Filed 12–5–96; 8:45 am]

BILLING CODE 4310–DQ–P

[OR–958–0777–54; GP6–0178; OR–19673 (WA)]

Public Land Order No. 7227; Revocation of Geological Survey Order

February 15, 1949.

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a Geological Survey order which withdrew 280.77 acres of public lands for the Bureau of Land Management's Powersite Classification No. 400. The lands are no longer needed for the purpose for which they were withdrawn. This action will restore the lands to surface entry. The lands have been and continue to be open to mining and mineral leasing.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

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 Geological Survey Order dated February 15, 1949, which established Powersite Classification No. 400, is hereby revoked in its entirety as to the following described lands:

Willamette Meridian

T. 25 N., R. 21 E.,
Sec. 10, SE¼NW¼;
Sec. 18, lot 1;
Sec. 20, W½SW¼;
Sec. 30, SE¼NE¼.
T. 26 N., R. 22 E.,
Sec. 6, SE¼NE¼;
Sec. 8, SE¼SE¼.

The areas described aggregate 280.77 acres in Chelan and Douglas Counties.

2. The State of Washington has waived its preference right for public highway rights-of-way or material sites as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988).

3. At 8:30 a.m. on January 6, 1997, 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 8:30 a.m., on January 6, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: November 4, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–31041 Filed 12–5–96; 8:45 am]

BILLING CODE 4310–33–P

[NV–030–97–1330–00]

Notice of Closure of Public Lands to Off-Road Vehicle Use and Discharge of Firearms, Carson City, Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Brunswick Canyon are closed to off-road motorized vehicle use and the discharge of firearms. This closure is necessary to prevent impacts to soil and vegetative resources at a recently reclaimed BLM community sand pit.

EFFECTIVE DATES: This closure goes into effect on November 23, 1996, and will remain in effect until the BLM Authorized Officer determines the reclamation at the pit is successful and the closure is no longer needed.

SUPPLEMENTARY INFORMATION: This closure applies to all motorized vehicle traffic and discharge of firearms except for emergency and law enforcement personnel during the conduct of their official duties. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 15 N., R. 21 E.,
Sec. 19, S½SE¼NW¼NE¼ and NE¼SW¼NE¼.

Authority: 43 CFR 8364—Closure and Restriction Orders; 8365.1–6—Supplementary Rules of Conduct; 8341.2—Off-road Vehicles Conditions of Use, Special Rules.

PENALTY: Any person who fails to comply with this closure may be subject to imprisonment for not more than 12 months, or a fine in accordance with the

applicable provisions of 18 USC 3571, or both.

FOR FURTHER INFORMATION CONTACT: John O. Singlaub, District Manager, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone: (702) 885–6000.

A map of the closed area is available at the Carson City District Office.

Dated: November 22, 1996.

Daniel L. Jacquet,

Acting District Manager, Carson City District.

[FR Doc. 96–31018 Filed 12–5–96; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Record of Decision; Final Environmental Impact Statement General Management Plan; Richmond National Battlefield Park, Virginia

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared the following Record of Decision on the Final Environmental Impact Statement (EIS) for the General Management Plan for the Richmond National Battlefield Park (RNBP), Virginia.

Introduction: Richmond National Battlefield Park, located in Hanover County, Henrico County, Chesterfield County, and the City of Richmond, Virginia, was established in 1936 by the Congress of the United States as part of the National Park System for the battlefield's historic significance.

Public Law 95–625, the National Parks and Recreation Act, requires the preparation and timely revision of GMPs for each unit of the national park system. Section 604 of that Act outlines several requirements for GMPs, including measures for the protection of the area's resources and ''indications of potential modifications to the external boundaries of the unit and the reasons therefor.'' The previous general plan for this Park was completed in 1971, called the Master Plan for Richmond National Battlefield Park. The issues at RNBP have changed dramatically since 1971. New challenges for park management have emerged since then.

This General Management Plan/ Environmental Impact Statement identifies the purpose, significance, and primary interpretive themes for RNBP. The Plan addresses visitor experience, resource protection, and administrative requirements that will affect the park over approximately the next 15 years.

Background: The Park owns 763.99 acres in 11 individual units spread over a 132-square mile area. The Park interprets the repeated efforts by the Union army in 1862 and 1864–65 to take Richmond, the capital of the Confederacy, and to destroy the Army or Northern Virginia. The Park contains relatively few acres for the thirty plus battles that occurred in the area. Many visitors expect to see more battlefield land preserved and support addition of more acreage to the park. The Congressional definition of the boundary for the park includes too much land for some property owners and local government representatives.

The park evolved from private and state actions to protect the battlefields. The March 2, 1936, authorizing act of Congress (49 Stat. 1155) defines the mission of RNBP as follows:

> * * * all such lands, structures, and other property in the military battlefield area or areas of the City of Richmond, Virginia, or within five miles of the city limits of said city or within five miles of the boundary of the present Richmond Battlefield State Park, as shall be designated by the Secretary of the Interior, in the exercise of his discretion as necessary or desirable for national battlefield park purposes, * * * such area or areas shall be, and they are hereby, established, dedicated, and set apart as a public park for the benefit and inspiration of the people and shall be known as the Richmond National Battlefield Park.

Decision (Selected Action): The National Park Service will implement the proposed action as described in the Final Environmental Impact Statement released July 29, 1996.

The National Park Service will manage resources, staff, and visitors in order to preserve the battlefields and interpret the military actions of the Richmond Civil War integrated with an understanding of the importance of the Confederate capital to both sides. Visitors will be directed to battlefields and other Civil War resource sites in Virginia. The main visitor center will remain at Chimborazo Park augmented with interpretation of the hospital story; NPS will continue to explore the possibilities for cooperative development of a heritage education/ Civil War visitor center in Richmond. The plan responds actively to the Civil War Sites Advisory Commission report to Congress recommending federal involvement in protection of certain battlefields. RNBP's enabling legislation is proposed to be amended by Congress to authorize the appropriation and expenditure of federal funds for the purchase of battlefield lands, including specific tracts outside the existing legislative boundary. In order to allay concerns of property owners and be specific for potential donations, the NPS will request that Congress (1) redefine the authorized boundary of RNBP to reduce it to include approximately 7,121 acres, within which battlefield resource protection and/or interpretation would be accomplished through a partnership among local, state, and federal government and the private sector; and (2) stipulate that any real property interest acquired by the NPS be acquired only on a willing seller basis; and (3) authorize that appropriated funds may be used to acquire interest in real estate. The environmental consequences of this plan will include expansion of the battlefield resource protection effort, and, with partnerships with other entities, a greatly improved and integrated interpretation of all the Civil War resources in the Richmond area. Expanded partnerships and resource protection efforts would lead to an expanded visitor base. More visitors to the battlefields will result in longer visits to the area by more people, resulting in expanded heritage tourism and increased tourist spending. The benefits will positively affect the metropolitan Richmond area. Nationally significant battlefields would enjoy a greater measure of protection and natural resources would be carefully considered as cultural resource restoration and management plans are developed.

Basis for Decision: The draft plan for this park's general management was carefully crafted over a five year period with considerable public input.

At Richmond National Battlefield Park (RNBP) there is an opportunity to convey to visitors the meaning of the war. Not only is there a strategic explanation for the battles at Richmond, but also the Confederate capital's industrial, economic, political, and social fabric merge with the battlefield stories there. The concentration of diverse Civil War resources found in the Richmond area is unparalleled. A site-specific focus on the battles at Richmond, the combatants, and an understanding of why those battles occurred at Richmond can contribute to a visitor's understanding of the complexity of the American past and provide a means to appreciate strengths and shortcomings in our collective heritage. With a carefully developed battlefield preservation, commemoration, and interpretive effort, including close cooperation with other public and private agencies preserving Civil War resources, RNBP can become

a moving and eloquent place where visitors can examine for themselves the meaning of the American Civil War and its relevance in the modern world.

Protection and interpretation of the battlefield resources around Richmond has engendered debates about where, how much, and by whom since the local citizenry began the push for battlefield preservation early this century. In 1927 the Richmond Battlefield Parks Corporation began assembling the original battlefield acreage; and in 1932 the corporation deeded all of its property to the Commonwealth of Virginia to become Virginia's first state park—the Richmond Battlefield State Park. That same year, a study done by the Secretary of War for the U.S. Congress determined that these acres were appropriate for acquisition by the War Department should they be offered for donation. The War Department study further recommended that an additional 1,905 acres of core battlefield land be purchased. The donation was ultimately accepted by federal authorities, but he recommendation regarding additional land acquisition was not acted upon. In 1993 the Congressionally chartered Civil War Sites Advisory Commission submitted its report that highlighted seven (7) battlefields around Richmond in the list of the fifty most significant and most threatened battlefields in the country. This Plan is consistent with the recommendations of the Commission.

Other Alternatives Considered: Three other alternatives to the selected action were considered: (1). Under the no-action alternative, the park would continue to have amorphously defined boundaries that include large portions of developed land and would emphasize recreational development. This alternative was defined by the 1971 Park Master Plan and supporting implementation plans. The interpretive ideas were to deemphasize battle tactics and explain the Civil War in general in Richmond with no attempt to lead visitors on an interpretive theme from one site to another. Chimborazo would revert to the City while a new visitor center and headquarters would be constructed at Fort Harrison; (2) The first development option would create a new visitor center in downtown Richmond and deemphasize battlefield preservation. Interpretation would emphasize the importance of the Confederate capital, and visitors would be directed to a wide range of surviving Civil War resources in the metropolitan Richmond area; (3) The other development option would emphasize an expanded battlefield land protection and cultural/natural landscape scene restoration effort. The visitor center would be located adjacent to a battlefield, and interpretation would emphasize the military actions to take the city.

Measures to Minimize Impacts and Address Public Concerns: The environmental consequences of the proposed action and the other alternatives were fully documented in the DEIS and are re-presented with modifications in the FEIS. The public review period on the DEIS ended October 2, 1995. The ''Affected Environment'' section that follows the alternatives described the park's surroundings and community context, the current visitor experience, existing cultural and natural resources, and current park operations and administration. In the Environmental Consequences section the proposal and alternatives are analyzed for their general and specific impacts on the visitor experience, resource protection, park administration, and the surrounding community.

The results of public comment on the DEIS are included in the FEIS. A major concession on the part of the National Park Service was to eliminate objectionable provisions of the power of eminent domain and to propose to buy land from willing sellers only. Further, the Savage Station battlefield and parts of the Totopotomy Creek battlefield were dropped from the proposed boundary. The main Visitor Center is planned to remain at Chimborazo and partnerships with the private and public sectors pursued to augment visitor services to establish a Civil War center in Richmond.

Also in response to public comment, this action reaffirms the NPS commitment to battlefield resource protection and responds actively to the Civil War Sites Advisory Commission report to Congress recommending federal involvement at certain battlefields. Changes in the park's enabling legislation would be sought to authorize the appropriation and expenditure of federal funds for the purchase of battlefield lands, including specific tracts outside the existing legislative boundary. These changes will enable RNBP to be a more effective steward and partner with private interests and local and state governments to protect the principal Civil War resources associated with the long and difficult struggle for the capital of the Confederacy and to interpret these resources so as to foster an understanding of their significance as parts of a whole. If the legislation is not enacted, the plan will be able to be effected except that property would be acquired only through the use of donations.

The no-action period on this final plan and environmental impact statement ended September 9, 1996, thirty (30) days after the publication of a notice of availability in the Federal Register.

Environmentally Preferable Action: The environmentally preferred alternative is the one that causes the least damage to the biological and physical environment. If is the alternative that best protects, preserves and enhances the historic, cultural, and natural resources of the area where the proposed action is to take place.

The proposal is the alternative the best fits the definition. This Plan will best protect resources cultural and natural.

Conclusion: The above factors and considerations justify selection of the preferred alternative as the General Management Plan for the Richmond National Battlefield Park as identified and detailed in the final EIS.

Park personnel will begin working with local and state officials, the private sector, other staff of the National Park Service, and the Congress of the United States to implement the plan.

Dated: November 25, 1996.

Cynthia MacLeod,

Superintendent, Richmond National Battlefield Park, (804) 226–1981.

Dated: November 26, 1996.

Warren D. Beach,

Assistant Field Director, Northeast Field Area, (215) 597–7013.

[FR Doc. 96–30702 Filed 12–5–96; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan/ Environmental Impact Statement for Keweenaw National Historical Park, Michigan

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) for the General Management Plan for Keweenaw National Historical Park, Michigan.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, the National Park Service, Department of the Interior will prepare an Environmental Impact Statement to assess the potential impacts of future development and management options in conjunction with the General Management Plan for Keweenaw National Historical Park, Michigan.

Preparation of a draft General Management Plan began in 1995 and included preparation of a draft Environmental Assessment. Scoping for

the plan has included interdisciplinary team meetings with the Keweenaw National Historical Park Advisory Commission, interested agencies, organizations, and individuals. Meetings with the general public were conducted in February and May, 1995. The scoping process has indicated that the proposals being considered may result in significant impacts to the human environment and may constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an EIS in conjunction with the plan is appropriate.

The General Management Plan and EIS will investigate alternatives ranging from no action to a variety of development and management proposals designed to guide visitor use, resource protection, and partnership relationships. Federal, State and local agencies, and other individuals or organizations who may be interested in, or affected by, the future development of Keweenaw National Historical Park are further invited to participate in refining or identifying issues. Written comments and suggestions concerning preparation of the EIS should be sent to: Superintendent, Keweenaw National Historical Park, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913. William Schenk, Field Director for the Midwest Field Area in Omaha, Nebraska is the responsible official.

Preparation of the plan and EIS is expected to take about 12 months. The draft plan and EIS should be available for public review by spring, 1997 with the final plan and EIS and Record of Decision expected to be completed by fall, 1997. Schedules for public meetings to solicit comments on the draft plan will be announced at the time of plan completion.

Dated: November 22, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–31120 Filed 12–5–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 11–96]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Mon., December 16, 1996, 10:00 a.m.

Subject Matter: 1. Consideration of Proposed Decisions on claims against Albania

2. Oral Hearing on objection to Proposed Decision in the following claim against Albania:

ALB–216—Rita Deto Sefla

3. Hearings on the record on objections to Proposed Decisions in the following claims against Albania:

ALB–155—Near East Foundation
ALB–163—Zakije Florence Lika
ALB–202—Nazmi Araniti
ALB–217—Arthur Generalis

Status: Open

Subject matter not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 4, 1996.

Judith H. Lock,

Administrative Officer.

[FR Doc. 96–31243 Filed 12–4–96; 2:13 pm]

BILLING CODE 4410–01–P

[F.C.S.C. Meeting Notice No. 12–96]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Mon., December 16, 1996, approximately 11:30 a.m.

Subject Matter: Consideration of Proposed Decisions on claims of Holocaust survivors against Germany.

Status: Closed.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 4, 1996.

Judith H. Lock,

Administrative Officer.

[FR Doc. 96–31244 Filed 12–4–96; 2:13 pm]

BILLING CODE 4410–01–P

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; application for advance permission to return to unrelinquished domicile.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on August 14, 1996, at 61 FR 42270, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments until January 6, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1534.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for Advance Permission to Return to Unrelinquished Domicile.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–191. Office of Examinations, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information collected on this form will be used to determine whether an applicant is eligible for discretionary relief under section 212(c) of the Act.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300 respondents at 15 minutes (.250) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 75 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 2, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–31038 Filed 12–5–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 3, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 x 166). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 9:00 a.m. and 12:00 p.m. Easter time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

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

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection System.

OMB Number: 1218–0209.

Frequency: On occasion.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 35,000.

Total Annualized capital/startup costs: —0—.

Total annual costs (operating/maintaining systems or purchasing services): —0—.

Description: This information collection collects occupational injury and illness data and information on number of workers employed and number of hours worked from establishment in portions of the private sector.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–31107 Filed 12–5–96; 8:45 am]

BILLING CODE 4510–26–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment

procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and 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 Act,'' 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.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey

NJ960002 (March 15, 1996)
NJ960003 (March 15, 1996)

Vermont

VT960025 (March 15, 1996)

Volume II

District of Columbia

DC960003 (March 15, 1996)

Delaware

DE960002 (March 15, 1996)
DE960005 (March 15, 1996)

Maryland

MD960001 (March 15, 1996)
MD960002 (March 15, 1996)
MD960015 (March 15, 1996)
MD960023 (March 15, 1996)
MD960031 (March 15, 1996)
MD960046 (March 15, 1996)
MD960050 (March 15, 1996)
MD960055 (March 15, 1996)
MD960057 (March 15, 1996)
MD960058 (March 15, 1996)

Pennsylvania

PA960002 (March 15, 1996)
PA960016 (March 15, 1996)
PA960020 (March 15, 1996)
PA960022 (March 15, 1996)
PA960042 (March 15, 1996)

Volume III

Florida

FL960002 (March 15, 1996)
FL960014 (March 15, 1996)
FL960015 (March 15, 1996)
FL960017 (March 15, 1996)
FL960032 (March 15, 1996)

Kentucky

KY960001 (March 15, 1996)
KY960002 (March 15, 1996)
KY960004 (March 15, 1996)
KY960007 (March 15, 1996)
KY960025 (March 15, 1996)
KY960025 (March 15, 1996)
KY960027 (March 15, 1996)
KY960028 (March 15, 1996)
KY960029 (March 15, 1996)

South Carolina

SC960033 (March 15, 1996)

Volume IV

Illinois

IL960001 (March 15, 1996)
IL960002 (March 15, 1996)
IL960005 (March 15, 1996)
IL960006 (March 15, 1996)
IL960008 (March 15, 1996)
IL960009 (March 15, 1996)
IL960010 (March 15, 1996)
IL960011 (March 15, 1996)
IL960012 (March 15, 1996)
IL960015 (March 15, 1996)
IL960016 (March 15, 1996)
IL960017 (March 15, 1996)
IL960026 (March 15, 1996)
IL960049 (March 15, 1996)

Indiana

IN960001 (May 17, 1996)
IN960001 (March 15, 1996)
IN960002 (March 15, 1996)
IN960003 (March 15, 1996)
IN960004 (March 15, 1996)
IN960005 (March 15, 1996)
IN960006 (March 15, 1996)
IN960017 (March 15, 1996)
IN960018 (March 15, 1996)
IN960021 (March 15, 1996)
IN960059 (May 24, 1996)

Minnesota

MN960003 (March 15, 1996)
MN960005 (March 15, 1996)
MN960007 (March 15, 1996)
MN960012 (March 15, 1996)
MN960015 (March 15, 1996)
MN960017 (March 15, 1996)
MN960043 (March 15, 1996)
MN960044 (March 15, 1996)
MN960045 (March 15, 1996)
MN960046 (March 15, 1996)
MN960047 (March 15, 1996)
MN960048 (March 15, 1996)
MN960049 (March 15, 1996)
MN960059 (March 15, 1996)
MN960061 (March 15, 1996)

Ohio

OH960001 (March 15, 1996)
OH960002 (March 15, 1996)
OH960003 (March 15, 1996)
OH960012 (March 15, 1996)
OH960027 (March 15, 1996)
OH960028 (March 15, 1996)
OH960029 (March 15, 1996)
OH960034 (March 15, 1996)
OH960035 (March 15, 1996)
OH960036 (March 15, 1996)

Volume V

Louisiana

LA96004 (March 15, 1996)
LA96005 (March 15, 1996)
LA96009 (March 15, 1996)
LA96018 (March 15, 1996)

Volume VI

Colorado

CO960002 (March 15, 1996)
CO960009 (March 15, 1996)
CO960024 (March 15, 1996)

Idaho

ID960013 (March 15, 1996)
ID960014 (March 15, 1996)

Wyoming

WY960004 (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 29th day of November 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–30855 Filed 12–5–96; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96–87; Exemption Application No. D–09990, et al.]

Grant of Individual Exemptions; Blue Cross and Blue Shield of Virginia

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Blue Cross and Blue Shield of Virginia (the Company) Located in Richmond, VA; Exemption

[Prohibited Transaction Exemption 96–87; Exemption Application No. D–09990]

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed receipt of cash and/or common stock (the Stock) of Trigon Healthcare, Inc. (Trigon), the Company's sole owner, by any employee benefit plan policyholder of the Company (the Plan), other than an employee benefit plan sponsored by the Company or its affiliates, in exchange for such policyholder's membership interest in the Company, in accordance with the terms of a plan of reorganization (the Demutualization; the Demutualization Plan) adopted by the Company and implemented pursuant to the insurance laws of the State of Virginia.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Demutalization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Virginia law and is subject to the review and supervision by the Virginia State Corporation Commission (the Commission).

(b) The Commission reviews the terms of the options that are provided to certain policyholders of the Company (the Eligible Members), as part of such Commission's review of the Demutualization Plan, and the Commission only approves the Demutualization Plan following a determination that such Demutualization Plan is fair and equitable to the policyholders.

(c) Each Eligible Member has an opportunity to comment on the Demutualization Plan and each Member on the Record Date can decide whether to vote to approve such Demutualization Plan after full written disclosure is given such Member by the Company, of the terms of the Demutualization Plan.

(d) Any election by an Eligible Member to receive cash and/or Trigon Stock pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries of such Plan and neither the Company nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After an Eligible Member entitled to receive stock is allocated a fixed number of shares of Trigon Stock for each vote, additional consideration is allocated to an Eligible Member who owns a participating policy based on actuarial formulas that take into account each participating policy's contribution to the surplus (the Surplus or the Surplus Contribution) of the Company which formulas have been approved by the Commission.

(f) All Eligible Members participate in the transactions on the same basis within their class groupings as other Eligible Members that are not Plans.

(g) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Trigon Stock or in connection with the implementation of the commission-free sales program.

(h) All of the Company's policyholder obligations remain in force and are not affected by the Demutualization Plan.

Section III. Definitions

For purposes of this exemption:

(a) The term ''Company'' means Blue Cross and Blue Shield of Virginia and any affiliate of the Company as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of the Company includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Company. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Effective Date'' means the date on which the certificate of merger is issued by the Commission and the Demutualization occurs.

(d) The term ''Eligible Member'' means a member which will receive a distribution of Trigon Stock in the Demutualization. A ''Member'' is a policyholder which has a policy of insurance directly from the Company, which policy entitles the policyholder to vote. To be eligible for a distribution of Trigon Stock, the Member must have had a policy in effect as of December 31, 1995.

(e) The term ''Record Date'' is the date on which the determination of a policyholder's status for voting on the Demutualization is made.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) on May 23, 1996 at 61 FR 25900.

Written Comments

The Department received five written comments with respect to the Notice. Four comments, which objected to different aspects of the Demutualization, were submitted by policyholders of the Company. Of these policyholder comments, two were submitted by the same individual. The fifth comment was submitted by the Company and is intended to clarify and update the Notice. Following is a discussion of the comments received.

Policyholder Comments

Of the policyholder comments received, one commenter has objected to the Demutualization but does not cite the specific reasons for his opposition. The second commenter is of the view that the Demutualization will diminish benefits and increase premium costs for policyholders. This commenter is also opposed to the exemption because he believes it will facilitate the Demutualization.

In response to the second commenter, the Company notes that as a policyholder, the holder of the group policy that covers the commenter would have the opportunity to vote on the approval or disapproval of the Demutualization Plan with all other policyholders. The Company also states that the commenter's specific concerns about benefits and premium costs would be addressed in the Demutualization process which requires that the terms and conditions of the plan be fair and equitable to the policyholders of the issuer. The Company further notes that the Demutualization would not affect the premiums or other terms of insurance.

The third commenter, who submitted two comments, is an individual policyholder of the Company. The commenter proposes that the exemption permit the Company to allocate cash or shares of Trigon Stock directly to employees covered under group policies of insurance. In response, the Company notes that under Title I of the Act, the Plan administrator is given the primary duty to make decisions regarding the operation of the Plan including the use and disposition of Plan assets. According to the Company, distribution of cash or Trigon Stock directly to employees in the Demutualization is inconsistent with its responsibilities since the Company is not the Plan administrator of any Plans associated with its group policies. Therefore, the Company asserts that it cannot dictate to the Plan administrator the manner in which cash or shares of Trigon Stock should be used under the Plan. Rather, the Plan administrator must make this decision based on the individual facts concerning the Plan.

The Company is also of the view that the commenter's proposal would be untenable because of the various situations that might affect the Plan. In this regard, the Company explains that under the Demutualization Plan, the Surplus is allocated to each policyholder for each year from 1988 through 1995. During that time period, group policyholders may have had substantial changes (e.g., constant participant turnover, changes in allocation costs between the employer and the participants, changes in elections of health care providers by employers, etc.) in their Plans which could affect the manner in which the Plans would treat their participants. The only party who would possess this information and have the authority to determine the appropriate treatment of the employees would be the Plan administrator, who is permitted under the Demutualization Plan to decide how shares of Trigon Stock will be used to benefit employees. Therefore, the Company does not believe it is feasible to make these decisions for the thousands of groups that will receive Trigon Stock.

In addition, the commenter states that the Company's allocation formula should consider allocating shares to the Surplus Contribution made by self-funded Plans which are not insured Plans. In response, the Company represents that the allocation formula in the Demutualization Plan does not take into account contributions to Surplus from its non-insurance lines of business as such action would be inconsistent with the purpose of the allocation formula. The Company explains that the purpose of the allocation formula is to allocate, in a fair and equitable manner, shares of Trigon Stock among the Company's policyholders. Therefore, the Company states that the formula should only take into account the Surplus Contributions for the policyholders who will receive the shares. Moreover, the Company states that the customers of its non-insurance lines of business are not policyholders and revenue from these customers should play no part in the allocation formula.

Further, the commenter is of the view that there may be litigation if allocations are not made by the Company to individual employees covered under group policies. However, the Company notes that litigation on this issue has never occurred in prior Demutualizations.

Finally, the commenter has remarked on a provision of the Notice relating to the Company's in-house health Plans. In response, the Company states that this portion of the Notice has been withdrawn. With respect to its in-house health Plans, the Company indicates that it has determined that such Plans are not ''policies of insurance'' for purposes of eligibility under the Demutualization Plan. Therefore, no Trigon Stock will be distributed to the Company or its employees under the Demutualization Plan.

It should be noted that this commenter made comments to the Commission that are similar to the foregoing but he did not appear at the hearing on the Demutualization Plan which occurred on September 9–11, 1996. It is represented that the commenter withdrew as a protestant during the hearing and that the Commission did not require the Company to amend the Demutualization Plan in response to the commenter's remarks.

The Company's Comment

In its comment, the Company has noted various changes in the details of the Demutualization Plan. Although the basic structure of the Demutualization has remained the same, the Company indicates that a revised Demutualization Plan incorporating these changes was filed with the Commission on May 31, 1996. On October 28, 1996, the Commission issued a preliminary order and requested that a revised

Demutualization Plan be filed that incorporated its recommended modifications. On October 31, 1996, the Company filed a revised Demutualization Plan which contained two amendments that do not affect matters that were included in the Notice or in the subsequent revisions to the description of the Demutualization Plan as described below. Specifically, the time periods for certain restrictions on stock acquisitions that might affect control of the Company have been reduced from 5 years to 30 months. In addition, limitations have been placed on stock-based compensation awards until three months after the end of the Lockup Period. On November 5, 1996, the Commission issued its final order approving the Demutualization of the Company.

In order to clarify and update the Notice, the Company has requested that the Department make revisions in the following areas:

(1) *Number of Shares of Trigon Stock to be Allocated for Voting Rights.* Section II(e), Representations 8 and 15(e) of the Notice state that an Eligible Member entitled to receive Trigon Stock will be allocated at least 16 shares for each vote. However, the Company points out that under the revised Demutualization Plan, the current estimate for the number of shares to be allocated for each vote is 13.7 shares rather than 16 shares. The Company further explains that the exact number of shares for each vote may be subject to change depending on the number of votes which is presently estimated at 700,730.

(2) *Eligible Member Effective Date.* Section III(d) of the Notice states, in part, that to be eligible to receive a distribution of Trigon Stock, a member must have had a policy in effect on (a) May 31, 1995, (b) on the Effective Date, and (c) at all times between those dates. To reflect the revised Demutualization Plan, the Company states that in order to be eligible for a distribution, an eligible policy must have been in effect on December 31, 1995 (rather than May 31, 1995) and does not have to remain in effect after that date.

(3) *Special Member Hearing and Hearing.* In Representation 4 of the Notice, the dates for the special Member hearing and the hearing had not been established. The Company represents that the special Member hearing was held on September 6, 1996, at which time eligible policyholders of the Company approved the Demutualization Plan by approximately 92.5 percent of the votes cast in favor of the conversion. On September 9–11, 1996, the Company states that the Commission held hearings on the Demutualization Plan.

(4) *Allocation of Trigon Stock.* Representation 8 of the Notice states that the allocation of Trigon Stock will be based on two components—voting rights (Voting Rights) and the equity contribution (the Equity Contribution) by the policies. The Company wishes to clarify that the Voting Rights Allocation is referred to as the ''Fixed Component'' or the ''Aggregate Fixed Component'' and the Equity Contribution Allocation is referred to as the ''Surplus Contribution,'' the ''Variable Component'' or the ''Aggregate Variable Component.''

In addition, Representation 8 of the Notice states, in part, that the Demutualization Plan assigns each policy to a strategic business unit (SBU) and a major product line (MPL) under the SBU. It is also represented that the Demutualization Plan divides the Eligible Members into 4 SBUs and 11 MPLs that could receive an allocation of Trigon Stock. Under the amended Demutualization Plan, the Company notes that all policies will be allocated to one of fourteen MPLs and that the MPLs will not be further divided among any SBUs.

(5) *Changes to Hypothetical Example.* Representation 9 of the Notice sets forth a hypothetical example, provided by the Company, which describes the manner in which shares of Trigon Stock would be calculated for an Eligible Member. To update the Notice, the Company requests that references to the Equity Contribution Allocation be changed to the ''Aggregate Variable Component Allocation'' or the ''Variable Component Allocation'' and the Equity Contribution Factor be changed to the ''Surplus Contribution Factor.'' The Company also notes that the Surplus Contribution Factor (the SCF) will be applied for the years 1988 through 1995 and future years through 2015 rather than pre-1989 as stated in the Notice.

To reflect these changes, the example has been revised as follows:

Assume that an Eligible Member's group policy was in force from 1985 until 1995. Thus, the first step in the allocation methodology is to compute the Voting Rights allocation. The second step in the allocation methodology is to determine the Surplus Contribution allocation.

Fixed Component Allocation. Assume that the policy has a total of 30 votes as of the Record Date. At a rate of 13.7 shares per vote, the Fixed Component allocation would be 411 shares of Trigon Stock.

30 votes × 13.7 shares of Trigon Stock = 411 shares of Trigon Stock.

Variable Component Allocation. The following table represents the number of covered lives and the Surplus Contribution Factor (the SCF)[1] derived for the Eligible Member's MPL for each year.

Period	Covered lives	×	SCF	Surplus contribution
Pre-1988	22	×	$60	$1,320
1989	22	×	60	1,320
1990	30	×	60	1,800
1991	28	×	40	1,120
1992	35	×	70	2,450
1993	35	×	60	2,100
1994	40	×	80	3,200
1995	40	×	60	2,400
Future	40	×	70	2,800
Total surplus contribution				$18,510

Assume that the Surplus Contribution for all Eligible Members is $18,510/$650,000,000 x 54,400,000 shares = 1,545 Surplus Contribution Shares.

The total number of shares of Trigon Stock that will be received by the Eligible Member is the sum of the Voting Rights Shares and the Surplus Contribution Shares.

411 + 1,545 = 1,956 Total Shares Received.

(6) *Criteria for Being Considered a Mandatory Cash Member.* Footnote 7 of the Notice states, in pertinent part, that a Mandatory Cash Member is—

.....(c) an Eligible Member with a mailing address within a state in which there are fewer than 10 Eligible Members and the total stock allocated to such Eligible Members is less than 2,000 shares, if the Company determines that issuance of shares to these Eligible Members would result in unreasonable delay or excessive hardship or delay.

Under the revised Demutualization Plan, the Company explains that there are two different criteria for these Members. The first category is having a mailing address in a state with 30 or fewer Eligible Members. The second category is having a mailing address in a state in which issuance of shares would result in unreasonable delay or be excessively burdensome. Therefore, the Company requests that the Department revise the affected portions of this footnote to read as follows:

.....(c) an Eligible Member with a mailing address within a state in which there are fewer than 30 Eligible Members and (d) an Eligible Member with a mailing address in a state in which it is determined that the issuance of shares to these Eligible Members would result in unreasonable delay, be excessively burdensome or expensive.

[1] The SCF is determined by dividing the Surplus Contribution of the MPL by the total number of covered lives. For example, assume that in 1988, an MPL had a Surplus Contribution of $10 million and 50,000 covered lives. The 1988 SCF for that MPL would be $200 (i.e., $10 million divided by 50,000).

(7) *Reduction in Lockup Periods.* Representation 13 of the Notice states that all shares of Trigon Stock that are issued by the Company to Eligible Members will be subject to two Lockup Periods. The Company wishes to clarify that under the revised Demutualization Plan, the number of Lockup Periods has been reduced from two to one. The Company states that the single Lockup Period will have a duration of six months, after which time, all shares of Trigon Stock held by the Company, will be released. Otherwise, the Company explains that the Lockup will operate as under the prior Demutualization Plan. Therefore, the Company suggests that all references to the second Lockup Period be deleted.

Thus, after giving full consideration to the entire record, including the written comments, the Department has made the aforementioned changes and has decided to grant the exemption subject to the modifications or clarifications described above. The comment letters have been included as part of the public record of the exemption application. The complete application file, as well as all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First National Bank of Anchorage Common Trust Fund (the Fund) Located in Anchorage, Alaska; Exemption

[Prohibited Transaction Exemption 96–88; Exemption Application No. D–10117]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sales of certain defaulted real estate mortgages (the Mortgages) by the First National Bank of Anchorage Common Trust Fund (the Fund) to the First National Bank of Anchorage (the Bank), a party in interest with respect to the Fund, provided that the following conditions are satisfied:

(1) The sales will be one-time cash transactions;

(2) the Fund will incur no costs in connection with the sales;

(3) the Fund will sell each Mortgage for the greater of fair market value, or its outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) the independent fiduciaries (the Independent Fiduciaries) appointed to act on behalf of the Fund in these transactions will review and determine that a Mortgage is in default, has been properly declared to be in default by the Bank in accordance with the Comptroller of Currency regulations, and that the prospective sale of a Mortgage is in the best interest of the Fund;

(5) neither of the Independent Fiduciaries will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein;

(6) the Mortgages will be purchased, rather than segregated, by the Bank;

(7) the borrowers on the Mortgages will be unrelated third parties;

(8) the conditions of the Prohibited Transaction Exemption 90–60 (PTE 90–60) have been met. PTE 90–60, which expired September 12, 1995, provided retroactive and prospective relief for sales of the Mortgages by the Fund to the Bank;

(9) the Bank maintains for a period of six years, the records necessary to enable persons described in (10) below to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of the Bank or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(10) (i) Except as provided in paragraph (ii) of this subsection (10) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (9) above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in the Fund, who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in the Fund, or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in the Fund, or any duly authorized employee or representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (B) through (D) of this subsection (10) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 18, 1996 at 61 FR 49160/49162.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

John A. Colglazier Self Employment Retirement Plan (the Plan) Located in San Antonio, TX; Exemption and Replacement of Existing Exemption

[Prohibited Transaction Exemption (PTE) 96–89; Exemption Application No. D–10291]

The Department hereby grants a temporary new exemption that will replace PTE 86–95 (51 FR 26077, July 18, 1986). Under the new exemption, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, will not apply to the cash sale by the Plan, for $74,250, of a parcel of unimproved real property (the Property) to John A. Colglazier, a sole proprietor and a disqualified person with respect to the Plan.[2]

This exemption is subject to the following conditions:

(a) The sale is a one-time transaction for cash that is entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption.

(b) The Plan does not pay any real estate fees or commissions in connection with the sale.

(c) The Property is appraised by a qualified, independent appraiser.

(d) The Plan receives, as consideration, an amount that is equal to the greater of $74,250 or the fair market value of the Property as of the date of the sale, including any special value attributed to the Property by reason of its proximity to other real property owned by Mr. Colglazier.

(e) All terms and conditions of the sale remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party at the time of the sale.

[2] Because Mr. Colglazier is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

TEMPORARY NATURE OF EXEMPTION/ EFFECTIVE DATE: This exemption will be effective for a period of 90 days subsequent to the date the grant notice is published in the Federal Register.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 17, 1996 at 61 FR 54227.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of December, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–31108 Filed 12–5–96; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on December 13–14, 1996. The meeting will begin at 10 a.m. on December 13, 1996, and continue on December 14 until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation 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. Approval for the committee of minutes of September 29, 1996, Joint Operations and Regulations Committee and Provision for the Delivery of Legal Services Committee meeting.
3. Consider and act on draft interim revisions to 45 C.F.R. Part 1612, the Corporation's regulation restricting lobbying and certain other activities by grantees.
4. Consider and act on draft interim revisions to 45 C.F.R. Part 1620, the Corporation's regulation on priorities in the allocation of resources.
5. Consider and act on draft interim revisions to 45 C.F.R. Part 1626, the Corporation's regulation restricting legal assistance to aliens.
6. Consider and act on draft interim revisions to 45 C.F.R. Part 1627, the Corporation's regulation on subgrants, fees and dues.
7. Consider and act on a draft interim regulation (to be codified as 45 C.F.R. Part 1636) on disclosure of plaintiff identity and statement of facts.
8. Consider and act on a draft interim regulation (to be codified as 45 C.F.R. Part 1637) restricting grantees' participation in litigation on behalf of prisoners.
9. Consider and act on a draft interim regulation (to be codified as 45 C.F.R. Part 1638) restricting solicitation of clients by grantees.
10. Consider and act on a draft interim regulation (to be codified as 45 C.F.R. Part 1639) proscribing grantees' involvement in challenges to welfare reform.
11. Consider and act on a draft interim regulation (to be codified as 45 C.F.R. Part 1640) applying federal waste, fraud and abuse law to LSC funds.
12. Consider and act on a draft interim regulation (to be codified as 45 C.F.R. Part 1642) governing grantees' collection of attorneys' fees.
13. Consider and act on proposed revisions to 45 C.F.R. Part 1609, the Corporation's regulation on fee-generating cases.
14. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Corporate Secretary, (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 may notify Barbara Asante at (202) 336–8892.

Dated: December 4, 1996.

Victor M. Fortuno,

General Counsel and Corporate Secretary.

[FR Doc. 96–31247 Filed 12–4–96; 2:13 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–138]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Compix Incorporated, of Lake Oswego, Oregon, has applied for an exclusive license to practice the invention described in U.S. Patent No. 5,436,443, entitled ''Polaradiometric Pyrometer in which the Parallel and Perpendicular Components of Radiation Reflected from an Unpolarized Light Source Are Equalized with the Thermal Radiation Emitted from a Measured Object to Determine Its True Temperature,'' which was issued on July 25, 1995, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Thomas H. Jones, Patent Counsel, NASA Management Office—JPL.

DATES: Responses to this notice must be received by February 4, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Jones, Patent Counsel, NASA Management Office—JPL, Mail Station 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

Dated: November 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–31128 Filed 12–5–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses: Request for Volunteers To Participate in January 1997 Pilot Test

In an October 3, 1996, notice (61 FR 51729), NRC announced the availability of draft NUREG–1556, Volume 1, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Portable Gauge Licenses.'' The October 3 notice indicated that draft NUREG–1556, Volume 1, was ''strictly for public comment and NOT for use in preparation or review of applications for portable gauge licenses until the document is in final form.'' However, as part of the evaluation of the document's content, format, and usefulness, NRC is seeking a small number of volunteers (not to exceed 9) to participate in a pilot test of the draft guidance to be conducted during the week of January 27, 1997, in NRC's Region II office in Atlanta, GA. Volunteers need not be physically present in the NRC Region II office during the pilot, but should be available throughout the period January 27 through 31, 1997, by telephone and have the capability to receive and transmit messages via electronic mail or facsimile.

Ideally, volunteers will be applicants for new portable gauge licenses, willing to submit applications in accordance with draft NUREG–1556, Volume 1 in both paper and electronic format, to work closely with the NRC staff to resolve any identified deficiencies in the application (so that all applications can be completely processed during the one-week pilot test), and to provide NRC with comments on their pilot test experience. To be useful in the pilot test, applications accompanied by the appropriate fees as specified in 10 CFR Part 170 need to be received in NRC's Region II office not later than January 22, 1997. Rather than following the filing instructions in 10 CFR 30.6, for the purposes of the pilot test, applications should be addressed as follows: U. S. Nuclear Regulatory Commission, ATTN: Mr. John M. Pelchat, BPR Pilot Test, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323–0199.

Submitted applications will be reviewed following the draft NUREG–1556, Volume 1 guidance. Upon completion of the review of each submitted application and resolution of any identified deficiencies, NRC will issue a valid license to the applicant.

In addition, portable gauge manufacturers, master material licensees, and Agreement States may volunteer as they may be able to contribute to the evaluation and improvement of the guidance in draft NUREG–1556, Volume 1. John M. Pelchat, who can be reached at (404) 331–5083 or via electronic mail at INTERNET:JMP2@NRC.GOV, is coordinating volunteers and can answer questions about the pilot test.

Dated at Rockville, Maryland, this 29 day of November, 1996.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards

[FR Doc. 96–31076 Filed 12–05–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22358; 812–10296]

CIGNA Funds Group, et al.; Notice of Application

November 27, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: CIGNA Funds Group, CIGNA Institutional Funds Group, CIGNA High Income Shares, INA Investment Securities, Inc., CIGNA Variable Products Group (collectively, the ''Trusts''), all existing and future series of the Trusts, any other registered investment companies or series thereof that are now or in the future advised by CIGNA Investments, Inc. (''CII'') or any other registered investment adviser controlling, controlled by or under common control with CII (collectively, the ''Funds''), and CII.

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the series of certain investment companies and certain private accounts to deposit their uninvested cash balances in one or more joint accounts to be used to enter into short-term investments.

FILING DATES: The application was filed on August 8, 1996, and amended on October 28, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing in writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1996, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o CIGNA Investments, Inc., 900 Cottage Grove Road, Hartford, CT 06152.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenless, Senior Counsel, at (202) 942–0581, or Alison E. Baur, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. CIGNA Funds Group, CIGNA Institutional Funds Group, CIGNA High Income Shares, and CIGNA Variable Products Group are organized as Massachusetts business trusts. INA Investment Securities, Inc. is organized as a Delaware corporation. The Trusts are registered under the Act as management investment companies. The Trusts that intended to rely on the requested order are named as applicants; Funds established hereafter will not rely on the requested relief except upon the terms and conditions contained in the application.

2. CII is incorporated under the laws of Delaware and is registered as an investment adviser under the Investment Advisers Act of 1940. CII is an indirect, wholly-owned subsidiary of CIGNA Corporation, and serves as investment adviser to each existing Fund.[1] In addition, CII provides investment advisory services to other affiliated and unaffiliated companies, including employee benefit plans and accounts investing in mortgages, real estate, public bonds, private

[1] Applicants request that any relief granted to CII pursuant to the application also apply to any successor of CII. The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization of CII.

placements, and other types of investments (collectively, and together with any such account advised by another registered investment adviser controlling, controlled by, or under common control with CII, the ''Private Accounts'').

3. CII has discretion to purchase and sell securities for the existing Funds in accordance with the investment objectives, policies, and restrictions of each Fund and subject to the general oversight of the Trustees of each Trust. All of the existing Funds are authorized by their investment policies and restrictions to invest at least a portion of their uninvested cash balances in short-term liquid assets, including repurchase agreements, high-grade commercial paper, U.S. government securities and other short-term debt obligations.

4. CII also has discretion to purchase and sell securities for the Private Accounts in accordance with the investment objectives, policies, and restrictions of each Private Account. In order for a Private Account to participate in the proposed joint account (each, a ''Qualifying Private Account''), those persons with authority to act on behalf of such Private Account would have to determine that: (a) Participation in the Joint Account (as defined below); and (b) the proposed investments of the Joint Account are consistent with such Private Account's investment policies and with any state or other law applicable to the Private Account. No existing Private Account qualifies as a Qualifying Private Account. To the extent, however, that any future Private Account qualifies as a Qualifying Private Account or any current Private Account amends its investment policies such that it would so qualify, applicants request that any relief granted hereby also apply to any such Private Account.

5. The assets of the existing Funds and Qualifying Private Accounts are held by various bank custodians, none of which controls, is controlled by or is under common control with any of the Participants (as defined below), or CII. At the end of each trading day, the Funds and Qualifying Private Accounts may have uninvested cash balances in their accounts at their respective custodian banks that would not otherwise be invested in portfolio securities by CII. Generally, such cash balances are, or would be, invested in short-term liquid assets such as commercial paper or U.S. Treasury bills.

6. Applicants propose that the Participants (as defined below) deposit these uninvested cash balances into one or more joint accounts (the ''Joint Accounts'') and that the daily balances of the Joint Accounts be invested in: (a) Repurchase agreements ''collateralized fully'' as defined in rule 2a-7 under the Act; and (b) other short-term money market instruments that constitute ''Eligible Securities'' (as defined in rule 2a-7 under the Act), including interest-bearing or discounted commercial paper, and dollar denominated commercial paper of foreign issuers (collectively, ''Short-Term Investments''). Funds and Qualifying Private Accounts that are eligible to participate in any of the Joint Accounts and that elect to participate in one or more of such Accounts are collectively referred to as ''Participants.'' Each Participant would invest through a Joint Account only to the extent that it intends to invest in short-term liquid investments consistent with its investment objectives, policies, and restrictions.

7. The decision to employ a Joint Account for each Participant would be based on the same factors as the decision to make any other short-term liquid investment. Currently, CII purchases repurchase agreements and other money market instruments separately on behalf of each Fund or Qualifying Private Account. This requires CII to monitor multiple sources of cash availability so that it can allocate opportunities among Funds and Qualifying Private Accounts, execute multiple trades in similar securities on any given day, and settle trades in a number of separate accounts. The sole purpose of the Joint Accounts would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Participants as necessary to manage their respective daily account balances.

8. CII will be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, and ensuring fair treatment of Participants. All purchases through a Joint Account will be subject to the same systems and standards for acquiring investments for individual Funds. CII will not charge any additional or separate fees for operating or advising the Joint Accounts and would have no monetary participation in the Joint Accounts.

9. Any repurchase agreements entered into through any Joint Account will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements, and represent that repurchase agreement transactions will comply with future positions of the SEC to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Account will comply with those guidelines.

10. Applicants propose to enter into hold-in-custody repurchase agreements, *i.e.* repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement, only where cash is received very late in the business day and otherwise would be unavailable for investment.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Participants, by participating in the Joint Accounts, and CII, by managing the Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. In addition, each Joint Account could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

3. Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and other Short-Term Investments that is higher than the rate available on smaller repurchase agreements and other Short-Term Investments. The Joint Accounts also may increase the number of dealers and issuers willing to enter into Short-Term Investments with the participants and may reduce the possibility that their cash balances remain uninvested.

4. The Joint Accounts may result in certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the sellers of Short-Term Investments, the Participants' custodians, and CII's accounting and trading departments.

5. Applicants assert that no Participant will be in a less favorable position as a result of the Joint Accounts. Applicants believe that each Participant's investment in a Joint Account would not be subject to the

claims of creditors, whether brought in bankruptcy, insolvency, or other legal proceeding, of any other Participant. Each Participant's liability on any Short-Term Investment will be limited to its interest in such investment; no Participant will be jointly liable for the investments of any other Participant.

6. Although CII will realize some benefits through administrative convenience and some possible reduction in clerical costs, the Participants will be the primary beneficiaries of the Joint Accounts because the Joint Accounts may result in higher returns and would be a more efficient means of administering daily cash investments.

7. In passing upon applications under section 17(d) and rule 17d–1, the SEC is required to consider whether each party's participation in the proposed joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds would participate in the Joint Accounts on a basis no different from or less advantageous than that of any other Participant. They further submit that no Participant will receive fewer benefits than any other Participant. For the reasons set forth above, applicants believe that granting the requested order is consistent with the provisions, policies, and purposes of the Act and the intention of rule 17d–1.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. The Joint Accounts will not be distinguishable from any other accounts maintained by Participants at their custodians except that monies from Participants will be deposited in the Joint Account on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by CII of uninvested cash balances.

2. Cash in the Joint Accounts will be invested in one or more Short-Term Investments, as directed by CII. Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. No Participant will be permitted to invest in a Joint Account unless the Short-Term Investments in such Joint Account will satisfy the investment policies and guidelines of that Participant.

3. All assets held in the Joint Accounts would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

4. Each Participant that is a registered investment company valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Account, including interest payable on such assets invested in the Joint Account.

6. CII will administer the investment of cash balances in and operation of the Joint Accounts as part of the general duties under the advisory agreements it has (or its control affiliates have) with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Boards of Trustees of the Funds and the responsible person of the Qualifying Private Accounts (each a ''Board'' and collectively, the ''Boards'') will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each of the Boards will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Boards of each Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with such procedures and will only permit a Fund to continue to participate therein if it determines that there is a reasonable likelihood that the Fund and its shareholders (or beneficiaries, as applicable) will benefit from the Fund's continued participation.

9. Any Short-Term Investments made through a Joint Account will satisfy the investment criteria of each Participant in that joint investment.

10. Each Participant in a Joint Account will document daily on its books and the books of its custodian, its investments through such Accounts. Each Participant will maintain records (in conformity with section 31 of the Act and the rules and regulations thereunder) documenting for any given day its aggregate investment through each Joint Account and its *pro rata* share of each Short-Term Investment made through such Joint Account. Each Participant that is not a registered investment company or registered investment adviser will make available to the SEC, upon request, such books and records with respect to its participation in a Joint Account.

11. Every Participant in a Joint Account will not necessarily have its cash invested in every Short-Term Investment. However, to the extent that a Participant's cash is applied to a particular Short-Term Investment, the Participant will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Participant.

12. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) CII believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. CII may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in the Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant

in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Participant that is an open-end investment company registered under the Act, subject to the restriction that the Participant may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities and any similar restriction set forth in the Participant's investment restrictions and policies, if CII cannot sell the instrument, or the Participant's fractional interest in such instrument, pursuant to the preceding condition.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31017 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22361; 811–5435]

The Compass Capital Group®; Notice of Application

December 2, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Compass Capital Group®.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 31, 1996 and amended on October 2, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 680 East Swedesford Road, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company with sixteen series that is organized as a business trust under the laws of Massachusetts. Twelve of applicant's series are diversified investment companies and four are non-diversified. Applicant registered under the Act and filed a registration statement on Form N–1A on December 31, 1987. Applicant's registration statement was declared effective on March 1, 1988, and applicant commenced a public offering of its shares immediately thereafter.

2. On October 3, 1995, applicant's board of trustees considered and approved a reorganization agreement that provided for the transfer of all the assets and liabilities of applicant to the Compass Capital Funds (formerly, the PNC Fund®) (the ''Acquiring Fund''), a registered open-end investment company. The board of trustees made the findings required by rule 17a–8 under the Act, *i.e.*, that the reorganization was in the best interest of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of shares held at that time by applicant's shareholders.[1]

3. Definitive proxy materials were filed with the SEC on November 9, 1995. On November 9, 1995, applicant mailed proxy materials to its shareholders. On December 11, 1995, applicant's shareholders approved the reorganization.

4. On January 13, 1996, applicant transferred the assets and liabilities of fifteen series to certain series of the Acquiring Fund in exchange for shares of the respective series of the Acquiring Fund on the basis of the relative net asset values per share of the respective series of applicant and the Acquiring Fund. On February 13, 1996, the assets and liabilities of applicant's remaining series were transferred to a series of the Acquiring Fund in exchange for shares of that series of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. The shares of the Acquiring Fund received by applicant were distributed to the shareholders of applicant, *pro rata*.

5. The expenses incurred in connection with the reorganization totaled approximately $700,000. Applicant paid $286,723 of the expenses, of which $170,734 related to the costs of printing and mailing proxy statements, $56,500 related to audit fees, and $59,489 related to legal expenses. The remaining expenses were borne by the Acquiring Funds and/or their advisers. No brokerage fees were paid in connection with the reorganization.

6. Applicant has taken steps to dissolve under the laws of the Commonwealth of Massachusetts.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31082 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22360; International Series Release No. 1034; 812–10418]

The Lipper Funds, Inc., et al.; Notice of Application

December 2, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Lipper Funds, Inc. (the ''Company''), on behalf of its portfolio

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

series, Prime Lipper Europe Equity Fund (the ''Fund''), and Prime Lipper Asset Management (''PLAM'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: Assicurazioni Generali S.p.A. (''Generali'') has agreed to acquire a controlling interest in Prime S.p.A., the parent of Prime U.S.A. Inc. (''Prime U.S.A.''), which owns 50% of PLAM, the investment adviser to the Fund. The indirect change of control in Prime U.S.A. will result in the assignment, and thus the termination, of the existing advisory contract between the Fund and PLAM. The order would permit the implementation, without shareholder approval, of a new advisory contract for a period of up to 120 days following the date of the change in control of Prime S.p.A. (but in no event later than May 31, 1997). The order also would permit PLAM to receive from the Fund fees earned under the new advisory contract following approval by the Fund's shareholders.

FILING DATE: The application was filed on November 8, 1996 and amended on November 25, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 101 Park Avenue, New York, New York 10178.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or May Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company has three investment portfolios, one of which is the Fund. PLAM serves as investment adviser to the Fund and Lipper & Company, L.L.C. serves as investment adviser to the other two portfolios.

2. PLAM is a joint venture structured as an equally-owned New York general partnership between Lipper Europe L.P., a Delaware limited partnership controlled by Lipper & Company, and Prime U.S.A., a Delaware corporation and a wholly-owned subsidiary of Prime S.p.A., an Italian company that is currently controlled by Fiat S.p.A.

3. On October 22, 1996, Generali and Fiat S.p.A. entered into an agreement pursuant to which Generali agreed to acquire 95.1% of the outstanding stock of Prime S.p.A. from Fiat S.p.A. (the ''Purchase''). Consummation of the Purchase is subject to the satisfaction or waiver of certain conditions, including regulatory approvals in Italy. Prime S.p.A. has informed applicants that the only significant condition to closing is the receipt of regulatory approval that is currently pending and that could be received at any time. While regulatory approvals could be delayed or denied, applicants believe that a change in control of PLAM could occur soon. Applicants represent that Fiat S.p.A. and Generali determined the terms and timing of the Purchase in response to factors beyond the scope of the Act and unrelated to the Fund and Lipper Europe L.P.

4. The consummation of the Purchase will directly result in a change in control of Prime U.S.A. from Fiat S.p.A. to Generali. Because Prime U.S.A. is an equal partner of PLAM with Lipper Europe L.P., the indirect change of control of Prime U.S.A. will constitute an assignment of the existing investment advisory agreement between the Fund and PLAM within the meaning of section 2(a)(4) of the Act.

5. Applicants request an exemption to permit the implementation, without formal shareholder approval, of a new investment advisory agreement between the Fund and PLAM. The requested exemption would cover an interim period (the ''Interim Period'') of not more than 120 days beginning on the day the Purchase is consummated and continuing through the date the new investment advisory agreement is approved or disapproved by the Fund's shareholders (but in no event later than May 31, 1997). During the Interim Period, PLAM's advisory fees would be paid into escrow.

6. The investment advisory agreement between PLAM and the Fund to be entered into upon consummation of the Purchase is identical to the existing investment advisory agreement, except for its effective date and escrow provisions. The aggregate contractual rate chargeable for advisory services will remain the same as in the existing agreement. The Fund proposes to implement the new investment advisory agreement during the Interim Period, subject to the conditions contained in the application.

7. In accordance with section 15(c) of the Act,[1] the Company's board of directors will meet on a date prior to the assignment of the existing investment advisory agreement and they will receive all information that in their view is reasonably necessary to evaluate whether the new investment advisory agreement would be in the best interest of the Fund and its shareholders. The board also will consider whether to vote to recommend that the Fund's shareholders approve the new investment advisory agreement.

8. The Fund expects to prepare the required proxy materials and schedule a shareholder meeting as soon as practicable. Applicants believe that a 120 day period will allow for reasonable adjournments of a shareholder meeting if necessary to obtain sufficient shareholder response in order to obtain the required approval.

9. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution, such as the Fund's custodian, as escrow agent. The arrangement would provide that: (a) The investment advisory fees payable to PLAM during the Interim Period under the new investment advisory agreement would be paid into an interest-bearing escrow account maintained by the interest earned on such paid fees) would be paid to PLAM only upon approval of Fund shareholders of the new investment advisory agreement or, in the absence of such approval, to the Fund; and (c) the escrow agent would release the moneys only upon receipt of a certificate from an officer of the Company who is not an interested person of PLAM stating that the moneys are to be delivered to PLAM and that the new investment advisory agreement has received the requisite Fund shareholder vote or, if the moneys are to be delivered to the Fund, that the Interim

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

Period has ended, and the new investment advisory agreement has not received the requisite Fund shareholder vote. Before any certificate is sent, the boards of directors of the Company would be notified.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from section 15(a) of the Act to the extent necessary (a) to permit the implementation during the Interim Period of the new investment advisory agreement prior to receiving shareholder approval and (b) to permit PLAM to receive from the Fund all fees earned under the new investment advisory agreement (which would be the same as all fees that would have been earned under the existing investment advisory agreement) implemented during the Interim Period if and to the extent the new investment advisory agreement is approved by the shareholders of the Fund. Because the Fund has not had sufficient advance notice of the Purchase, it will not be possible for the Fund to obtain prior approval of the new investment advisory agreement by Fund shareholders.

2. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

3. Upon consummation of the Purchase, Fiat S.p.A. will transfer ownership of its interest in Prime S.p.A., the parent of Prime U.S.A., to Generali. The Purchase will result in an ''assignment'' within the meaning of section 2(a)(4) of the existing investment advisory agreement, terminating the agreement according to its terms.

4. Rule 15a–4 provides, in relevant part, that if an investment adviser's contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Applicants cannot relay on rule 15a–4 because of the benefits which will accrue to Fiat S.p.A. due to the Purchase.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

6. Applicants believe that the requested relief is necessary, as it would permit continuity of investment management to the Fund during the period following the consummation of the Purchase so that services to the Fund would not be disrupted. Applicants also believe that the Interim Period would facilitate the orderly and reasonable consideration of the new advisory agreement by the Fund's shareholders.

7. Applicants represent that the best interests of the Fund's shareholders would be served if PLAM receives fees for services during the Interim Period as provided herein. In addition, applicants believe that it would be unjust to deprive Lipper Europe L.P. of fees due to a change in control of the parent of Prime U.S.A. Finally, the fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Fund under the existing investment advisory agreement.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The new investment advisory agreement will have the identical terms and conditions as the existing investment advisory agreement, except for its effective date and escrow provisions.

2. The investment advisory fees paid to PLAM during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to PLAM in accordance with the new investment advisory agreement, after the requisite approval is obtained, or (b) to the Fund, in the absence of such approval.

3. The Fund will hold a meeting of shareholders to vote on approval of the new investment advisory agreement on or before the 120th day following the termination of the existing advisory agreement (but in no event later than May 31, 1997).

4. PLAM will bear the costs of preparing and filing the application. The Fund will not bear any costs relating to the solicitation of shareholder approval of the Fund's shareholders necessitated by the consummation of the Purchase.

5. PLAM will take all appropriate steps so that the scope and quality of investment advisory services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Company's board of directors, including a majority of the non-interested directors, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, PLAM will apprise and consult with the board of directors of the Company to assure that they, including a majority of the non-interested board members, are satisfied that the services provided will not be diminished in scope or quality.

6. The board of directors of the Company, including a majority of non-interested directors, will have approved the new investment advisory agreement in accordance with the requirements of section 15(c) of the Act prior to termination of the existing investment advisory agreement.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31083 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

Interactive Multimedia Publishers, Inc., File No. 500–1; Order Directing Suspension of Trading

December 3, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Multimedia Publishers, Inc. (''IMP'') (trading symbol DROM) because of questions that have been raised regarding the accuracy of disclosure concerning IMP's corporate history and tradability of its shares.

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 above listed company.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Interactive Multimedia Publishers, Inc. (trading symbol DROM), over-the-counter, on the National Association of Securities Dealers, Inc.'s

OTC Bulletin Board Service or otherwise, is suspended for the period from 9:30 a.m. E.S.T. December 4, 1996 through 11:59 p.m. E.S.T. on December 17, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31227 Filed 12–4–96; 11:51 am]

BILLING CODE 8010–01–M

[Release No. 34–38007; File No. SR–DTC–96–21]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Reversal of Reclamations by Issuing and Paying Agents

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 5, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–21) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to put in place a new service which will allow for Issuing and Paying Agents (''IPA'') to direct DTC to reverse all matched reclamations for a particular program made after 3:00 p.m. which are attributable to issuer failure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC filed the proposed rule change because it has identified a substantial potential risk to IPAs in connection with money market instruments (''MMIs'') which DTC wants to eliminate as soon as possible. The risk is brought about by the interplay between two different services available to DTC participants which were developed in order to serve two different functions.

Under DTC's MMI program, IPAs act as agents for MMI issuers. As such, IPAs issue MMIs on the issuers' behalf, and DTC automatically processes income and maturity payments to the IPAs' accounts. Both the credits generated from the issuances and the debits generated from income and maturity payments are netted into the IPA's DTC settlement obligation. An IPA may issue MMIs and make periodic payments of income, redemption, or other proceeds on MMIs upon presentment throughout the day while also being able to reverse transactions for a particular program in the event of the ''issuer failure'' by giving notice to DTC by 3:00 p.m. of the IPA's ''refusal to pay.''

This reversal mechanism is designed to make the MMI market more efficient by allowing IPAs to make issuances and payments with respect to a particular MMI program throughout the day while still affording the IPAs the protection of being able to reverse these transactions until 3:00 p.m. in the event that it becomes apparent that the issuer will be unable to honor its obligations under the particular program due to insolvency of default under a particular program.[3] If this mechanism were not in place, IPAs would have to wait until they had received funds from the issuers before making any payments or be at risk for the funds they had distributed throughout the day. In such a case, credits for payments on the MMIs would not be available to be used throughout the day by participants having positions in the MMIs as is currently the case.[4]

In anticipation of the conversion to the same day funds settlement (''SDFS''), DTC implemented a new processing schedule. As part of the new processing schedule, DTC introduced an extended reclamation period that allowed participants to process reclaims of deliveries until 3:30 p.m.[5] The reclamation procedure is designed to provide the recipient of a delivery with the opportunity to reject the delivery.

The potential risk to IPAs comes about in the situation where information regarding an issuer's insolvency becomes available after the 3:00 p.m. refusal to pay deadline but before the end of the reclamation period at approximately 3:30 p.m. Under these circumstances, participants could unwind through the reclamation process issuances previously made by the IPA. However, the IPA would be unable to unwind income and maturity payments since these transactions can only be unwound through the refusal to pay procedure. As a result, an IPA's settlement balance would be debited by an amount equal to the reclaimed issuances. Depending upon the settlement procedures in place between the issuer and the IPA, this situation could result in a direct exposure to the IPA.

The proposed rule change is designed to restore the IPA's refusal to pay opportunity with respect to reclamations made to its account between 3:00 p.m. and the end of the reclamation period. The proposed rule change will allow IPAs to instruct DTC to reverse those reclaims that are processed after 3:00 p.m. in the event that the IPA believes the reclaims are associated with the issuer's insolvency. The IPA will be able to request the reversal of these reclamations by giving DTC oral notice within fifteen minutes after the end of the reclamation period. Subsequently, the IPA will be required to provide DTC within thirty minutes after the end of the reclamation period with written notice on the basis of which DTC could treat the issuer as insolvent under its rules.[6] A copy of the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] The ''refusal to pay'' deadline was set at 3:00 p.m. by the industry during the period when deliveries of MMIs were made physically.

[4] Currently, throughout the processing day a participant is allowed to use all payment credits it has received that day in connection with MMI programs, other than the single largest net payment, in order to meet its net debit cap and collateral monitor requirements.

[5] The end of the reclamation period is approximately 3:30, but this deadline may vary slightly depending upon the timing of the release of other DTC controls.

[6] DTC's Rule 12 which governs insolvency provides: ''An issuer of MMI securities subject of any transaction in the MMI Program shall be treated by [DTC] in all respects as insolvent in the event that the issuer is determined to be insolvent by any agency which regulates such issuer or in the event of the entry of a decree or order by a court having jurisdiction in the premises adjudging the issuer a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the issuer under the Federal Bankruptcy Code or any other applicable Federal or State law or appointing a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs or the institution by the issuer of proceedings to be

IPAs written notice would then be provided to all participants.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will eliminate risks to IPAs present in the existing system and will therefore promote a more efficient marketplace. DTC believes that this new service will not affect the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The substance of the proposed rule change has been presented to the Public Securities Association MMI Task Force, which has given its support to providing a new service to IPAs. No written comments have been solicited or received from DTC participants. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC.

All submissions should refer to the file number SR–DTC–96–21 and should be submitted by December 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31077 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

adjudicated a bankrupt or insolvent or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal or State law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the issuer or of any substantial part of its property, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the issuer in furtherance of any such action and, notwithstanding the foregoing, upon the filing by the issuer of a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the issuer under the Federal Bankruptcy Code or any other applicable Federal or State law, or the filing against it or any such petition, at any time [DTC] receives notice thereof, either written or oral and from whatsoever source and, without awaiting any further adjudication, consent thereto, acceptance or approval of such filing, determines to its reasonable satisfaction that such has occurred.''

[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38006; File No. SR–DTC–96–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of a Surcharge

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 21, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a surcharge of $1.00 on all deposits submitted to DTC outside its Deposit Automated Management System (''DAM System''). The surcharge will go into effect on December 1, 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a surcharge of $1.00 on all deposits submitted to DTC outside its DAM System.[3] The surcharge will go into effect on December 1, 1996. DTC participants benefit in many ways by depositing securities into DTC using the DAM System. For example, the automation features of the DAM System reduce DTC's costs in handing these deposits. Therefore, the fee that DTC charges its participants for a deposit submitted through the DAM System is less than the fee charged for a deposit submitted outside the DAM System. The DAM System also automatically verifies certain deposit-related information thereby eliminating the need for participants to perform similar verifications.[4] Finally, the DAM System

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The DAM System is an enhanced automated deposit service that enables DTC participants to send details of deposits to DTC in advance of forwarding physical certificates. For a more detailed description of the DAM System, see Securities Exchange Act Release No. 33412 (January 4, 1994), 59 FR 1769 [File No. SR–DTC–93–09] (order approving DAM Service).

[4] For example, in order to reduce the number of deposits rejected by DTC, participants will often refer to other functions available on DTC's Participant Terminal System (''PTS'') such as the Security Inquiry (CONI) function to verify whether a security is eligible for deposit at DTC or the Dividend Announcement Inquiry (DIVA) feature to

Continued

allows participants to consolidate deposits in the same issue (whether or not the advanced deposit data is transmitted to DTC at the same time) thereby saving deposit fees or the time necessary to manually compile deposits in the same issue.

The DAM System also improves DTC's efficiency in handling deposits. Because each deposit submitted through the DAM System is assigned a unique identifying number, use of the system reduces the amount of time DTC spends researching a deposit and enables DTC to more efficiently track the deposit's location (*e.g.*, whether it is at DTC, en route to a transfer agent, or delivered to a transfer agent). Moreover, when a participant submits a deposit outside of the DAM System, DTC must enter the deposit information into its systems by keystroke. However, when a deposit is submitted through the DAM System, deposit information transmitted by the participant is automatically written into DTC's systems.

Although virtually all of DTC's participants are presently using the DAM System, some participants continue to submit deposits outside the DAM System.[5] As explained above, such deposits create inefficiencies in the clearance and settlement of securities transactions. Therefore, DTC proposes to establish a surcharge to reduce the number of deposits submitted to DTC outside the DAM System.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act[6] and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19 (b)(3)(A)(ii)[7] of the Act and pursuant to Rule 19b–4(e)(2)[8] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR–DTC–96–19 and should be submitted by December 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 96–31078 Filed 12–5–96; 8:45 am]

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verify whether a corporate action effects the deposit.

[5] During a recent five day period from October 8, 1996, through October 14, 1996, DTC participants submitted 93,140 deposits. Of those deposits, only 1,566 (1.68%) were submitted outside the DAM System.

[6] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[7] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[8] 17 CFR 240.19b–4(e)(2) (1996).

[9] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38000; File No. SR–DTC–96–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Drop Window Service

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 5, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change expands the services provided by DTC's Transfer Agent Drop Window Service (''Drop Service'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's Drop Service provides transfer agents located outside of New York City with a central location within the Borough of Manhattan to receive and deliver securities.[3] DTC proposes to

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC originally established the Drop Service to enable transfer agents to comply with New York Stock Exchange Rule 496 and American Stock Exchange Rule 891. These rules require transfer agents to maintain a facility to receive and deliver securities that is located south of Chambers Street in the Borough of Manhattan, City of New York. For a complete description of the Drop Service, refer to Securities Exchange Act Release No. 37562 (August 13, 1996), 61 FR 43283 [File No. SR–DTC–96–09] (order approving proposed rule change).

expand its Drop Service to provide transfer agents with enhanced services. First, DTC will accept the following items on behalf of transfer agents from individuals or financial institutions: (1) Checks or securities delivered as contributions to dividend reinvestment plans; (2) checks drawn on a transfer agent and payable to an individual or financial institution with wire instructions; (3) checks payable to a transfer agent in payment for certain fees charged by the transfer agent (*e.g.*, rush transfer fees); and (4) envelopes [4] to be delivered to a transfer agent. DTC also will issue a window-ticket to the individual or financial institution delivering such items, log the receipt of the items, and forward the items to the transfer agent.

Second, if a transfer agent is required to accept securities up to midnight in connection with a corporate action, DTC's drop location will remain open until that time.[5] Finally, DTC will value securities received on behalf of a transfer agent in preparation for the shipment of such securities to the transfer agent by obtaining a daily market price for each issue received. DTC began providing these expanded services on November 18, 1996. The transfer agent Drop Service fee schedule is attached as Exhibit 1.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act [6] and the rules and regulations promulgated thereunder because the proposal promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions, specifically the transfer of record ownership. According to DTC, the expanded Drop Service also will reduce the expenses associated with the transfer of record ownership and foster cooperation and coordination between DTC and other entities engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [7] of the Act and pursuant to Rule 19b–4(e)(6) [8] promulgated thereunder because the proposed rule is effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for thirty days from the date of its filing on November 5, 1996, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and (4) was provided to the Commission for its review at least five days prior to the filing date. The Commission finds good cause for accelerating the operative date of the proposed rule change from the thirtieth day following the date of its filing on November 5, 1996, to November 18, 1996, because the accelerated approval will permit DTC to more quickly provide the enhanced services to transfer agents located outside of New York City through the framework of an existing DTC service, which has been reviewed by the Commission. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–96–20 and should be submitted by December 29, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1.—1996 Transfer Agent Drop Fees

1. *Monthly Service Charge:* $250.00.

2. *Micro-filming:* $14.50 per hour and $15.75 per roll.

3. *Window Tickets Issued By DTC for the Receipt of Securities, Checks, and Envelopes on Behalf of the transfer agent:* .75 per window ticket issued.

4. *Daily Valuation:* Daily flat fee of $175.00.

5. *Midnight closings:* $1,000.00 per occurrence.

6. *Pass-through Fees:* Varying.

For example, DTC uses various courier services to deliver securities to the transfer agent. DTC remits payment for such services to the carrier and, in turn, charges the appropriate transfer agent for the same amount.

In addition, each transfer agent must provide DTC with window tickets to be used as receipts for items delivered. If requested by the transfer agent, DTC will arrange for the printing of such tickets. Any associated printing costs incurred by DTC are charged to the transfer agent.

[FR Doc. 96–31080 Filed 12–5–96; 8:45 am]

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[4] DTC will accept envelopes from financial institutions for delivery to a transfer agent without opening or inspecting the envelopes. Securities delivered to the drop window from financial institutions are generally delivered in clear envelopes.

[5] DTC's drop location will remain open for a late closing for the limited purpose of accepting items on behalf of a transfer agent and issuing a window-ticket to the party delivering the item. A transfer agent will be required to provide DTC with notice of the need for a late closing at least one week in advance thereof. Moreover, a transfer agent will be required to provide on-site personnel at DTC to answer questions, examine items received, and approve such items. During a late closing, a transfer agent will be deemed to have taken possession and control of an item when the transfer agent's on-site personnel approve an item for receipt.

[6] U.S.C. 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[8] 17 CFR 240.19b–4(e)(6) (1966).

[9] 17 CFR 200.30–3(a)(12)(1996).

[Release No. 34–37996; File No. SR–GSCC–96–11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend the Maximum Term for Next-Day and Forward Settling Repurchase and Reverse Repurchase Agreements

November 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 9, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–96–11) as described in Items I and II below, which Items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to amend the eligibility requirements for its netting services to include next-day and forward settling repurchase and reverse repurchase agreements (''repos'') with terms that do not exceed 360 calendar days. Under GSCC's current rules, only repos with terms that do not exceed 195 calendar days are eligible for netting services.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its rule change filing implementing netting and risk management services for repos, GSCC added a number of provisions to its Rule 11, including the requirements that a repo must meet in order to be eligible for netting services.[3] One such requirement is that the number of calendar days between the scheduled settlement date for the close leg and the business day on which the data on the trade is submitted is not greater than the ''maximum number of Business Days established by the Corporation for such purpose and published in a schedule made available to Members, unless the Board determines a different timeframe to be appropriate * * *.''[4]

In the above mentioned filing, GSCC initially proposed that the maximum number of days between scheduled settlement and data submission should be no more than 364 calendar days.[5] After discussion with Commission staff, GSCC revised its rule filing to limit the maximum number of days allowable between scheduled settlement and data submission to 195 calendar days.[6] Until recently, the maximum permitted term for repos as set forth in GSCC's schedule was 180 calendar days.

In response to rising repo volumes and at the request of GSCC's members, GSCC proposes to extend the maximum allowable number of calendar days that a repo term may span and still be eligible for netting services to 360 calendar days. According to GSCC, its members will benefit from the inclusion of longer-term repos in its netting service because the inclusion of more repo transactions into the net should reduce costs as well as clearance and settlement risks.

The decision to extend the allowable repo term was made following evaluation of GSCC's risk management procedures that pertain to repo transactions. These procedures have been employed since November 1995 when repos were first included in GSCC's netting service. This period of analysis has enabled GSCC to conclude that the risk management procedures currently in place are sufficient to hedge against any exposure created by longer repo terms. Nevertheless, GSCC will continue to monitor and evaluate all aspects of repo netting services.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations promulgated thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions and safeguards securities and funds in GSCC's custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been received. Members will be notified of the rule change filing, and comments will be solicited by an important notice to members. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with GSCC's obligations under the Act because the proposal permits GSCC to provide the benefits of centralized, automated settlement to a border segment of repo's involving government securities.

As stated in previous orders, the Commission believes that GSCC has put into place adequate risk management procedures to limit the settlement risk associated with repo transactions.[9] The Commission believes that GSCC has adequately analyzed the application of these risk management procedures to the risks associated with longer term repo transactions and therefore will be able to adequately safeguard itself and its participants from the risks associated

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 [File No. SR–GSCC–95–02] (order approving proposed rule change implementing netting services for the non-same-day-settling aspects of repo transactions).

[4] GSCC Rule 11, Section 2(i).

[5] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation (''Division''), Commission (July 28, 1995).

[6] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Christine Sibille, Special Counsel, Division, Commission (September 14, 1995).

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] See, *e.g.*, Securities Exchange Act Release No. 36491, *supra* note 3.

with the inclusion of longer term repo transactions in the netting system.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will allow GSCC to immediately expand its netting services to include repos with terms between 196 and 360 calendar days. This will permit more participants that conduct repo transactions to benefit from the positive effects of netting. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–11 and should be submitted by December 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–GSCC–96–11) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31084 Filed 12–5–96; 8:45 am]

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37995; File No. SR–GSCC–96–07]

Self-Regulatory Organization's; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Modifying the Rights and Responsibilities of Interdealer Broker Netting Members

November 27, 1996.

On July 2, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to modify the rights and responsibilities of interdealer broker (''IDB'') netting members. GSCC amended the filing on July 23, 1996.[2] Notice of the proposed rule change, as amended, was published in the Federal Register on August 20, 1996.[3] On August 16, 1996, and on August 21, 1996, GSCC filed amendments No. 2 and No. 3 to the filing.[4] Because the amendments were substantive in nature, notice of the proposed amendments was published in the Federal Register on September 12, 1996.[5] No comment letters were received regarding the proposed rule change or proposed amendments. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

I. Description

This rule change modifies GSCC's loss allocation and clearing fund requirements for IDBs.[6] The percentage allocated collectively to IDBs from losses arising from member brokered transactions is raised to fifty percent with a dollar cap on each IDB's potential liability, as discussed below. Each IDB's individual share of the collective broker allocation will be allocated pro rata based on the dollar value of its trading activity with the defaulting member. By implementing this change, the IDB will no longer be subject to an allocation of a portion of a loss arising from the default of a firm with which the IDB never traded. Because only Category 2 IDBs may enter into brokered transactions with nonmembers,[7] the entire loss from such a transaction will be allocated among Category 2 IDBs pro rata based on the level of their trading activity with the defaulting member.

Currently, the loss amount allocated to each IDB is capped at $1.6 million per calendar year for losses attributable to brokered transactions with members. The proposed rule change raises the maximum amount of loss that can be allocated to each IDB to $5 million per loss allocation event as opposed to a calendar year maximum.[8]

GSCC is raising the clearing fund requirement for Category 1 IDBs from a fixed $1.6 million to a fixed $5 million and raising the minimum clearing fund requirement for Category 2 IDBs from $1.6 million to $5 million. Under the proposed rule change, at least thirty percent of a Category 1 IDB's clearing fund deposit must consist of cash or eligible netting securities, and no more than seventy percent of the clearing fund deposit may be met by pledging eligible letters of credit. Category 2 IDBs will be subject to the same clearing fund deposit composition requirement as other non-Category 1 IDB netting members, which is ten percent of the required fund deposit ($500,000) must be in cash, and no more than seventy percent of the total may consist of eligible letters of credit.

Category 1 IDBs are now subject to all of the surveillance requirements of Section 3 of GSCC Rule 4, including GSCC's authority to increase the amount of clearing fund deposit for any IDB on surveillance status. Category 1 IDBs are now required to participate in the daily funds-only settlement process. In addition, the proposed rule change eliminates the exception in Section 3 of GSCC Rule 11 that permitted IDBs to exclude trades from GSCC's netting system if the inclusion of such trade would have resulted in the IDB having a net settlement position other than zero. GSCC Rule 11, Section 3 will continue to permit netting members to exclude repo transactions from the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation (''Division''), Commission (July 18, 1996).

[3] Securities Exchange Act Release No. 37565 (August 14, 1996), 61 FR 43103.

[4] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry W. Carpenter, Division, Commission (August 12, 1996, and August 15, 1996).

[5] Securities Exchange Act Release No. 37658 (September 6, 1996), 61 FR 48190.

[6] Unless otherwise indicated, the term IDB refers to both Category 1 and Category 2 IDBs. Under current rules, Category 1 IDBs act exclusively as brokers, trade exclusively with GSCC netting members and certain grandfathered nonmember firms, and must maintain $10 million in net or liquid capital. Category 2 IDBs may transact up to 10% of their trading volume with nonmembers and must maintain $25 million in net worth and $10 million in excess net or liquid capital.

[7] A nonmember brokered transaction is a brokered transaction where either the buyside or sellside counterparty to the IDB is a nonmember.

[8] As noted above, Category 2 IDBs are subject to an unlimited loss allocation, based on trading volume, for losses related to brokered transactions with nonmembers.

netting system in accordance with GSCC Rule 18.

II. Discussion

The Commission finds that the proposed rule change is consistent with the Act and specifically with Section 17A(b)(3)(F).[9] Section 17A(b)(3)(F) requires the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

By changing the loss allocation procedures for IDBs, GSCC is increasing the percentage allocated among IDBs from losses arising from brokered transactions. IDBs will share on a collective basis equally with the dealers any loss allocation arising from brokered transactions and in proportion to the amount of trading the IDB conducted with the defaulting member. The Commission believes that the new loss allocation procedures should give IDBs a greater incentive to assess the creditworthiness of their counterparties, which should reduce the risk to GSCC of the trades submitted from IDBs. The Commission believes that by reducing the number of trades with financially suspect participants that are submitted to GSCC, the proposed rule change should enhance GSCC's ability to safeguard securities and funds. Furthermore, by placing a dollar cap on each IDB's share of a loss, the IDBs will continue to be protected from unusually large loss allocations.

The Commission believes that increasing the clearing fund requirement for IDBs should provide GSCC with more readily accessible funds if needed to cover a member's default. Moreover, the Commission believes that by requiring IDBs to fulfill a larger portion of their clearing fund deposit with cash and eligible netting securities, GSCC will increase the liquidity of its clearing fund thereby further enabling GSCC to assure the safeguarding of securities and funds in its control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–07) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31086 Filed 12–5–96; 8:45 am]

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[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38005; File No. SR-MBSCC–96–07]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying MBS Clearing Corporation Rules and By-Laws

December 2, 1996.

Pursuant to Section 19(b))1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on October 29, 1996, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's rules and by-laws to create the new title of Managing Director.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to conform with how MBSCC and many firms in the industry operate, MBSCC has created the new title of Managing Director. The purpose of the proposed rule change is to modify MBSCC's rules and by-laws to accommodate the change in MBSCC's internal management structure. Article V, Rule 1 of MBSCC's rules is being amended to establish the authority of a Managing Director to act for the Corporation. Article V, Section 5.1 of MBSCC's by-laws, which describes the designation, number, and selection process for the officers of MBSCC, is being amended to establish the office of managing director and the number of managing directors that will serve as officers of the corporation. Article V, Section 5.6 is being added to the by-laws to describe the duties and responsibilities of Managing Directors. Article V, Section 5.7 is being amended to include the Managing Director as an officer for whom the vice president shall act in the Managing Director's absence. Article V, Section 5.9 and 5.10 are being amended to include the Managing Director as an officer authorized to sign certificates of stock with the secretary or assistant secretary. Article 7, Section 7.1 is being amended to include the Managing Director as one of several officers who must sign, along with the secretary or treasurer, the stockholer's certificate certifying the number of shares owned by the stockholder in the corporation.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it makes technical modifications to MBSCC's rules and by-laws so that they coincide with MBSCC's new internal management structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and pursuant to Rule 19b–4(e)(3)[5] promulgated

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[5] 17 CFR 240.19b–4(e)(3) (1996).

thereunder in that the proposed rule change is concerned solely with the administration of MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC.

All Submissions should refer to File No. SR–MBSCC–96–07 and should be submitted by December 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31081 Filed 12–5–96; 8:45 am]

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[Release No. 34–37997; File No. SR–MSRB–96–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–38 on Consultants

November 29, 1996.

On November 18, 1996, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (SR–MSRB–96–11), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b) (3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a notice of interpretation concerning rule G–38 on consultants (hereafter referred to as ''the proposed rule change''). The proposed rule change is as follows:

Rule G–38 Questions and Answers

Role To Be Performed by Consultant

1. Q: Is there specific information concerning the role to be performed by a consultant that a dealer must disclose on Form G–37/G–38?

A: The role to be performed by a consultant may be described in general terms on Form G–37/G–38; however, dealers must include the state or geographic area in which the consultant is working on behalf of the dealer.

Compensation Arrangement, Total Dollar Amount Paid to Consultant During Reporting Period and Dollar Amounts Paid to Consultant Connected With Particular Municipal Securities Business

2. Q: When providing the information required to be disclosed on Form G–37/G–38, how should dealers describe the consultant's compensation arrangement?

A: Dealers must ensure that the compensation arrangement is clearly described and that it correlates with the information being disclosed concerning the total dollar amount paid to the consultant during the reporting period and the dollar amounts paid in connection with particular municipal securities business.

- For example, if a consultant is paid a monthly retainer, the amount of the monthly retainer must be disclosed and the total dollar amount paid during the reporting period must be reported.
- If a consultant is reimbursed for expenses, the amount of the reimbursed expenses must be disclosed either separately or within the total dollar amount paid for the quarter.
- If a consultant is to be paid a success fee, dealers must disclose how the success fee will be arrived at (*e.g.*, a certain percentage of profits). The sum total of the dollar amounts paid to the consultant in connection with particular municipal securities business should equal the total dollar amount paid to the consultant during the reporting period.
- In addition, if any discretionary bonus or similar payment is made, this amount must be included within the total amount paid for the quarter in which it is paid.

3. Q: What information must a dealer disclose on Form G–37/G–38 for the dollar amounts paid to a consultant connected with particular municipal securities business?

A: If any payment made during the reporting period is related to a consultant's efforts on behalf of the dealer which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the dealer must separately identify that business and the dollar amount of the payment.

Disclosure to Issuers of the Compensation Arrangement With Consultants

4. Q: Rule G–38 requires a dealer to disclose in writing its consulting arrangements to an issuer with which it is engaging or seeking to engage in municipal securities business and this written disclosure must include, among other things, the compensation arrangement. What is the level of disclosure required to issuers of the compensation arrangement with consultants?

A: The written disclosure to issuers of the compensation arrangement must explain the arrangement.

- For example, if a consultant is paid a monthly retainer, the amount of the monthly retainer must be disclosed.
- If a consultant also is reimbursed for expenses, this fact must be noted.
- If a consultant is to be paid a success fee, the dealer must disclose to the issuer how that fee will be arrived at (*e.g.*, a certain percentage of profits).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any

[6] 17 CFR 200.30–3(a)(12) (1996).

comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On January 17, 1996, the Commission approved Board rule G–38 on consultants.[1] Since that time, the Board has received inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published a prior notice of interpretation which set forth, in question-and-answer format, general guidance on rule G–38.[2] In its prior filing with the Commission, the Board stated that it will continue to monitor the application of rule G–38, and, from time to time, will publish additional notices of interpretations, as necessary.[3] In light of questions recently received from market participants concerning the disclosures to be made regarding consultants, the Board has determined that it is necessary to provide further guidance to the municipal securities industry. Accordingly, the Board is publishing this second set of questions and answers concerning rule G–38.[4]

(b) The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission.

At any time within sixty (60) days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–11 and should be submitted by December 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31015 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 36727 (January 17, 1996); 61 FR 1955 (January 24, 1996). The rule became effective on March 18, 1996.

[2] See MSRB Reports, Vol. 16, No. 2 (June 1996) at 3–5. See also MSRB Manual (CCH) paragraph 3686.

[3] Securities Exchange Act Release No. 36950 (March 11, 1996); 61 FR 10828 (March 15, 1996).

[4] The Board plans to publish the interpretations in the __ 199__ MSRB Reports (Vol. 1__, No. __).

[5] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board ''shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.''

[Release No. 34–37998; File No. SR–MSRB–96–10]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

November 29, 1996.

I. Introduction

On August 29, 1996, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–96–10), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), to expand its transparency program. The proposed rule change was published for comment in the Federal Register on October 30, 1996.[1] No comments were received on the proposal.

II. Description of the Proposal

The MSRB proposed to amend Board rule G–14 concerning reports of sales and purchases, and to amend Rule G–14 Transaction Reporting Procedures. The purpose of the proposed rule change is to increase transparency in the municipal securities market by adding retail and institutional customer transaction information to the inter-dealer transactions currently included in the Board's Transaction Reporting Program (''Program''). Under the proposed rule change, aggregate data about inter-dealer and customer market activity, and certain volume and price information about all transactions in frequently traded securities, would be disseminated to promote investor confidence in the market and its pricing mechanisms. The Program is designed to accomplish two objectives. The first is to increase the amount of information available about the market value of individual municipal securities. The second purpose of the Program is to provide a centralized audit trail of municipal securities transactions by making available to the National Association of Securities Dealers, Inc.

[1] Securities Exchange Act Release No. 37859 (October 23, 1996), 61 FR 56072.

(''NASD''), the Commission, and other enforcement agencies a computer database reflecting all municipal securities transactions reported to the Board.

The proposed rule change would require brokers, dealers and municipal securities dealers to (1) obtain an executing broker symbol, if one has not already been assigned, from the NASD, within thirty days after Commission approval of the proposed rule change; (2) provide the Board, on or before July 1, 1997, with the name and telephone number of a person responsible for testing the dealer's capabilities to report customer transaction information; (3) test its capabilities to report such information, between July and December 1997; and (4) report to the Board each day its municipal securities transactions with customers by January 1, 1998. Under the rule proposal, the Program would be fully effective by January 1, 1998.

III. Discussion

After careful review, the Commission finds that the proposed rule change generally is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the Commission believes the proposal is consistent with Section 15B(b)(2)(C) of the Act, which requires that the Board's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and protect investors and the public interest.

The proposed rule change will enhance price transparency in the municipal securities market by providing trade information on frequently traded securities. The principle of transparency is a fundamental aspect of investor protection and efficient markets. There are many benefits associated with enhanced market transparency. First, transparency enhances investor protection and encourages greater investor participation in the markets. Second, by encouraging investor participation in the municipal securities market, transparency promotes liquidity. Third, transparency fosters the efficiency of securities markets by facilitating price discovery and open competition, and counteracting the effects of fragmentation. Each of these benefits in turn promotes the fairness of the markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–MSRB–96–10) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31016 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37999; File No. SR–NSCC–96–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Modify Procedures Relating to the Reconfirmation and Pricing Service

December 2, 1996.

On September 30, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–96–18) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on November 1, 1996.[2] On November 21, 1996, NSCC filed an amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change modifies NSCC's procedures relating to NSCC's Reconfirmation and Pricing Service (''RECAPS'').[4] NSCC's Procedure II(G) currently provides that after the processing of initial RECAPS input members have an opportunity to submit supplemental input during the same RECAPS cycle. Prior to this amendment, supplemental input included only advisories, deletes, and as-of trades. An advisory allows a member to acknowledge a contraside submission that has not been reconfirmed. A delete permits a member to delete its own submission from RECAPS. An as-of trade enables a member to submit a transaction to RECAPS if the member failed to submit the transaction as initial RECAPS input at the start of the RECAPS cycle.

The proposed rule change makes several modifications to NSCC's Procedure II(G) regarding RECAPS supplemental input. First, the proposed rule change expands the range of responses by a member to a contraside submission that has been reconfirmed to include ''don't knows'' (DKs'') and rejects. A member must respond to a contraside submission that has not been reconfirmed on the next business day after the initial submission date by submitting an advisory, a DK, or a reject and in the case of a reject by also indicating the reasons for the rejection (*e.g.*, trade previously settled or different quantity).

The proposed rule change provides that failure to respond to a contraside submission that has not been reconfirmed by the next business day after the initial submission date results in the transaction being deemed DK'ed. The proposed rule change also provides that a DK'ed transaction extinguishes the rights, if any, of the DK'ing member with respect to the transaction. Transactions of a member that have been DK'ed will be subject to the rules of the appropriate marketplace.

The proposed rule change also eliminates deletes as a type of RECAPS supplemental input. In practice, members do not use the delete function.

The proposed rule change adds a RECAPS activity report which NSCC will make available to members at the end of the RECAPS cycle. The RECAPS activity report will contain summary information regarding a member's overall activity during a particular RECAPS cycle, including the number of transactions submitted, the number of transactions that were reconfirmed, and the number of transactions that were DK'ed, rejected, or for which there was no response.

II. Discussion

Section 17A(b)(3)(F) provides that the rules of a clearing agency must be designed to promote that prompt and accurate clearance and settlement of securities transactions.[5] Prior to this amendment, members which had transactions submitted against them by another party could only submit an advisory to acknowledge the trade. If the member chose not to acknowledge the trade, the contraside did not learn the reason for the trade not being reconfirmed. The expansion in the range of responses to a transaction submitted by a contraside that has not been reconfirmed will help to clarify why

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37877 (October 28, 1996), 61 FR 56595.

[3] Letter from Anthony Davidson, Associate Counsel, NSCC, to Christine Sibille, Special Counsel, Division of Market Regulation, Commission (November 20, 1996). This amendment was a technical amendment that did not require republication of notice.

[4] RECAPS is NSCC's automated system which provides the ability to a member on a quarterly basis to reconfirm and reprice transactions that have been compared but have failed to settle.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

certain transactions have not been reconfirmed and therefore subsequently will not settle. By providing for the contraside to receive information on why the transaction was not reconfirmed, the proposal may enable the contraside to amend their submission in order to create a match. Thus, the proposal may increase the number of trades that settle. The modifications also encourage members to respond to contraside submissions to prevent a DK and the loss of a member's rights with respect to the transaction. This should result in more trades being resolved in the RECAPS process. Therefore, the Commission believes that the proposal could resolve a higher percentage of unreconfirmed trades and thus facilitate the prompt and accurate clearance and settlement of transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31085 Filed 12–5–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below requires extension of the current OMB approval(s):

1. State Agency Schedule for Equipment Purchases for SSA Disability Program—0960–0406. The information collected on form SSA–871 is used by the Social Security Administration to budget and account for expenditures of funds for equipment purchases by the State Disability Determination Services that administer the disability program. The respondents are State Disability Determination Services.

Number of Respondents: 54.

Frequency of Response: Annually.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 54 hours.

2. Work Reintegration Study—0960–0543. The purpose of the Work Reintegration Study is to identify those incentives and interventions that are most successful in assisting persons who are disabled due to a back condition to return to work. The information collected will be used primarily to complete a cross-national analysis of this issue. Data will also be gathered on subjects of particular importance in the U.S. The findings will provide policy-makers with information that will be highly useful in establishing disability policy. The respondents are persons entitled to Social Security Disability Insurance, Supplemental Security Income (SSI) or State Temporary Disability Insurance.

Number of Respondents: 800.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 800 hours.

3. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. The information collected by the Social Security Administration on form SSA–8203 is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The information collected also will assist agencies administering Medicaid programs in ascertaining the legal liability of third parties to pay for care and services. The respondents are recipients of SSI benefits or their representative payees.

Number of Respondents: 552,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 156,400 hours.

To receive a copy of the form(s) or clearance package(s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The information collections listed below, which were published in the Federal Register on October 2 and October 11, 1996 have been submitted to OMB.

1. Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public—20 CFR 401 and 402; 0960–NEW. The respondents are individuals requesting access to their SSA records, correction of their SSA records and disclosure of SSA records. The information is required to:

(a) Identify individuals who request access to their records.

Number of Respondents: 10,000.

Frequency of Response: On occasion.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 1,833 hours.

(b) Designate an individual to receive and review a recordholder's sensitive medical records in accordance with 20 CFR 401.55, and for the disclosure of such records to the recordholder by his/her designee.

Number of Respondents: 3,000.

Frequency of Response: On occasion.

Average Burden Per Response: 2 hours (This includes the time needed for the designee to review the recordholder's medical records.)

Estimated Annual Burden: 6,000.

(c) Correct or amend records.

Number of Respondents: 100.

Frequency of Response: On occasion.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

(d) Obtain consent from an individual to release his/her records to others. Consents are submitted by letter in writing or by use of a form SSA–3288.

Number of Respondents: 200,000.

Frequency of Response: On occasion.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 10,000 burden hours.

(e) Facilitate the release of information under the Freedom of Information Act (FOIA).

Number of Respondents: 15,000.

Frequency of Response: On occasion.

Average Burden Per Response: 5 minutes.

[6] 17 CFR 200.30–3(a)(12) (1996).

Estimated Annual Burden: 1,250 hours.

(f) Grant a waiver or reduction of fees for records requested under FOIA.

Number of Respondents: 400.

Frequency of Response: On occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 33 hours.

2. Report of New Information in Disability Cases—0960–0071. The information collected on form SSA–612 is needed by the Social Security Administration to determine whether an event or change in circumstances will affect an individual's disability benefits. The information will be used to determine continued eligibility for disability payments. The respondents are disabled social security beneficiaries or their representative payees.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 16,667.

3. Instructions for Completion of Federal Assistance Application Form SSA–96 for SSA Research and Demonstration Grant Programs —0960–0184. The information collected on form SSA–96 is needed by the Social Security Administration to evaluate and select grant proposals for funding. The respondents are applicants for federal assistance, including State and local governments, educational institutions and other nonprofit and for-profit organizations.

Number of Respondents: 200.

Frequency of Response: On occasion.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 2,800 hours.

4. Request to be Selected as Payee—0960–0014. The information collected on form SSA–11–BK is needed by the Social Security Administration to determine the proper payee for a Social Security beneficiary. The information is used to establish an applicant's relationship to the beneficiary, his/her justification and concern for the beneficiary, and the manner in which the benefits will be used. The respondents are applicants for representative payee of individuals receiving title II, title XVI and Black Lung benefits.

Number of Respondents: 1,709,657.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 313,437.

5. Supplemental Security Income Claim Information Notice—0960–0324. The information collected on form SSA-L8050–U3 is used by the Social Security Administration to ensure that all sources of potential income which can be used to provide for an individual's own support and maintenance are utilized. The respondents are applicants for SSI and recipients who are potentially eligibile for benefits from other public or private programs.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

6. Supplemental Security Income—Quality Review Case Analysis; 0960–0133. The information collected on form SSA–8508–BK is used by the Social Security Administration to assess the effectiveness of SSI policies and procedures and to establish payment accurate rates. The respondents are a random sample of SSI recipients.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 14,000 hours.

7. Marital Relationship Questionnaire—0960–0460. The information collected on form SSA–4178 is needed by the Social Security Administration to determine whether unrelated individuals of the opposite sex who are living together present themselves to the public as husband and wife. The information is used to determine whether correct payment is being made to SSI couples and individuals.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

8. Psychiatric Review Technique—0960–0413. The information collected on form SSA–2506 by the Social Security Administration is needed to assist in the adjudication of claims involving mental impairments. The information is used to identify the need for additional evidence for the determination of impairment severity; to consider aspects of the mental impairment relevant to the individual's ability to work; and to organize and present the findings in a clear, concise manner. The respondents are State Disability Determination Services administering title II and title XVI disability programs.

Number of Responses: 796,346.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 199,087.

9. Letter to Employer Requesting Information About Wages Earned—0960–0034. The information collected on form SSA–L725 will be used by the Social Security Administration (SSA) to establish the exact amount of wages earned by a beneficiary. The data is requested only in cases where the information in SSA's records is incomplete or has been questioned. The respondents are employers who provide the wage information necessary to resolve wage discrepancies.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 30–50 minutes.

Estimated Annual Burden: 100,000.

To receive a copy of the form(s) or clearance package(s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below under SSA. Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Judith T. Hasche, SSA Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd, Baltimore, MD 21235.

Dated: November 27, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–31009 Filed 12–5–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–066]

National Environmental Policy Act; Final Environmental Impact Statement for the USCG Atlantic Protected Living Marine Resource Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of the record of decision.

SUMMARY: The Coast Guard announces the availability of the approved Record of Decision for the Final Environmental Impact Statement (FEIS) for the Atlantic Protected Living Marine Resource

Initiative (the Initiative). Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the regulations promulgated by the Council on Environmental Quality, and the U.S. Coast Guard (USCG) NEPA Implementing Procedures and Policy for Considering Environmental Impacts, the USCG has approved a Record of Decision adopting the Initiative. The USCG will implement the proposed action (the preferred alternative), the Initiative, as described in the FEIS. (The FEIS notice of availability was published in the Federal Register on October 31, 1996.) The preferred alternative includes all components of the proposed action as stated in the FEIS and is the environmentally preferred alternative which incorporates mitigation and monitoring measures.

DATES: The Record of Decision will be available to the public on December 9, 1996.

ADDRESSES: For further information and/or copies of the approved Record of Decision, contact Mr. Keith Boi, Chief, Planning and Coordination Staff, Operations, at Commandant (G–O–1), 2100 Second Street, SW, Washington, DC 20593, telephone number (202) 267–1439, fax number (202) 267–4185.

SUPPLEMENTARY INFORMATION: The USCG preferred alternative as stated in the FEIS is composed of two main components, an Internal Program and a Conservation Program. Each program is made up of several elements or activities designed to protect or conserve living marine resources more effectively. The Internal Program of the preferred alternative focuses on operating procedures and directives for USCG vessels and aircraft in the Atlantic area that would prevent, to the maximum extent possible, harmful interactions with protected living marine resources. The Conservation Program focuses on the interaction of USCG personnel with other Federal and state agencies and the public to promote conservation of protected living marine resources. The preferred alternative was developed from recommendations provided to the USCG by the National Marine Fisheries Service, in Biological Opinions issued September 1995 and July 1996, and public comments received in response to the Environmental Assessment of Potential Impacts of U.S. Coast Guard Operations Along the U.S. Atlantic Coast and the Draft EIS.

Dated: November 29, 1996.

Keith Boi,

Chief, Planning and Coordination Staff, Operations.

[FR Doc. 96–31031 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–96–55]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 3, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26600
Petitioner: Keflavik Navy Flying Club
Sections of the FAR Affected: 14 CFR 91.411(b) and 91.413(c)
Description of Relief Sought: To permit the petitioner the option of using the Organizational Maintenance Division of the Air Operations Department of the U.S. Naval Air Station in Keflavik, Iceland, or Icelandair maintenance to conduct and record the required inspections and tests.

Docket No.: 28719
Petitioner: Comair, Inc.
Sections of the FAR Affected: 14 CFR 121.412(c)(1)
Description of Relief Sought: To permit Comair, Inc. Canadian CL–65 simulator flight instructors to serve in a training program established under subpart N of part 121 without those instructors having to hold a type rating for the CL–65.

[FR Doc. 96–31089 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 13–16, 1997, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Wyndham Warwick Hotel, 5701 Main Street, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Reavis, Executive Director, ATPAC, Strategic Operations/ Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 13 through January 16, 1997, at the Wyndham Warwick Hotel, 5701 Main Street, Houston, Texas.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 10, 1997. The next quarterly meeting of the FAA ATPAC is planned to be held from April 21–24, 1997, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on November 27, 1996.

Charles R. Reavis,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 96–31088 Filed 12–5–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 20, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0168.

Form Number: IRS Form 4361.

Type of Review: Extension.

Title: Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

Description: Form 4361 is used by ministers, members of religious orders, or Christian Science Practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 10,270.

Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—7 min.; Learning about the law or the form—20 min.; Preparing the form—16 min.; Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 10,270 hours.

OMB Number: 1545–0499.

Form Number: IRS Form 5305–SEP.

Type of Review: Extension.

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

Description: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions in the SEP. The data is used to verify the deduction.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—1 hr., 40 min.; Learning about the law or the form—1 hr., 35 min.; Preparing the form—1 hr., 41 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 495,000 hours.

OMB Number: 1545–0913.

Regulation Project Number: FI–165–84 NPRM.

Type of Review: Extension.

Title: Below-Market Loans.

Description: Section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,631,202.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 481,722 hours.

OMB Number: 1545–1002.

Form Number: IRS Form 8621.

Type of Review: Extension.

Title: Return by Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Description: Form 8621 is filed by a U.S. person who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—12 hr., 12 min.; Learning about the law or the form—3 hr., 41 min.; Preparing and sending the form to the IRS—4 hr., 2 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 39,840 hours.

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 Final.

Type of Review: Extension.

Title: Information with Respect to Certain Foreign-Owned Corporations.

Description: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements will allow IRS international examiners to better audit the tax returns of U.S. corporations engaged in crossborder transactions with a related party.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Recordkeepers: 63,000.

Estimated Burden Hours Per Recordkeeper: 10 hours.

Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 630,000 hours.
OMB Number: 1545–1210.
Form Number: IRS Form 8379.
Type of Review: Revision.
Title: Injured Spouse Claim and Allocation.
Description: A non-obligated spouse may file Form 8379 to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past-due obligation owed to a state or federal agency by the other spouse.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—13 min.; Learning about the law or the form—8 min.; Preparing the form—56 min.; Copying, assembling, and sending the form to the IRS—31 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 362,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–31019 Filed 12–5–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

November 21, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0120.
Form Number: None.
Type of Review: Extension.
Title: Commercial Invoice.
Description: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties. The invoice(s) is attached to the CF 7501. The information which is supplied by the foreign shipper is used to ensure compliance with statutes and regulations.
Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.
Estimated Number of Respondents: 14,000,000.
Estimated Burden Hours Per Respondent: 10 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 84,000 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–31020 Filed 12–5–96; 8:45 am]

BILLING CODE 4820–02–p

Submission to OMB for Review; Comment Request

November 22, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1018.
Regulation Project Numbers: FI–27–89 Final and FI–61–91 Final.
Type of Review: Extension.
Title: Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters (FI–27–89); and Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (FI–61–91).
Description: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirments for REMICs and certain brokers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 655.
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 978 hours.
OMB Number: 1545–1146.
Regulation Project Number: PS–54–89 Final.
Type of Review: Extension.
Title: Applicable Conventions Under the Accelerated Cost Recovery System.
Description: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with the section 168 rules.
Respondents: Business or other for-profit, farms.
Estimated Number of Respondents: 700.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 70 hours.
OMB Number: 1545–1425.
Regulation Project Number: PS–55–93 Temporary and NPRM.
Type of Review: Extension.
Title: Certain Elections for Intangible Property.
Description: The information is required by the IRS to aid it in administering the law and preventing manipulation. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes. The likely respondents are businesses or other for-profit institutions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (once, 1993 tax return).
Estimated Total Reporting Burden: 100 hours.
OMB Number: 1545–1497.
Form Number: IRS Form 8837.
Type of Review: Extension.
Title: Adoption of Revenue Procedure Model Amendments.
Description: Form 8837 will act as a transmittal document and will be used by sponsors of ''master or prototype'' plans, regional prototype plans, and

volume submitter plans. Revenue Procedures implementing law changes or other changes may be issued at any time requiring changes in plan documents. These changes or amendments can be submitted to the Service using this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—2 hr., 11 min.; Preparing and sending the form to the IRS—2 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 7,950 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–31021 Filed 12–5–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

December 2, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0002.

Form Number: ATF Form 1600.7.

Type of Review: Extension.

Title: ATF Distribution Center Contractor Survey.

Description: Information provided on ATF F 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides the users of ATF forms and publications.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 21,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 168 hours.

OMB Number: 1512–0020.

Form Number: ATF Form 9 (5320.9).

Type of Review: Extension.

Title: Application and Permit for Permanent Exportation of Firearms.

Description: This form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearm from registration in the National Firearms Registration and Transfer Record of collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit and by ATF to determine and collect taxes.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 70.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1512–0058.

Form Number: ATF Form 5120.25 and ATF Form 5120.36.

Type of Review: Extension.

Title: Application to Establish and Operate Wine Premises (5120.25); and Wine Bond (5120.36).

Description: ATF F 5120.25 is the form used to establish the qualifications of an applicant for a wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use. The bond form (ATF F 5120.36) is used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,720.

Estimated Burden Hours Per Respondent:
Form ATF F 5120.25—1 hour.
Form ATF F 5120.36—30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 810 hours.

OMB Number: 1512–0079.

Form Number: ATF Form 5000.8.

Type of Review: Extension.

Title: Power of Attorney.

Description: ATF F 1534 (5000.8) delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. 26 U.S.C. 6061 authorizes that individuals signing returns, statements, or other documents required to be filed by industry members, under the provisions of the Internal Revenue Code (IRC) or the Federal Alcohol Administration (FAA) Act are to have that authority on file with ATF.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1512–0137.

Form Number: ATF Form 5150.22 and ATF Form 5150.25.

Type of Review: Extension.

Title: Application for and Industrial Alcohol Users Permit and Industrial Alcohol Bond.

Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with the Federal laws and regulations. ATF F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 738.

Estimated Burden Hours Per Respondent:.
Form ATF F 5150.22—2 hours.
Form ATF F 5150.25—1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,476 hours.

OMB Number: 1512–0142.

Form Number: ATF Form 2734 (5100.25).

Type of Review: Extension.

Title: Specific Export Bond—Distilled Spirits or Wine.

Description: ATF F 2734 (5100.25) is used to ensure the payment of taxes on shipments of wine and distilled spirits. The form describes the taxable articles, the surety company, the specific conditions of the bond coverage and the persons that are accountable for tax payment.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0144.
Form Number: ATF Form 2736 (5100.12) and ATF Form 2737 (5110.67).
Type of Review: Extension.
Title: Specific and Continuing Transportation Bond—Distilled Spirits and/or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.
Description: ATF F 2736 (5100.12) and ATF F 2737 (5110.67) are specific bonds which protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bonds identify the shipment, the parties, the date, and the amount of the bond coverage.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0354.
Recordkeeping Requirement ID Number: ATF REC 5170/3.
Type of Review: Extension.
Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Audit trail records show amounts of purchases and from whom; complete final audit trail established at distilled spirits plant. Protection of the revenue. The collection of information contained in 27 CFR 194.234.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 455,000.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 455,000 hours.

OMB Number: 1512–0357.
Recordkeeping Requirement ID Number: ATF REC 5170/6.
Type of Review: Extension.
Title: Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records).
Description: To ascertain that revenue is not placed in jeopardy. To protect the revenue. (Affects wholesale liquor dealers.).
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,029.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 515 hours.

OMB Number: 1512–0384.
Recordkeeping Requirement ID Number: ATF REC 5620/2.
Type of Review: Extension.
Title: Airlines Withdrawing Stock from Customs Custody.
Description: Airlines may withdraw tax-exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has Customs certification; enables ATF to verify that tax is not due; allows spirits and wines to be traced and maintains accountability. Protects tax revenues. The collection of information is contained in 27 CFR 252.280 and 252.281.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 25.
Estimated Burden Hours Per Recordkeeper: 100 hours.
Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 2,500 hours.

OMB Number: 1512–0492.
Recordkeeping Requirement ID Number: ATF REC 5000/24.
Type of Review: Extension.
Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.
Description: ATF Forms 5000.24, 5000.25—(Alcohol & Tobacco); and 5300.26 (Firearms & Ammo) are completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarettes papers and tubes, snuff, smoking tobacco (pipe), firearms and ammunition. The return is prescribed by law for the collection of these taxes. ATF uses the forms to identify the taxpayer, premises and period covered by the tax return, taxpayer's ability and adjustments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 503,921.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 503,921 hours.

OMB Number: 1512–0494.
Recordkeeping Requirement ID Number: ATF REC 5530/3.
Type of Review: Extension.
Title: Liquors and Articles from Puerto Rico and the Virgin Islands.
Description: Information collection requirements for persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands is necessary for the verification of claims for drawback of distilled spirits excise taxes paid on such products.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Quarterly, Monthly.
Estimated Total Reporting Burden: 120 hours.

OMB Number: 1512–0518.
Form Number: ATF F 7CR (5310.16).
Type of Review: Extension.
Title: Application for License (Collector of Curios and Relics).
Description: This form is used by the public when applying for a Federal firearms license to collect curios and relics in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,500 hours.

OMB Number: 1512–0530.
Form Number: None.
Type of Review: Extension.
Title: Applications, Notices, and Permits Relative to Importation and Exportation of Distilled Spirits, Wine, and Beer, Including Puerto Rico and Virgin Islands.
Description: Beverage alcohol, industrial alcohol, beer and wine are taxed when imported. The taxes on these commodities coming from the Virgin Islands and Puerto Rico are largely returned to these insular possessions. Exports are mainly tax free. These sections ensure that proper taxes are collected and returned according to law.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 20.
Estimated Burden Hours Per Recordkeeper: 9 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 120 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 96–31022 Filed 12–5–96; 8:45 am]

BILLING CODE 4810–31–P

Customs Service

Tariff Classification of Hydraulic Mine Roof Shield Supports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of practice; solicitation of comments.

SUMMARY: This notice advises the public that Customs proposes a change of practice regarding the classification of hydraulic mine roof shield supports under the Harmonized Tariff Schedule of the United States (HTSUS). Customs has a uniform and established practice of classifying shield supports under subheading 8430.50.50, HTSUS, which provides for other self-propelled excavating machinery. Customs intends to change this practice to reflect the proper classification of the shield supports under subheading 8479.89.95, HTSUS, which provides for other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter.

If this proposed change is adopted, those rulings which are inconsistent with our current practice would be revoked. We believe such action would affect only the classification of the hydraulic mine roof shield supports. Before adopting this proposed change, consideration will be given to any written comments timely submitted in response to publication of this document.

DATES: Comments must be received on or before February 4, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Tariff Classification Appeals Division, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

Background

Self-propelled, hydraulic mine roof shield supports are used in underground coal mining. They are one of three machines of a long wall mining system. The system consists of: (1) A cutting device (shearer) which removes coal as it moves along the face of a coal deposit; (2) a face conveyor, located underneath the cutting tool, which transports the coal as it is removed; and (3) an advancing mechanism and shield support which serve as a platform for (1) and (2). The shield supports are installed side by side along the face of an underground coal seam to form a continuous overhead canopy which cantilevers over the shearer and face conveyor. The supports prevent the mine roof from collapsing onto these machines as the coal is removed. The supports also move the entire system forward. No single component can function as coal cutting machinery without the other two components.

Customs position with regard to the classification of self-advancing, hydraulic mine roof shield supports under the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, was expressed in C.I.E. 227–67, dated February 28, 1967. In C.I.E. 227–67, we stated that ''[t]here is a uniform and established practice of classifying equipment similar to the mechanized roof supports and the hydraulic roof supports, Mk III, under the provision for extracting machinery, whether or not stationary or mobile, for minerals or ores, in item 664.05 * * *.'' Item 664.05, TSUS, provided for ''mechanical shovels, coal-cutters, excavators, scrapers, bulldozers and other excavating, levelling, boring and extracting machinery * * * for earth, minerals or ores.'' This position was later followed in New York Ruling Letter (NY) 802700, dated April 19, 1982, and NY 803104, dated June 16, 1982 (then, under item 664.08, TSUS).

Customs position with regard to the classification of shield supports under the HTSUS was expressed in Headquarters Ruling Letter (HQ) 084855, dated September 13, 1989. In HQ 084855, we held that the shield supports were classifiable under subheading 8479.89.90 (now, 8479.89.95), HTSUS, which provides for other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter. This decision was later affirmed, in HQ 950218 and HQ 950220, both dated April 17, 1992.

However, in *Hemscheidt Corporation* v. *United States,* 858 F.Supp. 223 (CIT 1994), the U.S. Court of International Trade determined that the uniform and established practice of classifying the shield supports as ''extracting'' machinery, established under the TSUS, survived implementation of the HTSUS. The Court pointed out that Customs did not publish notice in the Federal Register, in accordance with 19 U.S.C. 1315(d), of its intention to classify shield supports under heading 8479, HTSUS. Accordingly, the Court held that the shield supports were properly classifiable under subheading 8430.50.50, HTSUS, which provides for other self-propelled excavating or extracting machinery. This decision was affirmed in *Hemscheidt Corporation* v. *United States,* 72 F.3d 868 (Fed. Cir. 1995).

It is Customs position that the shield supports cannot be classified as excavating or extracting machinery under heading 8430, HTSUS. The terms ''excavate'' and ''extract'' are not defined in the HTSUS. When terms are not so defined, they are construed in accordance with their common and commercial meaning. *Nippon Kogasku (USA), Inc.* v. *United States,* 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons* v. *United States,* 69 CCPA 128, 673 F.2d 1268 (1982).

''Excavate'' is defined in Webster's Ninth New Collegiate Dictionary, pg. 431 (1990), as follows: ''1: to form a cavity or hole in 2: to form by hollowing 3: to dig out and remove 4: to expose to view by or as if by digging away a covering.'' ''Extract'' is defined, pg. 440, as follows: ''1 a: to draw forth * * * b: to pull or take out forcibly * * * c: to obtain by much effort from someone unwilling * * * 2: to withdraw (as a juice or fraction) by physical or chemical process.* * *.''

As coal is removed, the self-propelled shield supports prevent the mine roof from collapsing onto the system's shearer and face conveyor. The supports also move the entire system forward. They do not, however, form a cavity or hole, dig out or remove, nor pull, take out, or withdraw, any material. While the supports form a portion of a system designed to excavate coal, the shield supports cannot, by themselves, be considered ''excavating'' or ''extracting'' machinery.

This determination is supported by Harmonized Commodity Description and Coding System Explanatory Note (EN) 84.30, pg. 1203, which states, in pertinent part, that heading 8430, HTSUS, covers machinery ''for

'attacking' the earth's crust (e.g., for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling).'' The shield supports do not ''attack'' the earth's crust, nor do they prepare or compact the terrain. Accordingly, based on the common meaning of the terms ''excavating'' and ''extracting,'' and the guidance of EN 84.30, the shield supports cannot be classified under heading 8430, HTSUS.

Proposed Change of Practice

Customs believes that the shield supports are classifiable under heading 8479, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in the chapter. The function performed by the shield supports is not described by any heading in the tariff schedule.

The shield supports prevent the mine roof from collapsing onto the system's shearer and face conveyor. This function is distinct and separable from that which is performed by the other components of the long wall mining system, which is designed to cut and then transport coal. While the supports also move the entire system forward, they do not perform a cutting or (coal) transportation function. See EN 84.79 (for examples of devices having ''individual functions''). Accordingly, the shield supports are classifiable under heading 8479, HTSUS, specifically under subheading 8479.89.95, HTSUS.

Authority

This notice is published in accordance with section 177.10, Customs Regulations (19 CFR 177.10).

Comments

Before adopting this proposed change in practice, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

Approved: November 7, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

George J. Weise,

Commissioner of Customs.

[FR Doc. 96–31010 Filed 12–5–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

[CO–24–96]

Proposed Collection; Comment Request for Regulation Project

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 an existing regulation, CO–24–96 (TD 8677), Consolidated Returns—Limitations on the Use of Certain Losses and Deductions (§ 1.1502–21T(b)).

DATES: Written comments should be received on or before February 4, 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: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

OMB Number: 1545–1237.

Regulation Project Number: CO–24–96.

Abstract: Section 1.1502–21T(b)(3) of the regulation contains a collection of information which permits a consolidated group of corporations to elect to relinquish a carryback period with respect to a consolidated net operating loss. The common parent of the group must file a statement evidencing the election with the income tax return of the group. The statement is required to assure that an election to relinquish a carryback period is properly documented.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,000.

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: December 2, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–31131 Filed 12–5–96; 8:45 am]

BILLING CODE 4830–01–U

Joint Board for the Enrollment of Actuaries; Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room 5718 of the Main Internal Revenue Service Building, 1111

Constitution Avenue, NW, Washington, DC, on Thursday and Friday, January 9 and 10, 1997, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1996 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, the possibility of an open book examination for the AE2 (P365) examination, the effectiveness of administering the EA1–B (P360) examination, the use of upgraded calculators, and length of the questions in the examinations will be discussed.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the November 1996 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5, U.S. Code, section 552(c)(9)(B), and that public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of EA2 (P365) open book, EA1–B (P360) effectiveness, calculators, and length of questions will commence at 1:30 p.m., on January 9 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Persons planning to attend the public session must also notify the Committee Management Officer in writing to obtain building entry. Notifications should be faxed to (202) 376–1420 no later than December 30,1996, Attention: Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Department of Treasury, Internal Revenue Service (c:AP:P), 1111 Constitution Avenue, NW, Washington, DC 20224.

Dated December 3, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–31132 Filed 12–5–96; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances (Epoxy); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of a petition requesting that diglycidyl ether of bisphenol-A be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by February 4, 1997. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1992.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on July 1, 1991. The petitioner is Dow Chemical Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 3907.3.

CAS number: 025085–99–8.

Diglycidyl ether of bisphenol-A (DGEBA) is derived from the taxable chemicals benzene, propylene, chlorine, and sodium hydroxide and produced predominantly from epichlorohydrin and bisphenol-A via a two-step reaction.

The stoichiometric material consumption formula for this substance is:

2 C_6H_6 (benzene) + 4 C_3H_6 (propylene) + 4 Cl2 (chlorine) + 6 NaOH (sodium hydroxide) + 2 O_2 (oxygen) -----> $(CH_3)_2C(C_6H_4OC_3H_50)_2$ (DGEBA) + CH_3COCH_3 (acetone) + 2 HCl (hydrogen chloride) + 6 NaCl (sodium chloride) + 5 H_2O (water)

According to the petition, taxable chemicals constitute 92.95 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $7.08 per ton. This is based upon a conversion factor for benzene of 0.459, a conversion factor for propylene of 0.494, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.705.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 96–31130 Filed 12–5–96; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision; Submission for OMB Review; Comment Request

December 2, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Number: 1550–0011.

Form Number: Not Applicable.

Type of Review: Revision of an approved collection.

Title: General Reporting and Recordkeeping by Savings Associations.

Description: This information collection allows management of savings associations to exercise prudent controls and provides OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness and regulatory compliance.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1,372.

Estimated Burden Hours Per Recordkeeper: 2,966 average hours.

Frequency of Response: On Occasion.

Estimated Total Recordkeeping Burden: 4,069,042 per year.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–31035 Filed 12–5–96; 8:45 am]

BILLING CODE 6720–01–p

Office of Thrift Supervision

[AC–54; OTS No. 1830]

Home City Federal Savings Bank of Springfield, Springfield, Ohio; Approval of Conversion Application

Notice is hereby given that on October 8, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home City Federal Savings Bank of Springfield, Springfield, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: December 3, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–31062 Filed 12–5–96; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Friday
December 6, 1996

Part II

Environmental Protection Agency

Modification of the General National Pollutant Discharge Elimination System Permit for Placer Mining in Alaska; Notice

Environmental Protection Agency

[FRL–5655–3]

Final General NPDES Permit Modifications for Mechanical Placer Mining (No. AKG–37–0000), Medium-size Suction Dredge Placer Mining (No. AKG–37–1000), and Small Suction Dredge Placer Mining (No. AKG–37–5000) in the State of Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final general NPDES permit modification.

SUMMARY: The Director, Office of Water, EPA Region 10, is modifying the General National Pollutant Discharge Elimination System (NPDES) permit for placer mining in Alaska pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* EPA originally issued this general permit (No. AKG–37–000) on May 13, 1994 [59 FR 28079]. On September 28, 1994, two environmental groups filed a petition for review of the general permit in the Ninth Circuit. Without any admission or denial of any of the Petitioners' allegations, EPA proposed to modify the general permit on January 31, 1996 [61 FR 3403]. The original comment period on the proposed modification began on January 31, 1996, and ended on March 15, 1996. Region 10 later extended the comment period to April 18, 1996. Public hearings were held in Anchorage on March 4 and in Fairbanks on March 5, 1996.

Based on the comments received, it was apparent that there was some confusion regarding what conditions were applicable to which type of facility (mechanical operations, medium-size suction dredges, or small suction dredges). Therefore, the permit was split into three separate general permits—one for each type of facility. The permit numbers of the final permits are AKG–37–0000 (mechanical operations), AKG–37–1000 (medium-size suction dredge operations), and AKG–37–5000 (small suction dredges).

The general permit for mechanical operations authorizes discharges from facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore, open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season, and mechanical dredge gold placer mines except those dredges that remove less than 50,000 cubic yards of placer ore per mining season or dredge in open waters. The medium-size suction dredge permit authorizes discharges from suction dredges with intake nozzles less than or equal to 8 inches and greater than 4 inches, provided that hose size is not be greater than 2 inches larger than the nozzle size. Placer mining by suction dredges with intake nozzles equal to 10 inches for which Notices of Intent were approved by August 13, 1996 are also covered. The small suction dredge permit authorizes discharges from suction dredges with intake nozzles less than or equal to 4 inches, provided that hose size is not be greater than 2 inches larger than the nozzle size. None of the permits authorize discharges from facilities for which Notices of Intent (NOIs) were approved after August 13, 1996, which are proposed to be located in National Park System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act.

EFFECTIVE DATE: These general NPDES permits shall become effective April 7, 1997.

ADDRESSES: Unless otherwise noted in the permit, correspondence regarding this permit should be sent to Environmental Protection Agency, Region 10, Attn: NPDES Permits Unit, OW–130, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Carla Fisher, of EPA Region 10, at the address listed above or telephone (206) 553–1756. Copies of the final general NPDES permit, response to public comments, and today's publication will be provided upon request by EPA Region 10, Public Information Center, at 1 (800) 424–4372 or (206) 553–1200.

SUPPLEMENTARY INFORMATION: EPA modified this general NPDES permit pursuant to its authority under Sections 301(b), 304, 306, 307, 308, 402, 403, and 501 of the Clean Water Act. The fact sheet for the draft permit modification, the response to comments document, the certification issued by the State of Alaska, and the coastal zone management plan consistency determination issued by the State of Alaska set forth the principal facts and significant factual, legal, and policy questions considered in the development of the terms and conditions of the final permits presented below.

The State of Alaska, Department of Environmental Conservation, has certified that the subject discharges comply with the applicable provisions of Sections 208(e), 301, 302, 306, and 307 of the Clean Water Act.

The State of Alaska, Office of Management and Budget, Division of Governmental coordination, has certified that the general NPDES permits are consistent with the approved Alaska Coastal Management Program.

No comments were received from Office of Management and Budget on the information collection requirements in these permits. Responses to public comments appear in the Response to Comments.

Changes have been made from the draft permit to the final permits in response to public comments received on the draft permit and the final coastal management plan consistency determination and 401 certification issued by the State of Alaska. The following is a summary of some of the changes.

For mechanical operations and medium-size suction dredge permits, only permittees who do not use the Alaska Placer Mining Application (APMA) are required to submit copies of their applications to agencies other than Alaska Department of Natural Resources. Additionally, the timing of the separation distance between operations was changed from the entire season to requiring separation from operations which are discharging or from which it is apparent that a discharge has occurred.

For mechanical operations, the arsenic limitation was changed from 0.18 ug/l to 0.18 ug/l or natural background; turbidity monitoring was changed from three times per season to monitoring of the first two discharges of the season and one discharge per month for every month in which there is a discharge thereafter; arsenic monitoring was changed from three times per season to monitoring of the first three discharges of the season and one discharge per month for every month in which there is a discharge thereafter, and; the 500-foot separation distance between operations was reduced to 300 feet.

For medium and small suction dredges, size is determined by nozzle, not hose, size, except that the hose must be less than or equal to two inches larger than the nozzle, and; if a constrictor ring is permanently attached to the nozzle, size may be determined by constrictor ring size.

For medium-size suction dredges, suction dredges with 10 inch nozzles for which NOIs were approved by August 13, 1996, are also covered under this permit; the provision regarding discharge to quiet pools was deleted, the timing of separation from spawning areas was changed to the times when fish are spawning; the separation

distance between operations was changed from 1000 feet to 800 feet; the prohibition on dredging silt and clay was changed to a prohibition on dredging concentrated silt and clay, and; the definition of ''active stream channel'' was changed to included unvegetated gravel bars.

For small suction dredges, coverage was simplified so that submittal of a notice of intent to Alaska Department of Fish and Game results in immediate coverage under the permit; a prohibition against damming or diversions was added, and; the strict prohibition against dredging of silt and clay was changed to advisory language.

Within 120 days following this service of notice of EPA's final permit decisions under 40 CFR 124.15, any interested person may appeal these general NPDES permits in the Federal Court of Appeal in accordance with Section 509(b)(1) of the Clean Water Act. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge these permits in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

Dated: November 18, 1996.

Philip G. Millam,

Director, Office of Water.

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Alaskan Mechanical Placer Miners

[General Permit No.: AKG–37–0000]

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, Public Law 100–4, the ''Act'', owners and operators of facilities engaged in the processing of placer gold are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE WHERE DISCHARGES OCCUR.

The original version of this permit became effective June 30, 1994. This permit as modified shall become effective April 7, 1997.

This permit and the authorization to discharge shall expire on June 30, 1999.

Signed this 18th day of November, 1996.

Philip G. Millam,

Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

Table of Contents

I. Coverage Under this Permit

A. Coverage

1. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

2. Existing Facilities (those mechanical operations facilities having individual National Pollutant Discharge Elimination System [NPDES] permits or coverage under the existing Alaska placer miner general permit). To gain coverage under this permit, existing facilities which meet the criteria for coverage under Part I of this permit must submit a Notice of Intent (NOI, OMB #2040–0086, expiration date 8/31/98). Such facilities will be granted coverage according to Permit Part F.

3. Pending Applications: Mechanical operations facilities which have submitted applications in accordance with 40 CFR 122.21(a) and which meet the criteria for coverage under this permit will be granted coverage according to Permit Part F.

4. New Facilities: New mechanical operations facilities that are determined to be new sources under the CWA will be required to have an Environmental Assessment (EA) completed pursuant to the National Environmental Policy Act (NEPA). A finding of no significant impact (FNSI) by EPA is necessary prior to receiving coverage under this permit. A FNSI will become effective only after the public has had notice of, and an opportunity to comment on, the FNSI including either the accompanying Environmental Assessment or a summary of it, and the EPA has fully considered all public comments submitted, pursuant to 40 CFR 6.400(d). If there may be a significant impact, the facility will require an Environmental Impact Statement (EIS). An EIS will be issued only after public notice and an opportunity for public comments on a draft EIS pursuant to 40 CFR 6.403(a) and 1503.1(a).

5. Expanding Facilities: Mechanical operations facilities that contemplate expanding shall submit a new NOI that describes the new discharge. The current permit will be terminated and a new permit, reflecting the changes, issued in its place if the facility meets all the necessary requirements of coverage.

6. Coastal Zone Facilities: Mechanical operations facilities located in the coastal zone as determined by the Alaska Coastal Zone Management Act shall submit, with their Notice of Intent (NOI), an individual consistency determination from Alaska Division of Governmental Coordination (ADGC) unless ADGC makes an overall determination on this General Permit after its issuance.

B. Authorized Placer Mining Operations

1. Facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore.

2. Open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season.

3. Mechanical dredge gold placer mines except those dredges that remove less than 50,000 cubic yards of placer ore per mining season or dredge in open waters.

C. Additional Requirements

1. Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as Conservation System Units (CSUs) by the federal government. Permittees should contact the district offices of the federal agencies that administer the designated area for additional restrictions that may apply to operating within the area. See part I.E.2.

2. Many streams in Alaska where placer mining occurs have been designated by the Alaska Department of Fish and Game (ADF&G) as anadromous fish streams. Placer mining activities in these streams require an ADF&G Fish Habitat Permit which may include additional restrictions. The ''Atlas to the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fish'' lists the streams in the State which require prior ADF&G authorization. In addition, placer mining activities in resident fish streams require an ADF&G Fish Habitat Permit if the proposed activity will block or impede the efficient passage of fish. Permittees operating in anadromous or resident fish streams should contact the ADF&G to determine permitting requirements and additional restrictions that may apply.

D. Prohibitions

1. Discharges from the following beneficiation processes are not authorized under this permit: mercury amalgamation, cyanidation, froth floatation, heap and vat leaching.

2. Discharges from hydraulicking, as defined in Part VIII.E, are not authorized under this permit.

3. This general permit does not apply to facilities for which Notices of Intent were approved after August 13, 1996, which are proposed to be located in National Park System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act.

4. This permit does not apply to wetlands designated in the 1995 Anchorage Wetlands Management Plan.

E. Requiring an Individual Permit

1. The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved;

f. An Individual Control Strategy (ICS) is required under Section 304(L) of the Act;

g. A Total Maximum Daily Load (TMDL) and corresponding wasteload allocation has been completed for a waterbody or a segment of a waterbody;

h. A review of the facility shows that it is subject to the State of Alaska's anti-degradation policy; or

i. There are other federal or State legislation, rules or regulations pertaining to a site directly or indirectly related to water quality.

2. The Regional Administrator may deny coverage under this permit in the following circumstances:

a. a land management agency with jurisdiction over affected portions of the receiving water, bed, or uplands submits a request that general permit coverage be denied to EPA within thirty (30) days of the agency's receipt of an NOI; and,

b. the land management agency's request includes proposed additional or revised permit terms which the requesting agency believes—based upon evidence attached to or cited in the request—are necessary to protect the natural values of the affected location; and,

c. the land management agency's request concerns a person who either;

i. seeks to discharge into U.S. waters located in National Recreation Areas, or in State Refuges, Preserves, Sanctuaries, Recreation Areas, Parks, or Critical Habitat Areas; or,

ii. is in significant noncompliance with the terms and conditions of the most recent applicable NPDES permit; or,

iii. intends to discharge into waters designated as impaired or polluted under the Clean Water Act.

Any person denied coverage under this part must apply for and obtain coverage under either (1) an individual permit, or (2) another applicable watershed-specific general permit. Upon receipt of any such application, EPA will determine whether the permit terms requested by the land management agency should be included in the applicable permit.

3. The Regional Administrator will notify the operator in writing by certified mail that a permit application is required. If an operator fails to submit, in a timely manner, an individual NPDES permit application as required, then any applicability of this general permit to the individual NPDES Permittee is automatically terminated at the end of the day specified for application submittal.

4. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2C or 2D) with reasons supporting the request to the Regional Administrator.

5. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit.

6. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, the Permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Regional Administrator. A new facility can receive coverage under this general permit by submitting an NOI. See Permit Part I.A.3. for details.

7. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

F. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit an NOI to be covered by this permit. The information required for a complete NOI is in Appendix A of this permit. Notification must be made:

a. by January 1 of the year of discharge from a new facility or a facility established since 1988 subject to New Source Performance Standards (NSPS) that has not previously been covered by a permit; or

b. 90 days prior to discharge from a new facility not subject to NSPS; or

c. 90 days prior to the expiration of an existing individual permit, or

d. 90 days prior to discharge for any other facilities.

2. Facilities covered under this permit that discharge to National Park System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act that wish to retain coverage under the general permit until the effective date of a new permit shall submit an application for an individual permit (EPA Application Form 2c) no later than January 1, 1999.

3. An Alaska Placer Mine Application (APMA) will be accepted as an NOI if all the required information from Appendix A, including information to determine site-specific turbidity limits, if applicable, is included.

4. The NOI shall be signed by the owner or other signatory authority in accordance with Permit Part VI.H. (Signatory Requirements), and a copy shall be retained on site in accordance with Permit Part IV.F. (Retention of Records). The address for NOI submission to EPA is: United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101.

5. A copy of the NOI must also be sent to the Alaska Department of Environmental Conservation (ADEC). The address is: Alaska Department of Environmental Conservation, 610 University Avenue, Fairbanks, Alaska 99709.

6. Permittees who do not use the APMA procedure for filing their NOI with Alaska Department of Natural Resources shall send a copy of the NOI to the Federal, State, or local agency that manages or owns the land in which the mine is located or proposed to be located. The addresses are:

Anchorage Area

U.S. Department of the Interior, Bureau of Land Management, 222 West 7th Avenue, #13, Anchorage, AK 99513–7599

U.S. Department of the Interior, Fish and Wildlife Service, 1011 E Tudor Rd, Anchorage, AK 99503.

U.S. Department of the Interior, National Park Service, 605 West 4th Avenue, Suite 104, Anchorage, AK 99501.

Fairbanks Area

State of Alaska, Department of Fish & Game, 1300 College Road, Fairbanks, AK 99701–1599.

U.S. Department of the Interior, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709.

U.S. Department of the Interior, Fish and Wildlife Service, 101 12th Avenue, Box 19, Fairbanks, AK 99701.

U.S. Department of the Interior, National Park Service, 250 Cushman, Suite 1A, Fairbanks, AK 99701.

Glennallen Area

U.S. Department of the Interior, Bureau of Land Management, P.O. Box 147, Glennallen, AK 99588.

U.S. Department of the Interior, National Park Service, Wrangell St. Alias, P.O. Box 439, Copper Center, AK 99573.

Juneau Area

U.S. Department of the Interior, Fish and Wildlife Service, 3000 Vintage Blvd, Suite 201, Juneau, AK 99801.

U.S. Department of the Interior, National Park Service, P.O. Box 21089, Juneau, AK 99802–1089.

Nome Area

U.S. Department of the Interior, Bureau of Land Management, P.O. Box 925, Nome, AK 99762.

U.S. Department of the Interior, National Park Service, P.O. Box 220, Nome, AK 99762.

Tok Area

U.S. Department of the Interior, Bureau of Land Management, P.O. Box 309, Tok, AK 99780.

7. A copy of the general permit will be sent to the Permittee when it is determined that the facility can be granted coverage under this general permit. If it is determined that coverage cannot be granted under this permit, the applicant will be informed of this in writing.

G. Permit Expiration

1. This permit will expire on June 30, 1999. Except as provided in paragraph F.2., for facilities submitting a new NOI 90 days prior to expiration of this general permit, the conditions of the expired permit continue in force until the effective date of a new permit.

2. When a permittee has made timely and sufficient application for a permit renewal or new permit in accordance with paragraph 1 of this section, a permit with reference to an activity of a continuing nature does not expire until the application has been finally determined by EPA.

II. Effluent Limitations and Monitoring Requirements

A. Effluent Limitations

During the term of this permit, no wastewater discharges are authorized except as specified below.

1. Effluent Limitations

a. The volume of wastewater which may be discharged shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the beneficiation process.

b. The wastewater discharged shall not exceed the following:

Effluent Characteristic	Instantaneous Maximum
Settleable Solids	0.2 ml/l.
Turbidity	5 NTUs above natural background [1].
Arsenic, Total Recoverable.	0.18 µg/l [2].
Effluent Flow	[Flow reported in NOI [3]].

[1] Subject to Turbidity Mixing Zone outlined in Permit Part II.A.1.c.
[2] See Part II.A.1.e. for details.
[3] See Part II.A.1.d. for details.

c. Permittees may request a modified turbidity limit based upon a mixing zone approved by the Alaska Department of Environmental Conservation (ADEC) pursuant to 18 AAC 70.032. EPA will approve a modified turbidity limit proposed by ADEC under this General Permit if the modified limit and resulting mixing zone are consistent with the Clean Water Act, EPA's regulations, and 18 AAC 70.032, and provided that:

i. the modified turbidity limit does not exceed 1500 NTUs;

ii. the modified turbidity limit does not cause turbidity levels to exceed 100 NTUs in at least one-half of the cross-sectional area of resident and anadromous fish migration corridors;

iii. the modified turbidity limit is to be calculated using (1) the 7-day, 10-year low flow (7Q10) as the chronic criteria design flow for the protection of aquatic life; and (2) zero as the value for upstream turbidity unless site-specific turbidity data are submitted to justify a higher level;

iv. the modified turbidity limit does not result in a mixing zone in an area of anadromous fish spawning or resident fish spawning redds for the fish species listed in 18 AAC 70.032(d)(3)(D)(ii) when eggs or alevins are present;

v. approved mixing zones do not overlap and the availability and extent of approved mixing zones is limited as necessary to avoid potentially harmful cumulative effects on the receiving environment; and,

vi. the public was provided reasonable notice of, and an opportunity to comment on, the modified turbidity limit and associated mixing zone, including site-specific assessments used

to calculate the limit and zone, prior to their approval by ADEC.

d. The volume of discharge shall not exceed the volume reported by the permittee on the NOI (Appendix A). If the permittee exceeds that volume, EPA will not consider the permittee in violation of the flow limit if:

i. the permittee submits to EPA turbidity samples, flow measurements/seepage estimates for the discharge, and flow measurements for the upstream receiving water taken during the period of the flow exceedence; and,

ii. those samples show that the permittee's discharge did not cause the standard of 5 NTU above background to be exceeded at the edge of the mixing zone.

The permittee must report all exceedences of the flow limit, together with any turbidity and flow/seepage data which the permittee intends to use to avoid being considered in violation of the flow limit, pursuant to the reporting requirements in Part IV.G.

e. Permittees may request a modified arsenic limit reflecting the arsenic concentrations naturally present in the receiving waters as determined by ADEC. EPA will approve a modified arsenic limit proposed by ADEC under this General Permit provided:

i. the modified limit is consistent with the Clean Water Act, EPA's regulations, and state water quality standards regulations;

ii. The arsenic concentration naturally present in the receiving waters is determined upstream from any human-caused influence on, discharge to, or addition of material to, the waterbody; and

iii. the public was provided reasonable notice of, and an opportunity to comment on, the modified arsenic limit, including all data and other information used to calculate the limit, prior to its approval by ADEC.

Pending decision on the modified arsenic limit, the limit in part II.A.1.b. applies.

2. Effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.

B. Monitoring Requirements

1. During the period beginning on the effective date of this permit and lasting until the expiration date, the following monitoring shall be conducted:

Effluent characteristic	Monitoring location	Monitoring frequency	Sample type
Settleable Solids (ml/l)	effluent	once per day each day a discharge occurs.	Grab
Turbidity (NTU)	effluent	(1)	Grab.
	background	(1)	Grab.
Arsenic (µg/l)	effluent	(1)	Grab 2.
Flow (gpm)	effluent	(3)	Instantaneous.

1 See Part II B.3. & 4. for details.
2 Analyzed by EPA Method 206.2 with a detection limit of 1.0 µg/l.
3 See Part II. B.6. for details.

2. Inspection Program

The Permittee shall institute a comprehensive inspection program to facilitate proper operation and maintenance of the recycle system and the wastewater treatment system. The Permittee shall conduct a visual inspection of the site once per day, while on site, during the mining season. The Permittee shall maintain records of all information resulting from any inspections in accordance with part IV.F. of this permit. These records shall include an evaluation of the condition of all water control devices such as diversion structures and berms and all solids retention structures including, but not limited to, berms, dikes, pond structures, and dams. The records shall also include an assessment of the presence of sediment buildup within the settling ponds. The Permittee shall examine all ponds for the occurrence of short circuiting.

3. Turbidity Monitoring

Permittees shall monitor visually for turbidity at the edge of the mixing zone, or at the point of discharge if no mixing zone is approved by the State, once for each day during which a discharge occurs. The Permittee shall maintain records of all information resulting from this observation in accordance with part IV.F. of this permit.

Permittees that have obtained a site-specific turbidity limit under Permit Part II.A.1.c. shall take at least one turbidity sample per discharge for the first two discharges of the season and one sample for each calendar month in which there is a discharge thereafter.

Those Permittees that do not obtain a site-specific turbidity limit shall take at least one turbidity sample set (i.e. the discharge and background samples referenced in Part IV.A.) per discharge for the first two discharges of the season and one sample set for each calendar month in which there is a discharge thereafter.

A Permittee who has had less than two days of discharge over the course of the mining season must submit one sample or sample set for each day of discharge.

All samples must be taken and stored in the manner set forth in Attachment 1.

Discharge and background samples shall be taken within a reasonable time frame. The sample results shall be reported on the annual Discharge Monitoring report (DMR). Monitoring shall be conducted in accordance with accepted analytical procedures. See attachment 1 for sampling protocol.

4. Arsenic Monitoring

Arsenic samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Monitoring shall be conducted in accordance with accepted analytical procedures. The Permittee shall report the sample results on the DMR. (See attachment 2 for sampling protocol.) Because the water quality-based effluent limit for arsenic (0.18 µg/l) is below the MDL (1.0 µg/l) using EPA Method 206.2, EPA has derived an interim minimum level of 3 µg/l (3.18 × 1.0 µg/l = 3.18 rounded to 3) as the quantifiable level. For purposes of reporting analytical results for arsenic in the DMR, results below the MDL will be reported as ''less than 1.0 µg/l''. Actual analytical results shall be reported on the DMR when the results are greater than the MDL. The permittee must also specify in the comment column of the DMR that Method 206.2 was used for analysis.

The Permittee shall take at least one arsenic sample per discharge for the first three discharges of the season and one sample for each calendar month in which there is a discharge thereafter.

A Permittee who has had less than three days of discharge over the course of the mining season, must submit one sample for each day of discharge.

All samples must be taken and stored in the manner set forth in Attachment 2.

5. Settleable Solids Monitoring

Settleable solids samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Monitoring shall be conducted in accordance with accepted analytical procedures (Standard Methods, 17th Edition, 1989). The Permittee shall report the daily sample results on the annual DMR. See attachment 3 for sampling and analysis protocol.

6. Flow Monitoring

Permittees shall measure the volume of intake water used as make-up water. The intake flow for each day that water is taken in shall be reported on the annual DMR.

Effluent flow shall be measured at the discharge prior to entering the receiving water. Effluent flow shall be measured at least once per day each day discharge occurs. The operator must also make a good faith effort to estimate seepage discharging to waters of the United States each day that seepage occurs. Effluent flow and seepage flow shall be reported in gallons per minute (gpm). The flow measurements and seepage estimates, the number of discharge events, and the duration of each discharge event shall be reported in the annual DMR for each day of the mining season.

III. Management Practices

A. The flow of surface waters (i.e., creek, river, or stream) into the plant site shall be interrupted and these waters diverted around and away to prevent incursion into the plant site.

B. Berms, including any pond walls, dikes, low dams, and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

C. Measures shall be taken to assure that pollutant materials removed from the process water and wastewater streams will be retained in storage areas and not discharged or released to the waters of the United States.

D. The amount of new water allowed to enter the plant site for use in material processing shall be limited to the minimum amount required as makeup water.

E. All water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures, and dams shall be reasonably maintained to continue their effectiveness and to protect from failure.

F. The operator shall take whatever reasonable steps are appropriate to assure that, after the mining season, all unreclaimed mine areas, including ponds, are in a condition which will not cause degradation to the receiving waters over those resulting from natural causes.

G. During each mining season, a permittee may not discharge into the receiving stream within three hundred feet of any other upstream or downstream placer mining operation which is discharging or from which it is apparent that a discharge has occurred. Nor may a permittee discharge at a point within three hundred feet of the downstream edge of a mixing zone granted for any other upstream placer mining operation.

H. Other Requirements

The operator shall maintain fuel handling and storage facilities in a manner which will prevent the discharge of fuel oil into the receiving waters or on the adjoining shoreline. A Spill Prevention Control and Countermeasure Plan (SPCC Plan) shall be prepared and updated as necessary in accordance with provisions of 40 CFR Part 112 for facilities storing 660 gallons in a single container above ground, 1320 gallons in the aggregate above ground, or 42,000 gallons below ground.

The Permittee shall indicate on the DMR if an SPCC Plan is necessary and in place at the site and if changes were made to the Plan over the previous year.

I. Storm Exemption

The Permittee may qualify for a storm exemption from the technology-based effluent limitation for flow in Permit Part II.A.1.a. of this NPDES general permit if the following conditions are met:

1. The treatment system is designed, constructed and maintained to contain the maximum volume of untreated process wastewater which would be discharged, stored, contained and used or recycled by the beneficiation process into the treatment system during a 4-hour operating period without an increase in volume from precipitation or infiltration, plus the maximum volume of water runoff (drainage waters) resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of water which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which should result from the plant site contributing runoff to the individual treatment facility.

2. The operator takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

3. The source is in compliance with the Management Practices in Permit Parts III.A. through G.

4. The operator complies with the notification requirements of Permit Parts IV.G. and IV.H.

IV. Monitoring and Reporting Requirements

A. Representative Sampling

All samples for monitoring purposes shall be representative of the monitored activity, 40 CFR 122.41(j). To determine compliance with permit effluent limitations, ''grab'' samples shall be taken as established under Permit Part II.B. Specifically, effluent samples for settleable solids, turbidity, and arsenic shall be collected from the settling pond outlet or other treatment systems' outlet prior to discharge to the receiving stream. Additionally, turbidity background samples shall be taken at a point that is representative of the receiving stream just above the permittee's mining operation. Those who receive a site-specific turbidity limit are not required to take background turbidity samples. Samples for arsenic and turbidity monitoring must be taken during sluicing at a time when the operation has reached equilibrium. For example, samples should be taken when sluice paydirt loading and effluent discharge are constant.

B. Reporting of Monitoring Results

Monitoring results shall be summarized each month and reported on EPA Form 3320–1 (DMR, OMB #2040–0004, expiration date 5/31/98). The DMR shall be submitted to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Enforcement Section WD–135, Seattle, Washington 98101–3188, no later than November 30 each year. If there is no mining activity during the year or no wastewater discharge to a receiving stream, the Permittee shall notify EPA of these facts no later than November 30 of each year.

The DMR shall also be sent to the ADEC office located in Fairbanks. The address can be found in permit part I.F.4.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test

procedures have been specified in this permit.

D. Additional Monitoring by the Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

F. Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of DMRs, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Notice of Noncompliance Reporting

1. Any noncompliance which may endanger health or the environment shall be reported as soon as the Permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the Permittee becomes aware of the occurrence.

2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the Permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Permit Part V.G., Bypass of Treatment Facilities.); or

b. Any upset which exceeds any effluent limitation in the permit (See Permit Part V.H., Upset Conditions.).

c. Any violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the Permit to be reported within 24 hours.

3. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Enforcement Section in Seattle, Washington, by phone, (206) 553–1213.

5. Reports shall be submitted to the addresses in Permit Part IV.B., Reporting of Monitoring Results.

H. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Permit Part IV.G. above shall be reported at the time that monitoring reports for Permit Part IV.B. are submitted. The reports shall contain the information listed in Permit Part IV.G.3.

V. Compliance Responsibilities

A. Duty To Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The Permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Permit Part V.G., Bypass of Treatment Facilities and Permit Part V.H., Upset Conditions, nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewater's shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Permit Part IV.G., Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director or ADEC may take enforcement action against a Permittee for a bypass, unless:

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The Permittee submitted notices as required under paragraph 2 of this section.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. An administrative review of a claim that noncompliance was caused by an upset does not represent final administrative action for any specific event. A determination is not final until formal administrative action is taken for the specific violation(s).

2. Conditions necessary for a demonstration of upset. A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under Permit Part IV.G., Notice of Noncompliance Reporting; and

d. The Permittee complied with any remedial measures required under Permit Part V.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Changes in Discharge of Toxic Substances

Notification shall be provided to the Director and ADEC as soon as the Permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. One hundred micrograms per liter (100 μg/l);

b. Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. Five hundred micrograms per liter (500 μg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part VI.A.1.

3. The alteration or addition will significantly change the location, nature or volume of discharge or the quantity of pollutants, subject to the effluent limitations, discharged.

C. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty To Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The NOI should be submitted at least 90 days before the expiration date of this permit.

F. Duty To Provide Information

The Permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

G. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.

H. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.H.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

N. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

O. Inspection and Entry

The Permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must

be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

P. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

VII. Reopener Clause

If EPA-approved revisions to Alaska's water quality standards are made, this permit may be reopened to include limits or requirements based on the revised standards.

VIII. Definitions

A. ''Bypass'' means the intentional diversion of waste streams around any portion of a treatment facility.

B. ''Drainage Water'' means incidental surface waters from diverse sources such as rainfall, snow melt or permafrost melt.

C. ''Expanding Facility'' means any facility increasing in size such as to affect the discharge but operating within the permit area covered by its general permit.

D. A ''Grab'' sample is a single sample or measurement taken at a specific time.

E. ''Hydraulicking'' means both the hydraulic removal of overburden and the use of hydraulic power to move raw rock to the point of processing (i.e. to the gate of the sluice or other processing equipment).

F. ''Infiltration Water'' means that water which permeates through the earth into the plant site.

G. ''Instantaneous Maximum'' means the maximum value measured at any time.

H. ''Mine Drainage'' means any water, not associated with active sluice water, that is drained, pumped or siphoned from a mine.

I. ''Mining Season'' means the time between the start of mining in a calendar year and when mining has ceased for that same calendar year.''

J. ''Monitoring Month'' means the period consisting of the calendar weeks which begin and end in a given calendar month.

K. ''New Facility'' means a facility that has not operated in the area specified in the NOI prior to the submission of the NOI.

L. ''NTU'' (Nephelometric Turbidity Unit) is an expression of the optical property that causes light to be scattered and absorbed rather than transmitted in a straight line through the water.

M. ''Make-up Water'' means that volume of water needed to replace process water lost due to evaporation and seepage in order to maintain the quantity necessary for the operation of the beneficiation process.

N. ''New Water'' means water from any discrete source such as a river, creek, lake or well which is deliberately allowed or brought into the plant site.

O. ''Plant Site'' means the area occupied by the mine, necessary haulage ways from the mine to the beneficiation process, the beneficiation area, the area occupied by the wastewater treatment storage facilities and the storage areas for waste materials and solids removed from the wastewaters during treatment.

P. ''Receiving Water'' means waters such as lakes, rivers, streams, creeks, or any other surface waters which receive wastewater discharges.

Q. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

R. ''Short circuiting'' means ineffective settling ponds due to inadequate or insufficient retention characteristics, excessive sediment deposition, embankment infiltration/percolation, lack of maintenance, etc.

S. ''Silt and Clay'' are soil particles having a diameter of less than 0.002 mm (2 microns).

T. ''Turbidity Modification'' means the procedures used to calculate a higher turbidity limit based on a mass balance equation which relates upstream receiving water flow and turbidity to effluent flow and turbidity. The basic form of this equation is:

$Q_1C_1+Q_2C_2=Q_3C_3$,

Where C_1=effluent turbidity;

C_2=natural background turbidity (zero, unless data are submitted to justify a higher value)

C_3=receiving water downstream turbidity after mixing where the allowable increase is 5 NTU above background (*i.e.* 5 NTU);

Q_1=effluent flow

Q_2=receiving water flow upstream from the discharge (i.e., 7Q10)

Q_3=total receiving water flow downstream from discharge after complete mixing (Q_1+Q_2).

U. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

V. ''Wastewater'' means all water used in and resulting from the beneficiation process (including but not limited to the water used to move the ore to and through the beneficiation process, the water used to aid in classification, and the water used in gravity separation), mine drainage, and infiltration and drainage waters which commingle with mine drainage or waters resulting from the beneficiation process.

Attachment 1

Turbidity Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees Celsius (iced).

4. Samples must be analyzed within 48 hours of sample collection.

Attachment 2

Arsenic Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees Celsius (iced).

4. Samples must be acidified promptly with nitric acid (HNO3), to a pH less than 2.*

5. Samples must be sent to a laboratory for analysis within 60 days.

6. Samples must be acidified for at least 16 hours prior to analysis.

* Samples that are not acidified promptly must be sent to a laboratory within 48 hours of sample collection.

Attachment 3

Settleable Solids Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees Celsius (iced), if analysis is not performed immediately.

4. Samples must be analyzed within 48 hours of sample collection.

Settleable Solids Analysis Protocol

1. Fill an Imhoff cone to the liter mark with a thoroughly mixed sample.

2. Settle for 45 minutes, then gently stir the sides of the cone with a rod or by gently spinning the cone.

3. Settle 15 minutes longer, then record the volume of settleable matter in the cone as milliliters per liter. Do not estimate any floating material. The lowest measurable level on the Imhoff cone is 0.1 ml/l. Any settleable material below the 0.1 ml/l mark shall be recorded as trace.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Alaskan Medium-Size Suction Dredge Placer Miners

[General Permit No.: AKG–37–1000]

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the ''Act'', owners and operators of facilities engaged in the processing of placer gold by suction dredging are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE WHERE DISCHARGES OCCUR.

The original version of this permit became effective June 30, 1994. This permit as modified shall become effective April 7, 1997.

This permit and the authorization to discharge shall expire on June 30, 1999.

Signed this 18th day of November, 1996.

Philip G. Millam,

Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

Table of Contents

I. Coverage Under This Permit

A. Coverage and Eligibility

1. Existing Facilities (those suction dredge facilities having individual National Pollutant Discharge Elimination System [NPDES] permits or coverage under the existing Alaska placer miner general permit): Upon the submittal of a Notice of Intent (NOI, OMB #2040–0086, expiration date 8/31/98) to gain coverage under this permit, existing facilities which meet the criteria for coverage under Part I of this permit will be granted coverage according to Permit Part E.5.

2. Pending Applications: Upon submittal of an NOI, all suction dredge facilities which have submitted applications in accordance with 40 CFR 122.21(a) and which meet the criteria for coverage under this permit will be granted coverage according to Permit Part I.E.5.

3. Expanding Facilities: Suction dredge facilities that contemplate expanding shall submit a new NOI that describes the new discharge. The current permit will be terminated and a new permit, reflecting the changes, issued in its place if the facility meets all the necessary requirements of coverage.

4. Coastal Zone Facilities: Suction dredge facilities located in the coastal zone as determined by the Alaska Coastal Zone Management Act shall submit, with their Notice of Intent (NOI), an individual consistency determination from Alaska Division of Governmental Coordination (ADGC) unless ADGC makes an overall determination on this General Permit after its issuance.

B. Authorized Placer Mining Operations

1. This permit authorizes:

a. Placer mining by suction dredges with intake nozzles less than or equal to 8 inches and greater than 4 inches; and

b. Placer mining by suction dredges with intake nozzles equal to 10 inches for which Notices of Intent were received by August 13, 1996.

2. Hose size shall not be greater than 2 inches larger than the nozzle size. If a constrictor ring is used, nozzle size may be determined based on the size of the constrictor ring, provided that the ring is of solid, one-piece construction with no openings other than the intake and openings not greater than one inch between the constricting ring and nozzle, and that the ring is welded or otherwise permanently attached over the end of the intake nozzle.

C. Prohibitions

1. This general permit does not apply to facilities for which Notices of Intent were received after August 13, 1996, which are proposed to be located in National Parks System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act.

2. This permit does not apply to wetlands designated in the 1995 Anchorage Wetlands Management Plan.

D. Additional Requirements

1. Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as Conservation System Units (CSUs) by the federal government. Permittees should contact the district offices of the federal agencies that administer the designated area for additional restrictions that may apply to operating within the area.

2. Many streams in Alaska where placer mining occurs have been designated by the Alaska Department of Fish and Game (ADF&G) as anadromous fish streams. Placer mining activities in these streams require an ADF&G Fish Habitat Permit which may include additional restrictions. The ''Atlas to the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fish'' lists the streams in the State which require prior ADF&G authorization. In addition, placer mining activities in resident fish streams require an ADF&G Fish Habitat Permit if the proposed activity will block or impede the efficient passage of fish. Permittees operating in anadromous or resident fish streams should contact the ADF&G to determine permitting requirements and additional restrictions that may apply.

E. Requiring an Individual Permit

1. The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved;

f. An Individual Control Strategy (ICS) is required under Section 304(l) of the Act;

g. A Total Maximum Daily Load (TMDL) and corresponding wasteload allocation has been completed for a waterbody or a segment of a waterbody;

h. A review of the facility shows that it is subject to the State of Alaska's anti-degradation policy; or

i. There are other federal or State legislation, rules or regulations pertaining to a site directly or indirectly related to water quality.

2. The Regional Administrator may deny coverage under this permit in the following circumstances:

a. A land management agency with jurisdiction over affected portions of the receiving water, bed or affected uplands submits a request that general permit coverage be denied to EPA within thirty (30) days of the agency's receipt of an NOI; and,

b. The land management agency's request includes proposed additional or revised permit terms which the requesting agency believes—based upon evidence attached to or cited in the request—are necessary to protect the natural values of the affected location; and,

c. The land management agency's request concerns a person who either;

i. Seeks to discharge into U.S. waters located in National Recreation Areas, or in State Refuges, Preserves, Sanctuaries, Recreation Areas, Parks, or Critical Habitat Areas; or,

ii. Is in significant noncompliance with the terms and conditions of the most recent applicable NPDES permit; or,

iii. Intends to discharge into waters designated as impaired or polluted under the Clean Water Act.

Any person denied coverage under this part must apply for and obtain coverage under either (1) an individual permit, or (2) another applicable watershed-specific general permit. Upon receipt of any such application, EPA will determine whether the permit terms requested by the land management agency should be included in the applicable permit.

3. The Regional Administrator will notify the operator in writing by certified mail that a permit application is required. If an operator fails to submit, in a timely manner, an individual NPDES permit application as required, then any applicability of this general permit to the individual NPDES Permittee is automatically terminated at the end of the day specified for application submittal.

4. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2C or 2D) with reasons supporting the request to the Regional Administrator.

5. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit.

6. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, the Permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Regional Administrator. A new facility can receive coverage under this general permit by submitting an NOI. See Permit Part I.A.3. for details.

7. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

F. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit an NOI to be covered by this permit. The information required for a complete NOI is in Appendix A of this permit. Notification must be made:

a. 90 days prior to discharge from a new facility; or

b. 90 days prior to the expiration of an existing individual permit, or

c. 90 days prior to discharge for any other facilities.

Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

2. Facilities covered under this permit that discharge to National Park System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act that wish to retain coverage under the general permit until the effective date of a new permit shall submit an application for an individual permit (EPA Application Form 2c) no later than January 1, 1999.

3. An Alaska Placer Mine Application (APMA) will be accepted as an NOI if all the required information is included.

4. The NOI shall be signed by the owner or other signatory authority in accordance with Permit Part VI.H. (Signatory Requirements), and a copy shall be retained on site in accordance with Permit Part IV.F. (Retention of Records). The address for NOI submission to EPA is: United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101.

5. A copy of the NOI must also be sent to the Alaska Department of Environmental Conservation (ADEC). The address is: Alaska Department of Environmental Conservation, 610 University Avenue, Fairbanks, Alaska 99709.

6. Permittees who do not use the APMA procedure for filing their NOI with Alaska Department of Natural Resources shall send a copy of the NOI to

a. The Federal, State, or local agency that manages or owns the land in which

the mine is located or proposed to be located the addresses are:

Anchorage Area
U.S. Department of Interior, Bureau of Land Management, 222 West 7th Avenue, #13, Anchorage, AK 99513–7599
U.S. Department of Interior, Fish and Wildlife Service, 1011 E Tudor Rd., Anchorage, AK 99503
U.S. Department of Interior, National Park Service, 605 West 4th Avenue, Suite 104, Anchorage, AK 99501

Fairbanks Area
State of Alaska, Department of Fish & Game, 1300 College Road, Fairbanks, AK 99701–1599
U.S. Department of Interior, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709
U.S. Department of Interior, Fish and Wildlife Service, 101 12th Avenue, Box 19, Fairbanks, AK 99701
U.S. Department of Interior, National Park Service, 250 Cushman, Suite 1A, Fairbanks, AK 99701

Glennallen Area
U.S. Department of Interior, Bureau of Land Management, P.O. Box 147, Glennallen, AK 99588
U.S. Department of Interior, National Park Service, Wrangell St. Alias, P.O. Box 439, Copper Center, AK 99573

Juneau Area
U.S. Department of Interior, Fish and Wildlife Service, 3000 Vintage Blvd, Suite 201, Juneau, AK 99801
U.S. Department of Interior, National Park Service, P.O. Box 21089, Juneau, AK 99802–1089

Nome Area
U.S. Department of Interior, Bureau of Land Management, P.O. Box 925, Nome, AK 99762
U.S. Department of Interior, National Park Service, P.O. Box 220, Nome, AK 99762

Tok Area
U.S. Department of Interior, Bureau of Land Management, P.O. Box 309, Tok, AK 99780

b. The regional office of the Alaska Department of Fish & Game (ADFG) nearest the location of the dredge. The addresses are:

Anchorage Area
333 Raspberry Road, Anchorage, AK 99518

Glennallen Area
P.O. Box 47, Glennallen, AK 99588–0047

Juneau Area
P.O. Box 25526, Juneau, AK 99802–5526

Nome Area
Pouch 1148, Nome, AK 99762

Tok Area
P.O. Box 779, Tok, AK 99780

7. A copy of the general permit will be sent to the Permittee when it is determined that the facility can be granted coverage under this general permit. If it is determined that coverage cannot be granted under this permit, the applicant will be informed of this in writing.

G. Permit Expiration

1. This permit will expire on June 30, 1999. Except as provided in paragraph F.2., for facilities submitting a new NOI 90 days prior to expiration of this general permit, the conditions of the expired permit continue in force until the effective date of a new permit.

2. When a permittee has made timely and sufficient application for a permit with reference to an activity of a continuing nature does not expire until the application has been finally determined by EPA.

II. Effluent Limitations and Monitoring Requirements

A. Effluent Limitations

1. At all points in the receiving stream 500 feet downstream of the dredge's discharge point, the maximum allowable increase in turbidity over the natural receiving stream turbidity while operating is 5 NTUs.

2. A visual increase in turbidity (any cloudiness or muddiness) 500 feet downstream of the suction dredge during operations is considered a violation of this permit.

3. If noticeable turbidity does occur 500 feet downstream of the work site, operation of the suction dredge must decrease or cease so that a violation as defined above does not exist.

B. Monitoring Requirements

1. Suction dredge operations shall visually monitor for turbidity as described in Permit Part II.A. once per day of operation, in the following manner: Operators shall mark the point 500 feet downstream of the point of discharge from the suction dredge. With this 500 foot point marked, individuals who conduct visual monitoring shall observe the turbidity plume, where visible, immediately downstream until they reach either the point at which the turbidity plume is no longer visible, or the 500 foot mark, which ever point comes first. Monitors shall record daily all turbidity monitoring results. The Permittee shall maintain records of all information resulting from any visual inspections.

2. The Permittee will report the period of suction dredging on the DMR. Visual violation occurrences will also be reported on the DMR along with the measures taken to comply with the provisions of Permit Part II.A.3.

III. Management Practices

A. Dredging is permitted only within the active stream channel. Dredging within the active stream channel which results in undercutting or excavating, or which otherwise results in erosion of a stream bank, is prohibited.

B. Dredging and discharging are prohibited within 500 feet of locations where fish are spawning or where fish eggs or alevins are known to exist at the time dredging occurs. Each Permittee shall consult the regional office of the Alaska Department of Fish and Game (ADFG) for the region in which the Permittee proposes to operate a dredge in order to obtain the information necessary to comply with this BMP. Each Permittee shall report the information obtained from ADFG, and the name and title of the official contacted, to EPA concurrently with the NOI.

C. Winches or other motorized equipment shall not be used to move boulders, logs, or other natural instream obstructions.

D. No wheeled or tracked equipment may be used instream.

E. Suction dredges shall not operate within 800 feet of:

1. Another dredging operation occurring simultaneously or,

2. A location where it is apparent that another operation has taken place.

F. Dredging of concentrated silt and clay is prohibited.

G. Care shall be taken by the operator during refueling of the dredge to prevent spillage into public waters or to groundwater.

IV. Monitoring and Reporting Requirements

A. Representative Sampling

All samples for monitoring purposes shall be representative of the monitored activity, 40 CFR 122.41 (j).

B. Reporting of Monitoring Results

Monitoring results shall be summarized each month and reported on EPA Form 3320–1 (DMR, OMB #2040–0004, expiration date 5/31/98). The DMR shall be submitted to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Enforcement Section WD–135, Seattle, Washington 98101–3188, no later than November 30 each year. If there is no mining activity during the year or no wastewater discharge to a receiving stream, the Permittee shall notify EPA of

these facts no later than November 30 of each year.

The DMR shall also be sent to the ADEC office located in Fairbanks. The address can be found in permit part I.E.4.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by the Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

F. Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of DMRs, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Notice of Noncompliance Reporting

1. Any noncompliance which may endanger health or the environment shall be reported as soon as the Permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the Permittee becomes aware of the occurrence.

2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the Permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Permit Part V.G., Bypass of Treatment Facilities.); or

b. Any upset which exceeds any effluent limitation in the permit (See Permit Part V.H., Upset Conditions.).

c. Any violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the Permit to be reported within 24 hours.

3. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected;

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;

4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Enforcement Section in Seattle, Washington, by phone, (206) 553–1213.

5. Reports shall be submitted to the addresses in Permit Part IV.B., Reporting of Monitoring Results.

H. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Permit Part IV.G. above shall be reported at the time that monitoring reports for Permit Part IV.B. are submitted. The reports shall contain the information listed in Permit Part IV.G.3.

V. Compliance Responsibilities

A. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The Permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Permit Part V.G., Bypass of Treatment Facilities and Permit Part V.H., Upset Conditions, nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewater's shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Permit Part IV.G., Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director or ADEC may take enforcement action against a Permittee for a bypass, unless:

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The Permittee submitted notices as required under paragraph 2 of this section.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. An administrative review of a claim that noncompliance was caused by an upset does not represent final administrative action for any specific event. A determination is not final until formal administrative action is taken for the specific violation(s).

2. Conditions necessary for a demonstration of upset. A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under Permit Part IV.G., Notice of Noncompliance Reporting; and

d. The Permittee complied with any remedial measures required under Permit Part V.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Changes in Discharge of Toxic Substances

Notification shall be provided to the Director and ADEC as soon as the Permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part VI.A.1.

3. The alteration or addition will significantly change the location, nature or volume of discharge or the quantity of pollutants, subject to the effluent limitations, discharged.

C. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The NOI should be submitted at least 90 days before the expiration date of this permit.

F. Duty to Provide Information

The Permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

G. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.

H. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.H.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

N. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

O. Inspection and Entry

The Permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

P. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

VII. Definitions

A. ''Active Stream Channel'' means that part of the channel that is below the level of the water. Unvegetated gravel bars are considered part of the active stream channel.

B. ''Bypass'' means the intentional diversion of waste streams around any portion of a treatment facility.

C. ''Expanding Facility'' means any facility increasing in size such as to affect the discharge but operating within the permit area covered by its general permit.

D. A ''Grab'' sample is a single sample or measurement taken at a specific time.

E. ''Mining Season'' means the time between the start of mining in a calendar year and when mining has ceased for that same calendar year.''

F. ''New Facility'' means a facility that has not operated in the area specified in the NOI prior to the submission of the NOI.

G. ''Receiving Water'' means waters such as lakes, rivers, streams, creeks, or any other surface waters which receive wastewater discharges.

H. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

I. ''Silt and Clay'' are soil particles having a diameter of less than 0.002 mm (2 microns).

J. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Alaskan Small Suction Dredge Placer Miners

[General Permit No.: AKG–37–5000]

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, Public Law 100–4, the ''Act'', owners and operators of facilities engaged in the processing of placer gold are authorized to discharge to waters of the United States, in accordance with effluent limitation, monitoring requirements, and other conditions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE WHERE DISCHARGES OCCUR.

This permit as shall become effective on April 7, 1997.

This permit and the authorization to discharge shall expire on April 9, 2002.

Signed this 18th day of November, 1996.

Philip G. Millam,

Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

I. Coverage Under This Permit

A. Coverage and Eligibility

Upon the submittal of a Notice of Intent (NOI) to Alaska Department of Fish and Game to gain coverage under this permit, facilities which meet the criteria for coverage under Part I of this permit will be granted coverage.

B. Authorized Placer Mining Operations

This permit authorizes placer mining by suction dredges with intake nozzles less than or equal to 4 inches. Hose size shall not be greater than 2 inches larger than the nozzle size. If a constrictor ring is used, nozzle size may be determined based on the size of the constrictor ring, provided that the ring is of solid, one-piece construction with no openings other than the intake and openings not greater than one inch between the constricting ring and nozzle, and that the ring is welded or otherwise permanently attached over the end of the intake nozzle.

C. Additional Requirements

Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as Conservation System Units (CSUs) by the federal government. Permittees should contact the district offices of the federal agencies that administer the designated area for additional restrictions that may apply to operating within the area.

D. Prohibitions

1. This general permit does not apply to facilities located or proposed to be located in National Parks System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act.

2. This permit does not apply to wetlands designated in the 1995 Anchorage Wetlands Management Plan.

E. Permit Expiration

This permit will expire on April 9, 2002. For facilities submitting a new NOI 90 days prior to expiration of this general permit, the conditions of the expired permit continue in force until the effective date of a new permit.

II. Management Practices

A. Streambanks shall not be mined or otherwise disturbed. Dredging is permitted within only the existing wetted perimeter (waterline) in the active stream channel. This provision does not apply to suction dredges operating within mine cuts located above the ordinary high water line or disconnected ponds and meander cutoffs.

B. Dredging and discharging are prohibited in locations where fish are spawning or where fish eggs or alevins are known to exist at the time dredging occurs. Each Permittee shall consult the regional office of the Alaska Department of Fish & Game (ADFG) for the region in which the Permittee proposes to operate a dredge in order to obtain the

information necessary to comply with this BMP.

C. Winches or other motorized equipment shall not be used to move boulders, logs, or other natural instream obstructions.

D. No wheeled or tracked equipment may be used instream.

E. No damming or diversions are authorized.

F. Dredging of concentrated silt and clay should be avoided. The permittee shall use reasonable care to avoid dredging silt and clay materials that would result in a significant increase in turbidity. Reasonable care includes moving the dredge to a new location, or reducing the volume of effluent discharged by limiting the operating speed of the suction dredge.

III. Compliance Responsibilities

A. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The Permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

IV. General Requirements

A. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

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1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

3. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

L. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

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A. ''Active Stream Channel'' means that part of the channel that is below the level of the water. Unvegetated gravel bars are considered part of the active stream channel.

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ADP/telecommunications Federal Supply Schedules; comments due by 12-9-96; published 10-8-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling--
Saccharin and its salts; retail establishment notice; regulation removed; comments due by 12-11-96; published 9-27-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Public Health Service
Organ Procurement and Transplantation Network; operation framework and Federal oversight provisions:
Human livers allocation policies; comments due by 12-13-96; published 11-13-96
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal regulatory reform:
HUD and HUD-assisted programs; displacement, relocation assistance, and real property acquisition; streamlining; comments due by 12-10-96; published 10-11-96
Low income housing:
HOPE for homeownership of single family homes program (HOPE 3); comments due by 12-9-96; published 10-10-96
JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Port Passenger Accelerated Service System (PORTPASS) Program; dedicated commuter lane (DCL) system costs fee; comments due by 12-10-96; published 10-11-96
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):