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WASHINGTON, DC

WHEN: April 15, 1997 at 9:00 am

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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Thursday, March 20, 1997

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 414 and 457

General Crop Insurance Regulations; Forage Seeding Crop Insurance Regulations and Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of forage seeding. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current forage seeding crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current forage seeding crop regulations to the 1997 and prior crop years.

DATES: Effective: March 20, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require 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 No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Wednesday, January 15, 1997, FCIC published a notice of proposed rule making, in the Federal Register at 62 FR 2055–2059 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.151, Forage Seeding Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring forage seeding

found at 7 CFR part 414 (Forage Seeding Crop Insurance Regulations). FCIC also amends 7 CFR part 414 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 414.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 17 comments were received from the crop insurance industry and FCIC. The comments received, and FCIC's response, are as follows:

Comment: The crop insurance industry questioned the definition of ''FSA.'' They stated that with the passage of the Freedom to Farm Act, references to FSA or FSA Farm Serial Numbers or reliance on either in the crop insurance policies becomes questionable. They suggested that any reliance on FSA information, structure or data be eliminated from the policy given the farm bill provisions.

Response: FSA is still a viable agency and acreage can still be divided by Farm Serial Number. Those producers who elect to maintain their Farm Serial Number units will still be able to obtain optional units by Farm Serial Numbers. FCIC sees no reason to change that unit structure. Therefore, no change has been made.

Comment: A representative of FCIC recommended changing the definition of ''Forage'' to allow insurance coverage for non-grass forage species other than alfalfa and red clover (*e.g.*, birdsfoot trefoil).

Response: FCIC agrees with the comment and has amended the definition to allow insurance coverage for other species listed in the Actuarial Table.

Comment: The crop insurance industry recommended adding the words ''and quality'' after the word ''quantity'' in the definition of ''Irrigated practice'' in section 1.

Response: Water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be included in the definition. Therefore, no change has been made.

Comment: The crop insurance industry recommended changing the definition of ''Replanting'' in section 1. The commenter indicated that the wording ''* * * replace the forage seed and then replacing the forage seed * * *'' is duplicative.

Response: FCIC disagrees that the language is duplicative. The provision is amended to clarify that both preparation of the land necessary to replace the seed and replacement of the seed must be accomplished to be considered replanted.

Comment: The crop insurance industry recommended changing the wording in section 2(a) to read, ''A separate (basic) unit, as defined in section 1 (Definitions) of the Basic Provisions, will be established for spring and fall planted acreage.''

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comment: The crop insurance industry recommended that the states in section 5 ''Cancellation and Termination Dates'' be in alphabetical order.

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comment: The crop insurance industry recommended that the spring seeded forage acreage reporting date, premium billing date, and termination dates should be changed to allow the crop insurance industry more time to process their documents within compliance of their contract.

Response: This rule moves the termination dates from April 15 to March 15 for all states except Nevada, New Hampshire, New York, Pennsylvania and Vermont to coincide with the March 15 sales closing date that has been set in accordance with section 508(f)(2) of the Federal Crop Insurance Act. The acreage reporting and premium billing dates are not contained in this rule. However, FCIC has determined that the insurance provider has sufficient time to process the documents and comply with all provisions of the reinsurance agreement. Therefore, no change has been made.

Comment: The crop insurance industry stated that the provisions specify that the crop insured is ''forage seeding'', but the term is not included in the definitions. Either ''forage seeding'' should be defined, or the provisions should refer to ''all the forage seeded in the county''.

Response: FCIC agrees that use of the term ''forage seeding'' is confusing. The provisions have been amended to remove the word ''seeding'' since the provisions require the forage to be planted during the current crop year.

Comment: The crop insurance industry recommended that section 6(b) ''Insured Crop'' should clarify that insurance coverage is provided for forage ''that is initially planted this crop year, or replanted the calendar year following planting'' to distinguish between forage seeding (first year) and forage production (subsequent years).

Response: FCIC has clarified that the forage must be planted during the current crop year.

Comment The crop insurance industry stated that the language contained in section 8(b), ''Harvest of the unit, unless a late harvest date is listed in the Special Provisions, or late harvest on the unit if a late harvest date is listed in the Special Provisions'' is confusing and should be clarified.

Response: FCIC agrees with the comment and has amended the provisions for clarification.

Comment: A representative of FCIC questioned why in section 10 ''Replanting payment'' that replant payments are only allowed for fall seeded forage in counties that have both fall and spring final planting dates. The commenter stated that the policy should be changed to allow replant payments for damage that also occurs in the spring.

Response: When FCIC started the forage seeding program, the policy was written for fall forage producers. It was determined that spring forage seeding producers would not replant the forage until the following spring. However, FCIC agrees that, with the expansion of spring planted forage in the country, a spring replanting payment should be studied for future implementation. However, no change has been made in this rule.

Comment: The crop insurance industry recommended changing the wording in section 12(a)(3) that provides for a 10 percent deductible. The commenter questioned if it would be better to provide for a minimum qualifier rather than a deductible.

Response: FCIC disagrees with comment. The 10 percent deductible recognizes that when forage is seeded, it is expected 10 percent of the new seed will not mature and produce a crop. Therefore, no change has been made.

Comment: The crop insurance industry recommended that the requirement contained in section 13(d) for a written agreement to be renewed each year be removed. The commenters said that terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow written agreement to be continuous.

Response: FCIC disagrees with the comments. Written agreements by design are temporary and intended to address unusual situations. If the conditions for which a written agreement is needed continue year to year, they should be incorporated into the policy or Special Provisions. Therefore, no change has been made.

Good cause is shown to make this rule effective upon publication in the Federal Register. This rule improves the forage seeding insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date for the 1998 crop year for forage seeding is April 30, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects 7 CFR Parts 414 and 457

Crop insurance, Forage seeding, Forage seeding crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 414 and 457 effective for the 1998 and succeeding crop years, as follows:

PART 414—FORAGE SEEDING CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 414 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The subpart heading preceding § 414.1 is revised to read as follows:

Subpart—Regulations for the 1981 Through 1997 Crop Years

3. Section 414.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 414.7 The application and policy.

* * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Forage Seeding Insurance Policy for the 1984 through 1997 crop years are as follows:

* * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: U.S.C. 1506(1), 1506(p).

5. Section 457.151 is added to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Forage seeding crop provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Crop year—The period within which the planting is or normally would become established and shall be designated by the calendar year in which the planting is made for spring planted acreage and the next succeeding calendar year for fall planted acreage.

Days—Calendar days.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Fall planted—A forage crop seeded after June 30.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full amount of insurance.

Forage—Planted perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, or other species, as shown in the actuarial table.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce a normal stand, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Severance of the forage plant from the land with the intention of using it as livestock feed. Grazing will not be considered harvested.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated acreage planted to the insured crop.

Normal stand—A population of live plants per square foot that meets the minimum required number of plants as shown in the Special Provisions.

Nurse Crop (companion crop)—A crop seeded into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date, unless replanting is generally occurring in the area.

Replanting—Performing the cultural practices necessary to prepare the land for replacing of the forage seed and then replacing the forage seed in the insured acreage with the expectation of producing a normal stand. Replacing new seed into an existing damaged stand, which results in a reduced seeding rate from the original seeding rate, will not be considered replanting.

Spring planted—A forage crop seeded before July 1.

Written agreement—A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division

(a) In addition to the provisions of section 1 (Definitions) of the Basic Provisions (§ 457.8) (basic unit), a separate basic unit will be established for spring and fall planted acreage.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units will that have been combined be refunded to you.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(2) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigated system can deliver the quantity of water needed to produce a normal stand.

3. Amounts of Insurance

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may only select one coverage level and the corresponding amount of insurance designated in the Actuarial Table for the applicable type and practice for all the forage seeding in the county that is insured under this policy. The amount of insurance you choose for each type and practice must have the same percentage relationship to the maximum amount of insurance offered by us for each type and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific type and practice, you must also choose 100 percent of the maximum amount of insurance for all other types and practices.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to forage seeding.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and April 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and County	Cancellation and termination dates
Nevada, New Hampshire, New York, Pennsylvania, Vermont.	July 31.
All other states	March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the forage in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted during the current crop year, or replanted the calendar year following planting, to establish a normal stand of forage intended for harvest as livestock feed;

(c) That is not grown with the intent to be grazed, or not grazed at any time during the insurance period; and

(d) That is not interplanted with another crop, except nurse crops, unless allowed by the Special Provisions or by written agreement.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than a normal stand, must be replanted unless we agree that it is not practical to replant.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8) regarding when insurance ends, forage seeding insurance will end at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) The initial harvest of the unit, if a late harvest date is not listed in the Special Provisions;

(c) The first harvest after the late harvest date, if a late harvest date is specified in the Special Provisions. You may harvest the crop as often as practical in accordance with good farming practices on or before the late harvest date.

(d) Final adjustment of a loss on a unit;

(e) Abandonment of the insured crop;

(f) The date grazing commences on the insured crop; or

(g) May 21 of the calendar year following seeding for spring-planted forage; or October 15 of the calendar year following seeding for fall-planted forage.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes that result in loss of, or failure to establish, a stand of forage that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

10. Replanting Payment.

In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8):

(a) A replanting payment is allowed only in counties for which the Special Provisions designate both fall and spring final planting dates if:

(1) The insured fall planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent of a normal stand remains;

(2) It is practical to replant;

(3) We give written consent to replant; and

(4) Such acreage is replanted the following spring by the spring final planting date.

(b) The amount of the replanting payment will be equal to 50 percent of the amount of the liability determined in accordance with section 12(a).

(c) No replanting payment will be made on acreage for which one replanting payment has been allowed.

(d) If the information reported by you on the acreage report results in a lower premium than the actual premium determined to be due based on the acreage, share, practice, or type determined actually to have existed, the replanting payment will be reduced proportionately.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after tilling of the balance of the unit is completed.

(b) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us written notice if, during the period before destroying the crop on any fall planted acreage that is damaged, you decide to replant the acreage by the spring final planting date.

12. Settlement of Claim

(a) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage of each type and practice by the amount of insurance for the applicable type and practice;

(2) Totaling the results in section 12(a)(1);

(3) Multiplying the total of the acres with an established stand plus 10 percent of the planted acres for the insured acreage of each

type and practice in the unit by the amount of insurance for the applicable type and practice;

(4) Totaling the results in section 12(a)(3);

(5) Subtracting the result in section 12(a)(4) from the result in section 12(a)(2); and

(6) Multiplying the result in section 12(a)(5) by your share.

(b) The acres with an established stand will include:

(1) Acreage that has at least 75 percent of a normal stand;

(2) Acreage abandoned or put to another use without our prior written consent;

(3) Acreage damaged solely by an uninsured cause; or

(4) Acreage that is harvested and not reseeded.

(c) The amount of indemnity on any spring planted acreage determined in accordance with section 12(a) will be reduced 50 percent if the stand is less than 75 percent but more than 55 percent of a normal stand.

13. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, practice, premium rate, and amount of insurance;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on March 14, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–7012 Filed 3–19–97; 8:45 am]

BILLING CODE 3410–FA–P

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 96–092–2]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Oklahoma from a modified accredited State to an accredited-free State. We have determined that Oklahoma meets the criteria for designation as an accredited-free state.

EFFECTIVE DATE: The interim rule was effective on December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the Federal Register on December 26, 1996 (61 FR 67928–67929, Docket No. 96–092–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing Oklahoma from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before February 24, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 61 FR 67928–67929 on December 26, 1996.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 14th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–7014 Filed 3–19–97; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 102 and 104

[Docket No. 96–055–2]

Viruses, Serums, Toxins, and Analogous Products; Biologics Establishment Licenses and Biological Product Licenses and Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding veterinary biological products to remove the examples of the Animal and Plant Health Inspection Service (APHIS) forms for U.S. Veterinary Biologics Establishment Licenses and U.S. Veterinary Biological Product Licenses and Permits. This action resulted from a review of APHIS regulations in response to the President's Regulatory Reform Initiative. The amendments have the effect of removing unnecessary material from the regulations. The APHIS forms for product licenses and permits will still be used and provided by the agency—only the examples are removed from the regulations.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Director, Licensing and Policy Development, Center for Veterinary Biologics, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) conducted a review of the regulations under 9 CFR 101–118 pertaining to veterinary biologics initiated under the President's Regulatory Reform Initiative to remove unnecessary material from the regulations. As part of this initiative, on August 22, 1996, we published in the Federal Register (61 FR 43316–43317, Docket No. 96–055–1) a proposal to amend the regulations regarding veterinary biological products by removing the examples of APHIS forms for U.S. Veterinary Biologics Establishment Licenses and U.S. Veterinary Biological Product Licenses and Permits. We stated that the APHIS forms for establishment and product

licenses and permits would still be used and provided by the agency—only the examples would be removed from the regulations. It is not necessary to include examples of the APHIS forms in the regulations.

We solicited comments concerning our proposal for 45 days ending October 7, 1996. We did not receive any comments by that date.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule is a nonsubstantive change related to agency management and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866.

This rule removes unnecessary material from the regulations. The APHIS forms for a U.S. Veterinary Biologics Establishment License and U.S. Veterinary Biological Product License and Permit will still be used. Only the examples of the forms are removed from the regulations. This amendment will not have any adverse economic effect on producers as the APHIS forms are produced by the agency and provided to all qualifying license and permit applicants.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic

Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 7 CFR part 3015, subpart V).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 104

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 102 and 104 are amended as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 102.4, paragraph (c) is revised to read as follows:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(c) U.S. Veterinary Biologics Establishment Licenses shall be numbered.

* * * * * *

§ 102.5 [Amended]

3. In § 102.5, paragraph (c) is removed and paragraphs (d), (e), and (f) are redesignated as paragraphs (c), (d), and (e).

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

4. The authority citation for part 104 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

5. In § 104.7, paragraph (a) is revised to read as follows:

§ 104.7 Product permit.

(a) A permit shall be numbered and dated.

* * * * *

Done in Washington, DC, this 14th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–7013 Filed 3–19–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0940]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation O, which implements section 22(h) of the Federal Reserve Act and limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates. Under the final rule, Regulation O will not apply to extensions of credit by a bank to an executive officer or director of an affiliate, provided that the executive officer or director is not engaged in major policymaking functions of the bank and the affiliate does not account for more than 10 percent of the consolidated assets of the bank's parent holding company. Extensions of credit to executive officers of an affiliate that accounts for more than 10 percent of the consolidated assets of the bank's parent holding company are covered by Regulation O as a result of the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Introduction

Section 22(h) of the Federal Reserve Act restricts insider lending by banks, and Regulation O implements section 22(h). 12 U.S.C. 375b; 12 CFR Part 215. Regulation O limits total loans to any one insider and aggregate loans to all insiders to a percentage of the bank's capital and requires that such loans be on non-preferential terms—that is, on the same terms a person not affiliated with the bank would receive.[1] 12 CFR 215.4(a), (c), and (d). For this purpose, an ''insider'' means an executive officer,

[1] Regulation O also requires prior approval of the bank's board of directors for certain loans to insiders and prohibits certain overdrafts by executive officers and directors. 12 CFR 215.4(b) and (e).

director, or principal shareholder, and loans to an insider include loans to any ''related interest'' of the insider, including any company controlled by the insider. 12 CFR 215.2(h). Regulation O requires banks to maintain records to document compliance with all its restrictions. 12 CFR 215.8.

The Board in 1980 generally exempted executive officers of affiliates from the restrictions of Regulation O so long as they did not participate in major policymaking functions of a bank. The Board did not exempt directors of affiliates because it lacked authority to do so. On May 3, 1996, the Board proposed amendments to Regulation O to conform its exemptions for executive officers and directors of affiliates of banks to the requirements of section 22(h), as amended by the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), which had modified the authority of the Board to maintain such exemptions.[2] 61 FR 19683. On September 30, 1996, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[3] Congress amended section 22(h) to modify further the Board's exemptive authority over affiliate insiders. In view of the changes in the Board's authority and the comments received from the public concerning the Board's original proposal, the Board on November 8, 1996, sought comment on a new proposal to exempt certain insiders of affiliates from Regulation O. 61 FR 57797.

After considering the comments received on the notice, the Board has decided not to apply Regulation O to extensions of credit by a bank to an executive officer or director of a bank affiliate, provided that: (1) the executive officer or director is not engaged in major policymaking functions of the bank; and (2) the affiliate does not account for more than 10 percent of the consolidated assets of the bank's parent holding company. All commenters supported the Board's new proposal, except one commenter who complained that executive officers of certain larger affiliates of a bank who previously could be exempted from Regulation O no longer would be eligible to be exempted.

Background

Section 22(h) restricts lending not only to insiders of the bank that is making the loan but also to insiders of the bank's parent bank holding company and any other subsidiary of that bank holding company.[4] Prior to FDICIA, the Board's rules exempted from all the provisions of Regulation O a bank's loans to an executive officer of any of its affiliates (other than the parent bank holding company), provided that the executive officer did not participate in major policymaking functions at the bank.[5] 12 CFR 215.2(d) (1992). The Board considered this treatment appropriate for two reasons. First, such persons generally were not considered to be in a position to exert sufficient leverage on the lending bank to obtain a loan on anything but arms-length terms, in contrast to executive officers of the lending bank itself or its parent. Thus, the Board considered the benefits of restricting loans to these affiliate insiders, in terms of protecting the safety and soundness of bank, to be small. Second, applying these restrictions to executive officers of affiliates would have required each bank to maintain an updated list of all its affiliates' executive officers and all related interests of those executive officers, and to check all loans against the list. Particularly for a bank in a multi-subsidiary bank holding company, this effort would have constituted a significant burden not outweighed by any substantial benefit.

However, after the FDICIA amendment, the language of the statute no longer appeared to allow such an exception for executive officers of affiliates. Under the amendment, executive officers of affiliates were explicitly treated like executive officers of the bank itself. Still, nothing in the legislative history of FDICIA indicated that Congress intended to invalidate the Board's regulatory exception and extend coverage to all executive officers of affiliates.

In the Riegle Act, Congress addressed this issue by amending section 22(h)(8) again. The Riegle Act authorized the Board to make exceptions for executive officers and directors of affiliates, provided that the executive officer or director did not have the authority to participate, and did not participate, in major policymaking functions of the lending bank. The Act, however, did not authorize the Board to include any exception from section 22(h)(2), which prohibits lending on preferential terms.[6] Although the legislative history of the provision indicates that it was intended to allow the Board to maintain its existing exception for executive officers, its language did not allow the Board to do so.[7]

The Board suggested and supported an amendment to section 22(h) to make its language consistent with its apparent intent, and EGRPRA resolved the situation by dropping the requirement in section 22(h)(8) that the Board's exceptions not include the preferential lending provision. EGRPRA therefore restored the ability of the Board prior to FDICIA to exempt executive officers of a bank's affiliates from all the provisions of section 22(h), and granted the Board the authority to make the same exception for directors of a bank's affiliates as well.

Congress further revised section 22(h)(8) in EGRPRA, however, to introduce an additional restriction on the Board's exemptive authority. Under section 22(h), as amended, the Board may not grant an exception to an executive officer or director of an affiliate that constitutes more than 10 percent of the consolidated assets of the highest-tier holding company controlling the affiliate and the bank making the loan.

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[2] Pub. L. 103–325, section 334 (1994).

[3] Pub. L. 104–208, section 2211 (1996).

[4] As amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), section 22(h)(8) provides that ''any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.'' 12 U.S.C. 375b(8)(A).

[5] Subsection (h) of section 22 was added in 1978. Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, section 104. At that time, subsection (h) was ambiguous about whether an executive officer of a bank's affiliate was required to be treated like an executive officer of the bank itself. The statute provided that an ''officer'' of a bank included officers of affiliates, but did not similarly address ''executive officers.'' The statute's restrictions on lending by a bank to ''executive officers'' of the bank therefore did not clearly apply to ''executive officers'' of affiliates. No such ambiguity existed with respect to directors and principal shareholders of affiliates, who were explicitly treated like their counterparts at the lending bank. In 1980, the Board amended Regulation O to cover insiders of affiliates, but included a regulatory exception for executive officers of affiliates who did not participate in major policymaking functions at the bank.

[6] The provision extending the statute to executive officers and directors of affiliates was moved to a new paragraph (8)(A), and the authority of the Board to make exceptions was placed in a new paragraph (8)(B), which reads as follows:

The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank. 12 U.S.C. 375b(8)(B). ''Paragraph (2)'' is the prohibition against lending on preferential terms.

[7] The Conference Report stated, ''It is not the intent of the Conferees to affect the exemptions that the Federal Reserve Board has already extended to executive officers, but rather to allow the Board the authority to provide appropriate treatment for directors.'' House Report 103–652, 103d Cong., 2d Sess. at 180 (1994).

Accordingly, the Board proposed an amendment to Regulation O that would eliminate its restrictions on a bank's lending to executive officers and directors of an affiliate who are not involved in major policymaking functions of the lending bank, if the assets of the affiliate did not exceed 10 percent of the consolidated assets of a company that controlled the member bank and such subsidiary and was not controlled by any other company.[8] As the Board stated in its proposal, the Board believes, for the same reasons that it originally exempted executive officers of affiliates, that retaining the executive officer exemption and expanding it to cover directors would relieve regulatory burden on bank holding companies without increasing the risk of excessive or preferential lending or resultant safety and soundness problems.

The proposal also reflected a simplified procedure for excluding executive officers of affiliates that was adopted by the Board in a final rule effective the same date as the supplemental notice, and extended the procedure to directors. 61 FR 57769. The procedure allows the board of directors of a bank to exclude affiliate insiders without requiring any action by the affiliate board of directors. The Board adopted the simplified procedures because the lending bank and its board of directors have full and formal control over who participates in the bank's policymaking. For the same reasons, the Board stated in the proposal that it believed that simplifying the requirements to exempt a director of an affiliate would relieve regulatory burden without increasing the risk of evasion of Regulation O.

The Board received 44 comments on its original rulemaking proposal. Forty-one commenters supported the Board's proposed amendments, including 17 commenters who supported the Board's amendments without qualification.[9] Several commenters asked the Board to expand its proposed amendments to provide additional relief from Regulation O. These proposals included extending the exception to include §§ 215.8, 215.10, and 215.11 of Regulation O, which impose various recordkeeping and disclosure requirements, and making the amendments effective retroactively to the effective date of the Riegle Act.[10]

The Board received 21 comments on its supplemental rulemaking, including comments from three banks, nine bank holding companies, six Federal Reserve Banks, and three trade associations. Twenty commenters supported the Board's revised amendments, including 14 commenters who supported the revised amendments without qualification. The other commenters in favor sought clarification concerning the measurement of consolidated assets, suggested further changes to Regulation O concerning persons to be treated as executive officers subject to its lending restrictions and the manner of exempting them, proposed technical changes in the text of the amendment, or requested the Board to seek further amendments of section 22(h) by Congress. One commenter opposed the revised amendments because executive officers of certain larger affiliates of a lending bank who previously could be exempted from section 22(h) and Regulation O no longer can be exempted under EGRPRA.

The Board has carefully considered the comments received, and has decided to adopt the amendment substantially as proposed.

With respect to the comments received on the original rulemaking, the Board believes that no action is required to make the exceptions effective with respect to § 215.10, concerning the reporting of loans to executive officers of member banks in a bank's quarterly report of condition pursuant to 12 U.S.C. 1817(a)(3), and § 215.11, concerning public disclosure of extensions of credit to executive officers and principal shareholders of member banks pursuant to 12 U.S.C. 1817(k). Sections 215.10 and 215.11 do not apply to executive officers of affiliates in any case. Accordingly, no action is necessary to exclude executive officers of affiliates who are covered by the exceptions. The Board also has determined that a retroactive effective date for this amendment is not appropriate.[11]

With respect to the comments received on the supplemental rulemaking, one commenter noted that EGRPRA did not address when or how often the assets of affiliates and the consolidated assets of the top-tier bank holding company should be measured in order to determine whether insiders of certain larger affiliates are ineligible to be exempted from the lending restrictions of Regulation O. The Board has decided that assets should be measured once per year, based on the average assets reported by the top-tier holding company and its banking and nonbanking subsidiaries during the four preceding calendar quarters or as determined in the examination process. This method of measurement should minimize fluctuations in asset size (as may occur, for example, as a result of seasonal loan demand) and simplify the collection of relevant data.[12]

Two commenters sought further simplification of the procedure to exclude insiders of an affiliate of a bank from the insider lending restrictions. The Board has amended the definitions of ''director'' and ''executive officer'' in Regulation O to clarify that insiders of an affiliate may be excluded by any form of resolution of the board of directors or bylaw of a bank that identifies the persons who are excluded.[13] Even under the amended

[8] The proposed amendment also would retain the current provision in Regulation O that excludes extensions of credit to exempt insiders of affiliates from the recordkeeping requirements of § 215.8 of Regulation O. The Board in its original proposal retained the recordkeeping requirement because the lending bank was required to identify loans to exempted insiders of affiliates and their related interests in order to ensure that such loans were not made on preferential terms. Under the proposed amendment, however, the Board's exemption would encompass all prohibitions under section 22(h), including the prohibition on preferential terms, and therefore make recordkeeping for loans to exempt borrowers unnecessary.

[9] Eleven commenters generally supported the amendments as originally proposed but complained that banks would continue to bear a significant recordkeeping burden to ensure that loans to affiliate insiders were not made on preferential terms. The three commenters who opposed the original proposal also objected on the basis of the recordkeeping burden. As discussed above, the recordkeeping requirement for loans to exempted insiders of affiliates has been eliminated.

[10] One commenter also suggested that the requirement for a board of directors resolution to exempt insiders of a bank's affiliates be dropped entirely. This comment was addressed in the Board's notice of final rulemaking dated November 8, 1996. 61 FR 57770.

[11] Executive officers of affiliates of a lending bank that account for more than 10 percent of the consolidated assets of the lending bank's top-tier bank holding company previously could be exempted from section 22(h) and Regulation O, but they no longer can be exempted under EGRPRA, effective September 30, 1996. The statute makes no provision for the grandfathering of nonconforming loans that were outstanding when the law became effective. The Board's practice concerning loans that are outstanding at the time a borrower becomes an insider has been not to require that such loans be brought into conformity until such loans are renewed, revised, or extended, which events are deemed to be a new extension of credit subsequent to the date the borrower became an insider. The dollar amount of nonconforming loans, however, is counted toward the individual insider and aggregate insider lending limits whenever any additional extensions of credit subject to these limits are considered. *See* 12 CFR 215.4(c) and (d).

[12] When calculating the assets of any affiliate, all inter-affiliate liabilities should be excluded, in the same manner as such liabilities are excluded when calculating the consolidated assets of the top-tier bank holding company.

[13] *See* 12 CFR 215.2(d) and (e). A bank may exclude an insider of an affiliate by using an affirmative resolution or bylaw that lists, by name or by title, persons authorized to participate in major policymaking functions of the bank and does not include the affiliate insider. A resolution or bylaw that stated, ''A, B, and C are the only persons authorized to participate as executive officers in major policymaking functions of the bank'' would

procedures, however, a bank may not rely solely on its resolution or bylaw to identify all individuals subject to Regulation O, as some affiliate officers and directors who are excluded from policymaking at the bank by a bylaw or resolution may nevertheless remain subject to Regulation O because their employer controls the bank or controls more than 10 percent of the consolidated assets of the top-tier bank holding company. 12 CFR 215.2(d)(2)(ii) and (iii) and 215.2(e)(2)(ii) and (iii).[14]

Technical changes to the text of the amendment have been made to conform the amendment to other provisions of Regulation O and clarify the application of the percentage of assets test. A technical change also has been made to § 215.4(a)(2) to clarify the scope of the exception contained therein to the provisions of § 215.4(a)(1). This exception was added as part of the final rule effective November 8, 1996, implementing certain provisions of EGRPRA. 61 FR 52769.

Determination of Effective Date

Because the final rule adjusts a requirement on insured depository institutions, the final rule will become effective April 1, 1997, the first day of the calendar quarter after the date of the final rule's publication. *See* 12 U.S.C. 4802(b).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis when the agency publishes a final rule. Two of the requirements of a final regulatory flexibility analysis (5 U.S.C. 604(b))—a succinct statement of the need for, and the objectives of, the rule, and a summary of the issues raised by the public comments received, the agency assessment thereof, and any changes made in response thereto—are contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendment to Regulation O will not have a significant adverse economic impact on a substantial number of small entities. The amendment will reduce the regulatory burden for most banks by increasing the number of insiders of affiliates who may be excepted from the insider lending restrictions of Regulation O.

One aspect of the amendment may increase the regulatory burden on multi-subsidiary bank holding companies. Because EGRPRA no longer authorizes the Board to exempt extensions of credit to executive officers of affiliates holding more than 10 percent of the consolidated assets of the bank holding company, the Board's existing exemption, which covers such persons, is being amended to do so no longer. Although this action will increase the recordkeeping burden on some multi-subsidiary bank holding companies, the increase in burden is required by statute and outside the Board's discretion, will generally not be significant, and will not be focused on small entities, which are less likely to have multiple subsidiaries.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Board may not conduct or sponsor, and an organization is not required to respond to, the information collection required in the final rule unless the Board displays a currently valid OMB control number. The Board's OMB control number is 7100–0036.

This collection of information is authorized by section 22(h)(10) of the Federal Reserve Act (12 U.S.C. 375b(10)), and is mandatory under Regulation O. This information is used to evidence compliance with the requirements of section 22(h) of the Federal Reserve Act.

The respondents and recordkeepers are for-profit financial institutions, including small businesses. These parties must retain records concerning their insider lending for two years, and certain information in these records must be disclosed to the public upon request. Because these records are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act arises concerning this disclosure to the public.

The amendment is estimated to result in a 10 percent reduction in the annual hour burden of recordkeeping and disclosure associated with Regulation O for state member banks. The revisions affecting this burden are detailed in Section 215.2 of the final rule. The amendment will reduce the burden for most banks by increasing the number of insiders of affiliates who may be excepted from the insider lending restrictions of Regulation O. The burden may increase, however, for some multi-subsidiary bank holding companies. Comments on the burden are discussed in the Background section of this notice. The Board estimates there will be no cost burden in addition to the annual hour burden.

Some of the information collected by banks on extensions of credit to insiders of the bank and its affiliates is reported in the Consolidated Reports of Condition and Income (Call Report; FFIEC 031–034; OMB No. 7100–0036). Regulation O information is reported in the Call Report on Schedule RC-M, Memoranda, and Special Report on Loans to Executive Officers, and is available to the public upon request.

The Board has a continuing interest in the public's opinion of its information collection activities. At any time, comments regarding the burden estimate, or any other aspect of this information collection requirement, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0036), Washington, DC 20503.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board amends 12 CFR part 215, subpart A, as follows:

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be sufficient to exclude all other persons. A bank also may exclude an insider of an affiliate by using a negative resolution or bylaw that lists, by name or by title, persons not authorized to participate in such functions, and includes the affiliate insider. A resolution or bylaw that stated, ''No executive officer of X Bank or Y Company is authorized to participate in major policymaking functions of this bank unless that individual is directly employed by this bank as an executive officer,'' would be sufficient to exclude all executive officers of the identified affiliates. The identical procedures also may be used to exclude officers of a company or bank from being classified as executive officers of the company or bank. *See* 12 CFR 215.2(e)(1) and (3).

[14] Another commenter proposed that the Board permit a bank or company to identify its executive officers solely by reference to all members of a particular senior management committee of the bank or company, in order to avoid all presumptions that may arise from a person's title. The comment did not indicate, however, and the Board is not aware that such a procedure for identifying persons with major policymaking functions is so widespread or standardized that it would serve as a reliable substitute in general, at this time, for the traditional identification of persons with major policymaking functions by title. Accordingly, the Board has determined not to adopt this proposal at this time. This procedure may be suitable, however, in the particular circumstances of a given bank or company, and would be permissible under the terms of § 215.2(e)(2) as amended.

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b (9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

a. Paragraph (d) introductory text and paragraphs (d)(1) through (d)(3) are redesignated as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iii), respectively;

b. New paragraphs (d)(2) and (d)(3) are added;

c. Paragraph (e)(2) is revised; and

d. A new paragraph (e)(3) is added.

The additions and revisions read as follows:

§ 215.2 Definitions.

* * * * *

(d)(1) * * *

(2) Extensions of credit to a director of an affiliate of a bank are not subject to §§ 215.4, 215.6, and 215.8 if—

(i) The director of the affiliate is excluded, by resolution of the board of directors or by the bylaws of the bank, from participation in major policymaking functions of the bank, and the director does not actually participate in such functions;

(ii) The affiliate does not control the bank;

(iii) As determined annually, the assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that—

(A) Controls the bank; and

(B) Is not controlled by any other company; and

(iv) The director of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

(3) For purposes of paragraph (d)(2)(i) of this section, a resolution of the board of directors or a corporate bylaw may—

(i) Include the director (by name or by title) in a list of persons excluded from participation in such functions; or

(ii) Not include the director in a list of persons authorized (by name or by title) to participate in such functions.

(e)(1) * * *

(2) Extensions of credit to an executive officer of an affiliate of a bank are not subject to §§ 215.4, 215.6, and 215.8 if—

(i) The executive officer is excluded, by resolution of the board of directors or by the bylaws of the bank, from participation in major policymaking functions of the bank, and the executive officer does not actually participate in such functions;

(ii) The affiliate does not control the bank;

(iii) As determined annually, the assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that—

(A) Controls the bank; and

(B) Is not controlled by any other company; and

(iv) The executive officer of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

(3) For purposes of paragraphs (e)(1) and (e)(2)(i) of this section, a resolution of the board of directors or a corporate bylaw may—

(i) Include the executive officer (by name or by title) in a list of persons excluded from participation in such functions; or

(ii) Not include the executive officer in a list of persons authorized (by name or by title) to participate in such functions.

* * * * *

3. Section 215.4 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 215.4 General prohibitions.

(a) * * *

(2) *Exception.* Nothing in this paragraph (a) or paragraph (e)(2)(ii) of this section shall prohibit any extension of credit made pursuant to a benefit or compensation program—

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 14, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–7011 Filed 3–19–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 628 and 648

[Docket No. 970303042–7042–01; I.D. 021097C]

RIN 0648–AJ78

Fisheries of the Northeastern United States; Consolidation of the Fishery Management Plan for the Atlantic Bluefish Fishery

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

ACTION: Final rule.

SUMMARY: This final rule adds regulations implementing the Fishery Management Plan (FMP) for the Atlantic Bluefish Fishery to the consolidated Northeast fisheries regulations at 50 CFR part 648. It also amends references to Paperwork Reduction Act (PRA) collection-of-information requirements to reflect the addition. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: March 20, 1997.

ADDRESSES: Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930 and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Myles Raizin, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. In response to this directive, on July 3, 1996 (61 FR 34966), a final rule was published that consolidated six CFR parts setting forth Northeast Region fishery regulations into one CFR part (50 CFR part 648). The Atlantic Bluefish FMP was not included in this consolidation because NMFS had published a request for comments on a proposal to withdraw approval of this FMP and its implementing regulations (61 FR 13810, March 28, 1996). Comments received on this proposal convinced NMFS not to withdraw this FMP. Consequently, this final rule is intended to carry out further the President's directive by adding the regulations implementing the Atlantic Bluefish FMP to the consolidation and eliminating 50 CFR part 628. Portions of the bluefish regulations that contain identical or nearly identical provisions to those in part 648 have been combined

and restructured. Paragraph headings have been added for ease in identifying measures, and regulatory language has been revised to make needed technical changes and corrections and to improve clarity and consistency.

Section 3507(c)(B)(i) of the PRA requires agencies to inventory and to display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB approval numbers have been issued. This final rule revises § 902.1(b) by removing the reference to § 628.4. OMB approval numbers for Atlantic bluefish are incorporated in § 648.4.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive and technical changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comments is unnecessary. Because the technical changes made by this rule are nonsubstantive, they are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

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

The collection-of-information requirement for the Atlantic Bluefish Permit has been approved under OMB control number 0648–202 (Northeast Permit Family of Forms). The permit application is estimated to take 5 minutes per response. The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding: Whether this collection of information is necessary for the proper performance of NMFS' functions, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 628

Fisheries, Fishing.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 13, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

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

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entry ''628.4'', and in the right column, in the corresponding position, the control number ''–0202''.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.1, paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMP) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); and the Atlantic bluefish fishery (Atlantic Bluefish FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

* * * * *

5. In § 648.2, definitions for ''Bluefish Committee'', ''Person who receives bluefish for commercial purposes'', ''Regulated Fishery'', and ''Runaround gillnet or encircling net'' are added, in alphabetical order, and the definitions for ''Council'' and ''Pair trawl or pair trawling'' are revised to read as follows:

§ 648.2 Definitions.

* * * * *

Bluefish Committee means the Bluefish FMP Review and Monitoring Committee of the MAFMC.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; and the Atlantic bluefish fishery.

* * * * *

Pair trawl or pair trawling means to tow a single net between two vessels.

* * * * *

Person who receives bluefish for commercial purposes means any person (excluding representatives of governmental agencies) engaged in the sale, barter, or trade of bluefish received from a fisherman, or one who transports bluefish from a fisherman.

* * * * *

Regulated fishery means any fishery of the United States which is regulated under the Magnuson-Stevens Act.

* * * * *

Runaround gillnet or encircling gillnet means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than 1/4 the length of the net or with an opening greater than 1/4 the length of the net, if the opening is obstructed in any fashion.

* * * * *

6. In § 648.4, the heading, paragraph (a) introductory text, the first sentence in paragraph (b), paragraph (c) introductory text, (c)(1), (c)(2) introductory text, (c)(2)(i), (f), (j), (k), and (l) are revised and paragraphs (a)(8) and (c)(3) are added to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) *Fishery specific permit information.* * * *

(8) *Atlantic bluefish individual permits.* Any person selling bluefish

harvested in the EEZ must have either a valid permit issued under this part or a valid State of landing permit to sell bluefish.

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. * * *

(c) *Permit applications*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed and submitted to the Regional Administrator at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Administrator to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Vessel permit information requirements.* (i) With the exception of Atlantic bluefish permits, the requirements for which are described in paragraph (c)(3) of this section, an application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

* * *

(3) *Atlantic bluefish individual commercial permit information requirements.* In addition to the information specified in paragraph (c)(1) of this section, an application for an Atlantic bluefish individual commercial permit also must contain at least the following information, and any other information required by the Regional Administrator: The applicant's name; mailing address; telephone number; height; weight; hair color; and eye color; if the applicant represents a corporation, a copy of the current Certificate of Incorporation; and percentage of annual income derived from the sale of bluefish.

* * * * *

(f) *Change in permit information.* Any change in the information specified in paragraphs (c)(2) or (c)(3) of this section must be submitted by the applicant in writing to the Regional Administrator within 15 days of the change, or the permit is void.

* * * * *

(j) *Reissuance.* A permit may be reissued by the Regional Administrator when requested in writing, stating the need for reissuance, the name of the vessel (if applicable), and the fishing permit number assigned. An application for the reissuance of a permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(l) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer. Permits must be maintained in legible condition.

* * * * *

7. In § 648.14, paragraph (w) is redesignated as paragraph (x) and a new paragraph (w) is added as follows:

§ 648.14 Prohibitions.

* * * * *

(w) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ Atlantic bluefish in excess of the daily possession limit specified in § 648.131, unless that person has a permit meeting the requirements of § 648.4(a)(8);

(2) Possess, have custody or control of, ship, receive, barter, trade, transport, offer for sale, sell, purchase, import, or export any bluefish taken, retained, or landed in violation of the Magnuson-Stevens Act, or any regulation or permit issued under the Magnuson-Stevens Act;

(3) Fish under a permit meeting the requirements of § 648.4(a)(8) in violation of a notice of restriction published under § 648.162;

(4) Fish in the EEZ under a permit meeting the requirements of § 648.4(a)(8) during a closure under § 648.163; or

(5) Sell any Atlantic bluefish harvested from the EEZ unless that person has a permit that meets the requirements of § 648.4(a)(8).

* * * * *

8. Subpart J is added to Part 648 to read as follows:

Subpart J—Management Measures for the Atlantic Bluefish Fishery

Sec.

§ 648.160 Fishing year.

The fishing year is from January 1 through December 31.

§ 648.161 Possession limit.

(a) *Possession limit.* (1) No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of § 648.4(a)(8).

(2) Bluefish caught while in possession of a permit meeting the requirements of § 648.4(a)(8) must be kept separate from the pooled catch and in the possession of the permit holder at all times.

(3) If Atlantic bluefish are filleted into two or more sections, such fillets shall

be deemed to be whole Atlantic bluefish using a ratio of 1:2 (two fillets to one whole fish). If Atlantic bluefish are filleted into single (butterfly) fillets, such fillets shall be deemed to be whole Atlantic bluefish.

(4) Atlantic bluefish harvested from party and charter boats or other vessels carrying more than one person may be commingled. Compliance with the daily possession limit will be determined by dividing the number of Atlantic bluefish on board by the number of persons aboard, provided, however, that if a person or persons aboard are fishing under a permit meeting the requirements of § 648.4(a)(8), his/her catch shall not be counted for determining compliance with the possession limit, if it is maintained in the possession of such person(s). If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and/or operator.

(b) *Adjustment of the possession limit.* After notice and 15 days opportunity for public comment, NMFS may adjust the possession limit within a range of 0 to 15 Atlantic bluefish based on a recommendation of the MAFMC and Commission. NMFS will publish a notice of any proposed adjustment, together with the basis for such adjustment, in the Federal Register. After consideration of any public comments, NMFS may adjust the possession limit by publishing a notice of adjustment in the Federal Register.

§ 648.162 Catch monitoring, commercial controls, and gear restrictions.

(a) The Bluefish Committee will review bluefish catch statistics, a projection of the commercial share for the next fishing year, and the most recent stock assessment prior to August 15th of each year. The Bluefish Committee will report to the MAFMC and the Commission.

(b) The MAFMC and the Commission will review the report of the Bluefish Committee. If the report indicates that the commercial catch for the next fishing year will equal or exceed 20 percent of the total catch (recreational catch plus commercial landings) of Atlantic bluefish, the MAFMC and Commission will propose the commercial controls to be implemented at the start of the upcoming year. If the report indicates that the commercial catch will be greater than 17 percent but less than 20 percent of the total catch of Atlantic bluefish, or that the commercial share for the last full year is 50 percent greater than the previous year's commercial share, the MAFMC and Commission will determine whether commercial controls are necessary. In making such a determination the MAFMC and Commission will consider:

(1) The most recent catch data.

(2) Trends in the fishery.

(3) Any other relevant factors.

(c) If the catch in the commercial fishery is projected to equal or exceed the 20 percent limit during the upcoming year, then a state allocation system will be implemented. This will entail the use of landings data from the most recent 10-year period for each state, to determine the average percentage of each state's coastwide commercial landings. These percentages will be used to determine the amount of the coastwide quota allocated to each state. Quotas will apply to landings in each state, regardless of where the bluefish were caught.

(d) If whole Atlantic bluefish are processed into fillets at sea, then fillet weight will be converted to whole weight at the state of landing by multiplying fillet weight by 2.5. If whole Atlantic bluefish are headed and gutted at sea, then the conversion is accomplished by multiplying headed/gutted weight by 1.5.

(e) If the MAFMC concludes that the increase in the commercial catch is attributable to the use of purse seines, pair trawls, or encircling (runaround) gillnets, then it will propose restrictions applicable to that gear type. In determining what restrictions are necessary to control the catch of Atlantic bluefish by commercial fishermen using these gear types, the MAFMC may consider:

(1) Trip limits;

(2) Area closures;

(3) Banning the use of these gear types; or

(4) Any other measures it deems appropriate.

(f) The Regional Administrator will review any gear restrictions proposed by the MAFMC. If the Regional Administrator concurs that the proposed gear restrictions are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Administrator will recommend that NMFS publish a notice of the proposed restrictions in the Federal Register with a 30-day public comment period. After publication of such notice and after consideration of any public comments, NMFS may impose such restrictions by publishing a notice of gear restrictions in the Federal Register.

(g) NMFS may rescind any gear restriction if it finds, based on the advice of the MAFMC through the process set forth in paragraphs (a) and (b) of this section, that the restriction is no longer necessary.

§ 648.163 Closure of the fishery.

The Regional Administrator shall close the commercial fishery for Atlantic bluefish in the EEZ if the commercial fisheries for Atlantic bluefish have been closed in all Atlantic coastal states.

PART 628–[REMOVED]

9. Part 628 is removed.

[FR Doc. 97–6956 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 18 and 19

Reports by Large Traders; Cash Position Reports in Grains (Including Soybeans) and Cotton

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking; correction.

SUMMARY: CFTC is correcting an error in reports by large traders previously published in the Federal Register on February 11, 1997, (62 FR 6112). The original document contained an erroneous word and inconsistent wording.

EFFECTIVE DATE: April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Lamont Reese, Commodity Futures Trading Commission, Division of Economic Analysis, Three Lafayette Centre, 1155 21st St., N.W., Washington, D.C. 20581.

Correction

In the final rule FR Doc. 97–3395, beginning on page 6112 in the Federal Register issue of February 11, 1997, make the following correction:

§ 15.01 [Corrected]

On page 6113, in the third column, in paragraph (d)(1) of § 15.01, the reference to ''futures and option and positions'' is corrected to read ''futures and option positions.''

§ 18.04 [Corrected]

On 6114, in the first column, in § 18.04, in the second line, the reference to ''options or futures position'' is corrected to read ''futures and option position.''

§ 19.00 [Corrected]

On page 6114, in the second column, in § 19.00, in paragraph (a)(1), the reference to ''options or futures positions'' is corrected to read ''futures and option positions.''

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6972 Filed 3–19–97; 8:45 am]

BILLING CODE 6351–01–M

17 CFR Part 140

Change in Titles of Personnel

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: CFTC is correcting an error in a change to titles of personnel previously published in the Federal Register on May 13, 1996, (61 FR 21955). The original document contained an erroneous paragraph reference.

EFFECTIVE DATE: May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Counsel to the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW., Washington, DC 20581, (202) 418–5157.

Correction

In the final rule FR Doc. 96–11923, beginning on page 21954 in the Federal Register issue of May 13, 1996, make the following correction:

On page 21955, in the first column, in amendment 4. to § 140.735–8, the reference to ''paragraph (a)(3)'' is corrected to read ''paragraph (b)(3).''

Dated: March 14, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6971 Filed 3–19–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADA's) from Biocraft Laboratories, Inc., to Teva Pharmaceuticals USA.

EFFECTIVE DATE: March 20, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA's 65–492 (amoxicillin trihydrate tablets) and 65–495 (amoxicillin trihydrate for oral suspension) to Teva Pharmaceuticals USA, 650 Cathill Rd., Sellersville, PA 18960. Accordingly, the agency is amending the regulations in 21 CFR 520.88b and 520.88f to reflect the transfer of ownership.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.88b [Amended]

2. Section 520.88b *Amoxicillin trihydrate for oral suspension* is amended in paragraph (c) by removing the number ''000332'' and adding in its place ''000093''.

§ 520.88f [Amended]

3. Section 520.88f *Amoxicillin trihydrate tablets* is amended in paragraph (b) by removing the number ''000332'' and adding in its place ''000093''.

Dated: March 11, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–7002 Filed 3–19–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 803 and 804

[Docket No. 91N–0295]

RIN 0910–AA09

Medical Devices; Medical Device Reporting; Annual Certification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its medical device manufacturer and distributor adverse event certification regulations. The revised certification requirements allow manufacturers and distributors to designate more than one certifying official, who would each sign a certification statement for his or her identified organizational component or site; amend the certification statement to minimize concerns relating to liability from unintentional reporting errors; and indicate that the certifying official is making the certification statements, to the best of his/her knowledge and belief. This action is being taken to help FDA carry out its public health protection responsibilities relating to medical devices. This action provides reporting entities with greater flexibility in the certification process while reducing the regulatory burden.

DATES: Effective May 19, 1997. Submit written comments on the information collection requirements by April 21, 1997.

ADDRESSES: Submit written comments on the final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519(d) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(d)) provides that each manufacturer, importer, and distributor shall certify that they did file a certain number of medical device reports (MDR's) in the previous 12 months or they did not file any MDR's. Distribution certification regulations implementing this statutory provision became effective on May 28, 1992, when requirements relating to distributor reporting that were proposed in the Federal Register of November 26, 1991 (56 FR 60024), became final by operation of law. In the Federal Register of December 11, 1995 (60 FR 63578), FDA published a final rule similar to the distributor certification provisions, that required manufacturers to submit certification statements (§ 803.57 (21 CFR 803.57)) (hereinafter referred to as the December 1995 final rule). Distributors and manufacturers were required to certify that they filed reports for all reportable events required under

the rule for the previous 12 months or to certify that they did not receive any reportable events during the reporting period (§ 803.57 and 804.30 (21 CFR 804.30). The December 1995 final rule required certification to be made by the company's president, chief executive officer (C.E.O.), the U.S. designated agent, or other official most directly responsible for the firm's operations. The effective date of this regulation was to be April 11, 1996. In the Federal Register of April 11, 1996 (61 FR 16043), FDA extended the effective date to July 31, 1996.

Subsequent to the issuance of the December 1995 final rule, industry representatives objected to the corporate status of the person required to certify as well as the content of the certification statement itself. On April 19, May 23, and June 13, 1996, FDA held meetings with the Health Industry Manufacturers Association and several industry representatives. During these meetings, industry objected to requiring the C.E.O. or president to certify, because, especially in a large company, that person would not be familiar with the details of the MDR reporting program. Industry representatives also objected to the requirement that they certify that they filed reports for all reportable events during the reporting period. Industry representatives asserted that this requirement was not supported by the language of section 519(d) of the act. Moreover, industry representatives asserted that it would be impossible to certify that they submitted all ''reportable'' events because that would be a subjective conclusion and there could be honest disagreements between FDA and the manufacturer as to whether a particular event was a ''reportable'' event. Accordingly, industry representatives viewed the subjective nature of the certification statement as placing corporate officials in an untenable position with respect to their liability.

In response to industry concerns, the agency reviewed its position in light of the statutory language and legislative history. In the Federal Register of July 23, 1996 (61 FR 38346), the agency stayed the effective date of the certification requirement of the December 1995 final rule. In that same issue of the Federal Register (61 FR 63548), the agency reproposed a new certification requirement.

As discussed more fully in the preamble of the July 23, 1996, proposal, and in response to the comments below, the legislative history of section 519(d) of the act shows that the intent of Congress was to improve MDR efficiency by making firms more aware of their reporting obligations under MDR. The preamble of the proposed rule also stated that although FDA believed that the certification provision in its December 1995 final rule was within the scope of the statutory authority provided by section 519(d) of the act, FDA believed that the proposed modified certification provision would address the concerns expressed about the existing certification provisions and still meet the intent of section 519(d) of the act.

The July 23, 1996, proposed rule provided that the firms would be required to designate, as the certifying official, an individual with oversight responsibilities for, and knowledge of, the firm's MDR reporting system. The proposal also provided that, based upon its organizational structure, a firm may designate more than one certifying official, each of whom would sign a certification statement for his/her identified organizational component or site. The proposal would have required the individual certifying for the firm to state that: (1) He/she has read the requirements of the MDR regulation; (2) the firm has established a system to implement MDR reporting; and (3) following the procedures of its MDR reporting system, the firm submitted a specified number of reports, or no reports, during the certification period.

After reviewing the comments discussed below, FDA is now issuing a final rule based upon the proposed certification requirements, amended only by the additional statement that the certifying official is making the certification statements ''to the best of [his/her] knowledge and belief.'' In framing the certification in this way, the agency has attempted to eliminate industry's concern about potential liability for inadvertent errors, by requiring certification of objective statements to the best of the certifier's knowledge. It is a factual matter as to whether the certifier has read the MDR regulation, whether the company has established a system to implement those regulations, and how many MDR's the company submitted to FDA as a result of following that system. At the same time, FDA believes that this certification statement is a reasonable requirement that will achieve the intent of section 519(d) of the act by making reporters more aware of their MDR obligation, and will result in corporate management taking active responsibility for its MDR program. To implement section 519(d) of the act, FDA believes the regulation is reasonable in requiring a responsible company official to certify to the best of his/her knowledge and belief, that he/she has read the MDR regulation, that there is a system in place to implement those regulations, and that a specific number of reports were submitted under that system.

The agency is also taking this opportunity to stress the importance of certification by all firms covered under this rule, and by all sites or organizational components of such firms, if more than one certifying official is designated. The agency recognizes that, depending upon the organizational structure of a medical device firm, one certifying official may not be able to oversee or have complete knowledge of the operation of all components or sites owned by the firm. For this reason, the agency proposed that, in this circumstance, the firm may designate more than one certifying official, who will each sign a certification statement pertaining to his/her respective identified components or sites. The agency is taking this opportunity to clarify that, if the firm designates more than one certifying official, all organizational components or sites must be assigned to an appropriate certifying official, so that all sites and components of a firm are covered under a certification statement. The final rule has been modified to clarify this concept.

II. Summary of Comments

1. The agency received five comments on the July 23, 1996, proposed rule, submitted by manufacturers, industry representatives, and industry associations. Four of these comments were in strong support of the proposed changes. These comments praised the agency for its responsiveness and its appreciation of the diversity of the medical device industry. Specifically, these comments approved of the designation of responsible certifying official or officials who would have the most direct knowledge of the adverse event reporting process. Although these comments also noted that there may still be some question as to whether the certification statement exceeds the statutory requirement, because these comments found the certification statement to be reasonable, the comments requested only one change to the certification statement—the inclusion of the words ''to the best of my knowledge.''

The agency agrees with these comments and has modified the certification statement accordingly. The agency has already acknowledged that certifications should be made to the best knowledge of the certifier. In the April 11, 1996, Federal Register document announcing the Office of Management and Budget (OMB) approval of MDR

reporting forms, and extending the effective date of the MDR final rule, FDA concluded it would be reasonable to include the qualifying phrase ''to the best of my knowledge'' in this type of certification statement (see 61 FR 16043 at 16045). Likewise, in the certification statement submitted as part of a premarket notification, the agency has included language stating that the statement is made to the best of the certifier's knowledge (see 21 CFR 807.94(a)). Accordingly, the MDR certification statement, as modified in this final rule, now contains language that ''the certification is made to the best of the certifying official's knowledge and belief.''

2. The remaining comment believed the proposed certification statement was not reasonable. This comment maintained that the agency does not have statutory authority to require any more than certification of the number of reports submitted. Furthermore, this comment found the proposed certification statement to be ambiguous and requested clarification of several terms and concepts.

Specifically, this comment questioned whether, when the certifying official states that he/she has ''read the requirements of the MDR regulation,'' this would be interpreted to mean that the official is knowledgeable and understanding of the regulation and associated guidance documents. The comment objected to this interpretation because the certifying official would be at risk if he/she had read the regulation, but did not understand all the finer points of the intent or requirements of the regulation or supporting documents.

Likewise, this comment questioned whether the certification statement, which states that ''the firm has established a system to implement medical device reporting,'' may be interpreted by the agency to impute that such system is ''adequate,'' and thereby put the certifying official at risk, as one reporting error would render the reporting system inadequate. According to the comment, the same error in reporting would put the certifying official at risk when he/she certifies that ''following the procedures of its medical device reporting system'' certain reports were filed. This comment also expressed concern that the certifying official may be at risk if the agency disagrees with the manufacturer's determination that certain events are not reportable. The comment then suggested alternative wording to the certification statement designed to obviate these concerns.

The agency disagrees with the comment that the certification statements are ambiguous and create the risks described above to the certifier. The certification requirement simply requires the certifier to attest to certain facts, i.e., that he/she has read the MDR reporting requirements, that the firm has established MDR reporting systems to implement those requirements, and that those procedures were followed in submitting the MDR's. Certification to these facts does not add any additional liability to the certifier for reporting errors. However, as noted above, to alleviate concern that the proposed certification statements may subject certifiers to liability for inadvertent or good faith errors, FDA has adopted the suggestion of several comments by qualifying the certification with the statement that ''the certification is made to the best of the certifying official's knowledge and belief.'' FDA believes that this change appropriately addresses these concerns.

FDA also does not agree that the revised final regulation is beyond the statutory authority provided under section 519(d) of the act. Section 519(d) of the act requires that each manufacturer, importer, and distributor annually certify the number of MDR's or that no reports were filed. FDA disagrees with the comments' interpretation that this provision limits FDA's authority to issue a regulation to require certification solely of the number of MDR's filed or that no MDR's were filed. FDA's final regulation, which requires that the person filing the certification has read the MDR reporting requirements, that the firm has established a system to implement MDR reporting requirements, and that following these procedures a certain number of MDR's were filed or that no MDR's were filed, is well within the ambit of section 519(d) of the act.

The legislative history of section 519(d) of the act states that Congress included this provision on the recommendation of the General Accounting Office (GAO) as an important means of increasing the effectiveness of the MDR system (see H. Rept. 808, 101st Cong., 2d sess., 23 (1990); S. Rept. 513, 101st Cong., 2d sess. 26 (1990)). The GAO report noted that certain information indicated that a third of establishments inspected were not even aware that the MDR reporting requirements existed (1989 GAO Report entitled ''FDA's Implementation of the MDR Regulation,'' p. 4). The GAO report recommended certification to ensure that all manufacturers and importers be made aware of their obligation to submit MDR's and to identify those firms that were not aware of their obligation (Id. pp. 5 and 69).

The legislative history of section 519(d) of the act indicates that Congress' clear intent in requiring certification was to ensure that those required to report MDR's were aware of those requirements. FDA does not believe that requiring certification of solely the number of MDR's filed or that no MDR's were filed, adequately achieves this purpose. The final regulation ensures that firms are aware of the requirements by requiring firms to certify that a responsible person has read the requirements, the firm has established a system to implement these requirements, and this system was followed in submitting MDR's. In that the final regulation is consistent with the intent of Congress to make reporters aware of their obligations, FDA believes that the final regulation is fully within the ambit of section 519(d) of the act.

III. Implementation

Under final §§ 803.57(a) and 804.30(a), the agency has retained the schedule for submitting certification as established by the December 1995 final rule. The schedule for submitting annual certifications shall correspond with the schedule provided in § 807.21 (21 CFR 807.21(a)) for firm registrations, and must be followed by all firms required to certify regardless of whether the firm is required to register. Under this schedule, annual certifications will be due in either April, July, September, or December, depending on the first letter of the name of the owner or operator of the reporting firm. FDA intends that the first group of certifications will be due at the same time the first annual registrations would be due, at least 6 months after the effective date of the final rule.

According to this schedule, the first group of annual certifications will be due in April 1998, for firms whose owner or operator name begins with the letters A–E. This first group of certifications will certify to MDR's submitted between the effective date of this rule and March 1998. The second group of annual certifications will be due in July 1998, for firms whose owner or operator name begins with the letters F–M. This group of certifications will certify to MDR's submitted between the effective date of this rule and June 1998. The third group of annual certifications will be due in September 1998, for firms whose owner or operator name begins with the letters N–R, and will certify to MDR's submitted between the effective date of this rule and August 1998. The final group in this series of annual certifications will be due in December 1998, for firms whose owner or operator name begins with the letters S–Z, and

will certify to MDR's submitted between the effective date of this rule and November 1998.

After the initial certifications, firms shall submit certification reports annually, certifying to the MDR's submitted in the previous 12-month period ending 1 month prior to the month the certification is due, consistent with the schedule provided in § 807.21(a).

IV. Analysis of Impacts

FDA has examined the economic impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity. The agency believes that this rule is consistent with the principles identified in the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule applies to all medical device manufacturers and distributors whose devices are sold in the United States. The rule relieves two regulatory burdens. It allows the certification statement to be signed by the person most familiar with the MDR program, not necessarily the president or C.E.O. It also changes the certification statement to minimize the industry's concern about the possibility of liability as a result of an unintended mistake in reporting. Therefore, under the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

This rule contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below along with an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and recordkeeping requirements for user facilities, distributors, and manufacturers of medical devices under the Safe Medical Devices Act of 1990 and the Medical Device Amendments of 1992 (General Requirements).

Description: This regulation amends regulations regarding device manufacturer and distributor reporting of deaths, serious injuries, and certain malfunctions related to medical devices. The purpose of these changes is to improve the protection of the public health while also reducing the regulatory burden on reporting entities. This rule amends information collection requirements which have been approved under OMB No. 0910–0059.

Description of Respondents: Businesses or other for profit organizations, Federal, State, and local Governments.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.57	12,000	1	12,000	1	12,000
804.30	8,200	1	8,200	1	8,200
Total	20,200	.....	20,200	.....	20,200

There are no capital costs or operating and maintenance costs expected as a result of this rule.

Under OMB No. 0910–0059, which expires on February 28, 1999, a total of 187,610 burden hours were approved for collection of information requirements in the December 1995 final rule on medical device user facility and manufacturer reporting, certification, and registration. The 12,000 burden hours reported above in Table 1 for § 803.57 were included in the approval and therefore do not affect the total number of approved burden hours. However, the 8,200 burden hours reported in Table 1 for § 804.30 (distributor reporting) have not previously been considered in an information collection submission to OMB, and do represent an increase in the burden. Therefore, this rule would add 8,200 hours to the existing approved burden and would result in a total annual information collection burden of 195,810 hours (187,610 + 8,200 = 195,810).

In the July 23, 1996, proposed rule, the agency solicited public comments on the revised information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Individuals and organizations may submit written comments on the information collection requirements by April 21, 1997. Written comments on the final rule should be submitted to the Dockets Management Branch (address above).

The agency received one comment recommending an alternative format for the form associated with this reporting. Although the alternative format would not affect the reporting burden, the agency is considering the suggested modifications to the form.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803 and 804 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, medical device user facilities and manufacturers must report deaths and serious injuries to which a device has or may have caused or contributed, and manufacturers must also report certain device malfunctions. Additionally, user facilities and manufacturers must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

3. Section 803.57 is revised to read as follows:

§ 803.57 Annual certification.

(a) All manufacturers required to report under this section shall submit an annual certification report to FDA, on FDA Form 3381, or electronic equivalent as approved under § 803.14. The date for submission of certification coincides with the date for the firm's annual registration, as designated in § 807.21 of this chapter. Foreign manufacturers shall submit their certification by the date on which they would be required to register under § 807.21 of this chapter if they were domestic manufacturers. The certification period will be the 12-month period ending 1 month before the certification date, except that the first certification period shall cover at least a 6-month period from the effective date of this section, ending 1 month before the certification date.

(b) The manufacturer shall designate, as the certifying official, an individual with oversight responsibilities for, and knowledge of, the firm's MDR reporting system. A manufacturer may determine, based upon its organizational structure, that one individual cannot oversee or have complete knowledge of the operation of the reporting system at all organizational components or manufacturing sites owned by the firm. In this circumstance, the firm may designate more than one certifying official, each of whom will sign a certification statement pertaining to his/her respective identified organizational component(s) or site(s), provided that all organizational components and sites are covered under a certification statement.

(c) The report shall contain the following information:

(1) Name, address, and FDA registration number or FDA assigned identification number of the reporting site and whether the firm is a manufacturer;

(2) Name, title, address, telephone number, signature, and date of signature of the person making the certification;

(3) Name, address, and FDA registration number or FDA assigned identification number for each manufacturing site covered by the certification and the number of reports submitted for devices manufactured at each site;

(4) A statement certifying that:

(i) The individual certifying for the firm has read the MDR requirements under this part;

(ii) The firm has established a system to implement MDR reporting;

(iii) Following the procedures of its MDR reporting system, the reporting site submitted the specified number of reports, or no reports, during the certification period; and

(iv) The certification is made to the best of the certifying official's knowledge and belief.

(d) The name of the manufacturer and the registration number submitted under paragraph (c)(1) of this section shall be the same as the reporting site that submitted the reports required by §§ 803.52, 803.53, and 803.55. Multireporting site manufacturers who choose to certify centrally must identify the reporting sites, by registration number and name covered by the certification, and provide the information required by paragraphs (c)(2) and (c)(3) of this section for each reporting site.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

4. The authority citation for part 804 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

5. New § 804.30 is added to read as follows:

§ 804.30 Annual certification.

(a) All distributors required to report under this section shall submit an annual certification report to FDA, on FDA Form 3381, or electronic equivalent as approved under § 803.14 of this chapter. The date for submission of certification coincides with the date for the firm's annual registration, as designated in § 807.21 of this chapter. The certification period will be the 12-month period ending 1 month before the certification date, except that the first certification period shall cover at least a 6-month period from the effective date of this section, ending 1 month before the certification date.

(b) The distributor shall designate, as the certifying official, an individual with oversight responsibilities for, and knowledge of, the firm's MDR reporting system. A distributor may determine, based upon its organizational structure, that one individual cannot oversee or have complete knowledge of the operation of the reporting system at all organizational components or distribution sites owned by the firm. In this circumstance, the firm may designate more than one certifying official (one for each component or site), each of whom will sign a certification statement pertaining to their respective identified organizational component(s) or site(s), provided that all organizational components and sites are covered under a certification statement.

(c) The report shall contain the following information:

(1) Name, address, and FDA registration number or FDA assigned identification number of the firm;

(2) Name, title, address, telephone number, signature, and date of signature of the person making the certification;

(3) Name, address, and FDA registration number or FDA assigned identification number for the distributor covered by the certification, and the number of reports submitted for devices distributed by the distributor;

(4) A statement certifying that:

(i) The individual certifying for the firm has read the MDR requirements under part 804;

(ii) The firm has established a system to implement MDR reporting;

(iii) Following the procedures of its MDR reporting system, the firm submitted the specified number of reports, or no reports, during the certification period; and

(iv) The certification is made to the best of the certifying official's knowledge and belief.

Dated: March 12, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–7001 Filed 3–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 100

RIN 1105–AA39

Implementation of Section 109 of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Final rule.

SUMMARY: This rule implements section 109 of the Communications Assistance for Law Enforcement Act (CALEA), which requires the Attorney General to establish regulations which set forth the procedures that telecommunications carriers must follow in order to receive reimbursement under Sections 109 and 104 of CALEA. CALEA requires that this rule enable carriers to receive payments in a timely and cost-efficient manner while minimizing the cost to the Federal Government. Specifically, this rule sets forth the means of determining allowable costs, reasonable costs, and disallowed costs. Furthermore, it establishes the requirements carriers must meet in their submission of cost estimates and requests for payment to the Federal Government for the disbursement of CALEA funds. In addition, this rule protects the confidentiality of trade secrets and proprietary information from unnecessary disclosure. Finally, it sets forth the means for alternative dispute resolution.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Walter V. Meslar, Unit Chief, Telecommunications Contracts and Audit Unit, Federal Bureau of Investigation, P.O. Box 221286, Chantilly, VA 20153–0450, telephone number (703) 814–4900.

SUPPLEMENTARY INFORMATION:

A. General Background

Recent and continuing advances in telecommunications technology and the introduction of new digitally-based services and features have impaired the ability of federal, state, and local law enforcement agencies to fully and properly conduct various types of court-authorized electronic surveillance. Therefore, on October 25, 1994, the President signed into law the Communications Assistance for Law Enforcement Act (CALEA) [Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in scattered sections of 18 U.S.C. and 47 U.S.C.)]. This law requires telecommunications carriers, as defined in CALEA, to ensure law enforcement's ability, pursuant to court order or other lawful authorization, to intercept communications regardless of advances in telecommunications technology.

Under CALEA, certain implementation responsibilities are conferred upon the Attorney General; the Attorney General has, in turn, delegated certain responsibilities set forth in CALEA to the Director, FBI, or his designee, pursuant to 28 CFR 0.85(o). The Director, FBI, has designated the Telecommunications Industry Liaison Unit of the Information Resources Division and the Telecommunications Contracts and Audit Unit of the Finance Division to carry out these responsibilities.

Definition of ''Telecommunications Carrier''

CALEA defines a ''telecommunications carrier'' as any ''person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire'' (section 102(8)(A)), and includes any ''person or entity engaged in providing commercial mobile service, (as defined in section 332(d) of the Communications Act of 1934, as amended (47 U.S.C. 332(d))'' (section 102(8)(B)). This definition includes, but is not limited to, local exchange and interchange carriers; competitive access providers; resellers, cable operators, utilities, and shared tenant services providers, to the extent that they offer telecommunications services as common carriers for hire; cellular telephone companies; personal communications services (PCS) providers; satellite-based mobile communications providers; specialized mobile radio services (SMRS) providers and enhanced SMRS providers; and paging service providers.

The Federal Communications Commission (FCC) may determine that a person or entity who is not a common carrier is subject to CALEA if that person or entity provides wire or electronic communication service and the FCC concludes that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of CALEA.

The definition does not include (1) persons or entities insofar as they are engaged in providing information services such as electronic publishing and messaging services; and (2) any class or category of telecommunications carriers that the FCC exempts by rule after consultation with the Attorney General.

Capability Requirement

CALEA requires telecommunications carriers to ensure that, within four years of the date of enactment, their systems have the capability to meet the Assistance Capability Requirements as described in Section 103 of CALEA. These requirements are that a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government.

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier—(A) before, during, or immediately after the transmission of a wire or electronic communications (or at such later time as may be acceptable to the government); and (B) in a manner that allows it to be associated with the communication to which it pertains, except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of Title 18, United States Code), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and call-identifying information to the government, pursuant to a court order or lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communication interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—(A) the privacy and security of communications and

call-identifying information not authorized to be intercepted; and (B) information regarding the government's interception of communications and access to call-identifying information.

Under section 107(a)(2) of CALEA, a carrier will be deemed to be in compliance if it adheres to publicly available technical requirements or standards adopted by an industry association or standard-setting organization to meet the requirements of section 103 of CALEA. Telecommunications carriers may also adopt their own solutions. In any case, carriers must meet the requirements set forth in Section 103 of CALEA. If no technical requirements or standards are issued, or if they are challenged as being deficient, upon petition, the FCC has authority to develop them through a rule making.

Capacity Requirements

Section 104 of CALEA requires that the Attorney General, after seeking public notice and comment, establish and publish:

(1) notice of the actual number of communications interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of CALEA, and

(2) notice of the maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of CALEA.

On October 16, 1995 the FBI proposed for comment the Initial Notice of Capacity (60 FR 53643). On November 9, 1995, the comment period for the Initial Notice of Capacity was extended until January 16, 1996. In response to comments received, the FBI restructured its approach and published a Second Notice of Capacity for comment in the Federal Register on January 14, 1997 (62 FR 1902).

Section 104 of CALEA also provides that within 180 days after the publication of the Final Notice of Capacity, a telecommunications carrier must submit to the Attorney General a statement (Carrier Statement) identifying any of the systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in that notice. On April 10, 1996, the FBI published an Initial Notice and Request for Comment in accordance with the Paperwork Reduction Act of 1995 regarding the proposed information collection requirements of the Carrier Statement submission (61 FR 15974). A Second Notice and Request for Comment is forthcoming in the Federal Register. The FBI intends to use these Carrier Statements as one of the criteria upon which it will base its decisions to solicit cooperative agreements to reimburse carriers pursuant to section 104(e), based upon available funding.

Industry Implementation

Industry's compliance with the requirements set forth in section 103 of CALEA is affected by a number of interrelated factors, including whether the Attorney General has agreed to pay for needed modifications and whether the equipment, facility, or service was installed or deployed on or before January 1, 1995.

In the case of equipment, facilities, and services installed or deployed after January 1, 1995, compliance is dependent upon whether the necessary modifications are reasonably achievable as determined by the FCC using criteria set forth in CALEA. These criteria are as follows:

(1) The effect on public safety and national security.

(2) The effect on rates for basic residential telephone service.

(3) The need to protect the privacy and security of communications not authorized to be intercepted.

(4) The need to achieve the capability assistance requirements of section 103 of CALEA by cost effective methods.

(5) The effect on the nature and cost of the equipment, facility or service at issue.

(6) The effect on the operation of the equipment, facility, or service at issue.

(7) The policy of the United States to encourage the provision of new technologies and services to the public.

(8) The financial resources of the telecommunications carrier.

(9) The effect on competition in the provision of telecommunications services.

(10) The extent to which the design and development of the equipment, facility, or service was initiated before January 1, 1995.

(11) Such other factors as the FCC determines are appropriate.

Telecommunications carriers also may petition regulatory authorities to adjust charges, practices, classifications, and regulations to recover costs expended for making needed modifications to equipment, facilities, or services pursuant to the assistance capability requirements of CALEA section 103. CALEA also includes provisions for exemption, extension of the compliance date, consultation with industry, and systems security. Noncompliance may lead to civil actions by the Attorney General and the imposition of civil fines. In addition, CALEA requires telecommunications transmission and switching equipment manufacturers, as well as providers of the telecommunications support services, to cooperate with telecommunications carriers in achieving the required capabilities and capacities.

Section 109 of CALEA, Payment of Costs of Telecommunications Carriers to Comply with Capability Requirements, authorizes the Attorney General, subject to the availability of appropriations, to agree to pay telecommunications carriers for: (1) all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA; (2) additional reasonable costs directly associated with making the assistance capability requirements found in section 103 of CALEA reasonably achievable with respect to equipment, facilities, or services installed or deployed January 1, 1995, in accordance with the procedures established in CALEA section 109(b); and (3) reasonable costs directly associated with modifications of any of a carrier's systems or services, as identified in the Carrier Statement required by CALEA section 104(d), which do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the Capacity Notice(s) published in accordance with CALEA section 104.

CALEA section 109(e), Cost Control Regulations, authorizes the Attorney General, after notice and comment, to establish regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers under CALEA, under 18 U.S.C. chapters 119 and 121, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 *et seq.*). CALEA also directs the Attorney General to consult with the FCC prior to the establishment of these regulations.[1]

The regulations must minimize the cost to the Federal Government and

[1] CALEA § 109(e)(2).

permit recovery by telecommunications carriers of the direct costs of developing necessary modifications for CALEA compliance, including: providing the capabilities requested; providing capacities requested, training personnel in the use of such capabilities and capacities; and deploying or installing such capabilities and capacities.

In the case of any modification that may be used for any purpose other than lawfully authorized electric surveillance by a law enforcement agency of a government, CALEA permits the recovery of only the incremental cost of making the modification suitable for such law enforcement purposes.

B. Establishment of Cost Recovery Rules and Procedures

Purpose and Intent

As directed by CALEA section 109(e)(1), the FBI has developed and promulgated this rule to establish the procedures carriers must use to seek reimbursement under sections 109(a), 109(b)(2), and 104(e) of CALEA. Cost recovery payments under section 109(b)(2) of CALEA will be determined pursuant to the procedures set forth in section 109(b)(1) of CALEA and in accordance with this cost recovery rule. To the extent possible, this rule allows carriers to use their existing accounting procedures to record the costs of bringing equipment, facilities, and services into compliance with CALEA.

This rule seeks to ensure that each carrier's practices used in estimating costs for CALEA reimbursement purposes are consistent with the current cost accumulating and reporting procedures utilized by the carrier for the preparation of its financial statements. Further, it establishes that not all amounts reportable in accordance with generally accepted accounting principles will be eligible for reimbursement. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. Consistent application of internal cost accounting practices will facilitate the preparation of reliable cost estimates and allow comparison with the costs of performance. Such comparisons provide an important basis for financial control over costs and aid in establishing accountability for costs in the manner agreed to by both parties.

This rule also ensures that each cost is allocated only once and on only one basis to a cost group. The criteria for determining the allocation of costs to a cost group should be the same for all similar groupings.

In addition to setting forth the required accounting principles regarding reasonableness and allowability of costs and requirements for consistency in accounting, this rule establishes the reporting and record keeping requirements necessary for reimbursement. By establishing these requirements, the FBI ensures that it will be able to meet the joint mandate of CALEA section 109(e) to (1) make timely and cost-efficient payment to carriers while (2) minimizing the cost to the Federal Government. Throughout the development of this rule, the FBI sought to balance the need to minimize both the regulatory burden placed upon carriers and the expenditure of public funds.

Specific carriers will be selected for reimbursement based upon law enforcement priorities determined by the Attorney General. Several criteria will be used to determined law enforcement priorities. These include, but are not limited to: historical interceptions, features offered, existing surveillance techniques, and product life-cycles of telecommunications equipment, facilities, and services.

Cooperative Agreement Process

CALEA specifically states that the Attorney General ''may agree'' to pay carriers in the three circumstances discussed above [§ 109(a), § 109(b)(2), and § 104(e)]. Therefore, the FBI intends to enter into cooperative agreements with carries to accomplish this reimbursement.[2] This rule will be incorporated in all cooperative agreements executed under sections 109 and 104 of CALEA and entered into between the carriers and the FBI.

The FBI will contact the carriers identifying the equipment, facilities, and services which will require modification, and which are eligible for reimbursement. The FBI will send requests for proposals to these carriers regarding the necessary modifications. These requests for proposals will identify the specific equipment, facilities and/or services which are in need of modification in order to comply with CALEA. They will also include instructions for submitting cost estimates (§ 100.16 of the final rule) and proposed terms and conditions for the cooperative agreement. Cost estimate submission is necessary because: (1) carrier networks will require varying levels of modification to achieve compliance; (2) carriers have great latitude in developing and implementing CALEA-compliant solutions; and (3) CALEA's authorization for appropriations is limited to $500 million[3] Therefore, the FBI must have a clear idea of how much each modification is expected to cost so that it may weigh the proposed costs of each modification against the anticipated benefits to the public safety prior to entering into each cooperative agreement.

Once a carrier has submitted a cost estimate for the needed modifications, the FBI will enter into negotiations with that carrier to arrive at a cooperative agreement for reimbursement. To the extent possible, each cooperative agreement will be tailored to meet the specific needs of the individual carrier based upon the carrier's solution, existing accounting system, and size. For example, if a carrier's solution requires implementation over several months, the cooperative agreement with that carrier might include provisions for progress or milestone payments. There are several items which will be common to all cooperative agreements, including: the cost recovery rules, the requirements of CALEA (section 103 and/or section 104); and the protection of carrier patent rights. Once the carrier and the FBI reach agreement, a cooperative agreement will be executed and work can commence.

It must be noted that carriers are in no way obligated to expend funds on modifications eligible for reimbursement prior to the execution of a cooperative agreement. However, this in no way alleviates the carriers' responsibilities of compliance with CALEA for equipment, facilities, or services installed or deployed subsequent to January 1, 1995.

Proposed Rule

In response to CALEA's mandate and in accordance with the Administrative Procedures Act (5 U.S.C. 551 *et seq.*), the FBI published for notice and comment a proposed rule in the Federal Register on May 10, 1996 (61 FR 21396). The proposed rule was developed after consultation with other government entities, including the FCC, the Office of

[2] The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301 *et seq.*) states that cooperative agreements are to be used when ''the principal purpose of the relationship is to transfer a thing of value to the * * * recipient to carry out a public purpose of support or stimulation authorized by a law of the United States,'' and ''substantial involvement is expected between the executive agency and the * * * recipient when carrying out the activity contemplated in the agreement.'' (31 U.S.C. 6305).

[3] 31 U.S.C. 1341, commonly referred to as the Anti-Deficiency Act, states that an officer or employee of the United States Government may not ''make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation [31 U.S.C. 1341(a)(1)(A)].''

Management and Budget (OMB), and the General Accounting Office (GAO), and with representatives of the telecommunications industry.

In response to the proposed rule, the FBI received comments from 16 representatives of the telecommunications industry, including wireline and wireless carriers and associations. All comments have been considered in preparing this final rule. In developing this final rule, the FBI has also relied on the input of other governmental agencies, telecommunications industry experts, and the many years of cost accounting and auditing experience of its staff. Significant comments received in response to the proposed rule and any significant changes are discussed below.

C. Significant Comments or Changes

Comments by Section

1. Proposed § 100.9 (''General''): Several commenters expressed confusion as to the reimbursement process. Therefore, the FBI has amended this section to clarify the requirement that a cooperative agreement must be executed prior to the incurrence of costs. This section now makes clear that reimbursement is subject to: (1) the availability of funds; (2) the reasonableness of costs; and (3) the execution of a cooperative agreement between the FBI and the carrier. Carriers are in no way obligated to expend funds on modifications that are eligible for reimbursement under sections 109(a), 109(b)(2), and 104(e) prior to the execution of a cooperative agreement.

2. Proposed § 100.10(a) (Definition of ''allocable''): One commenter pointed out that ''allocable'' traditionally means chargeable to one or more cost objectives, rather than to two or more cost objectives. The FBI accepts this comment and the final rule is modified accordingly. In addition, for the purposes of clarity, the FBI has expanded the definition to include the descriptive phrase ''and can be distributed to them in reasonable proportion to the benefits received.''

3. Proposed § 100.10(e) (Definition of ''directly allocable costs''): One commenter pointed out that ''allocable'' traditionally means chargeable to one or more cost objectives, rather than to two or more cost objectives; therefore, the definition of ''directly allocable costs'' should reflect this. The FBI accepts this comment and the final rule is modified accordingly. In addition, for the purposes of clarity, the FBI has expanded the definition to include the descriptive phrase ''and can be distributed to them in reasonable proportion to the benefits received.''

4. Proposed § 100.10(j) and (k) (Definitions of ''plant non-specific costs'' and ''plant specific costs''): Several commenters expressed concern in connection with the allowability of plant specific and plant non-specific costs in proposed § 110.11(b) (''Allowable costs''; Allowable plant specific costs) and proposed § 100.15(c) (''Disallowed costs''; Plant non-specific costs). In order to effect the changes necessary to clarify these issues, the FBI has removed the definitions of these terms from § 100.10, Definitions, and replaced them with an all encompassing definition of ''plant costs.'' The specifics of which costs are allowed and disallowed with regard to these terms are addressed below in responses 12 and 28.

5. Proposed § 100.10 (''Definitions''): In response to several comments requesting further clarification of terms, the following definitions have been added to this section in the final rule: cooperative agreement; direct supervision; labor costs; network operations costs; and provisioning costs.[4] These definitions have been inserted in the appropriate alphabetical order. It should also be noted that the letter designations have been removed from § 100.10, Definitions, of the final rule at the suggestion of the Federal Register.

6. Proposed § 100.11(a)(1) (''Allowable costs''; Pre January 1, 1995 modifications; Plant specific costs): In conformance with the changes to proposed § 100.10(k), as discussed above in response 4, the term ''plant specific costs'' has been replaced with the term ''plant costs.''

7. Proposed § 100.11(a)(1) (''Allowable costs''; Pre January 1, 1995 modifications; General): This subsection establishes the allowability of all reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modifications. Several commenters asserted that the January 1, 1995 cut-off date for reimbursable modifications was inappropriate. In particular, several commenters from the wireless industry noted that the dynamic nature of their industry effectively, and unfairly, excluded them from the cost reimbursement pool under this subsection.

The FBI must comply with CALEA, which mandates this date in section 109(a). It is, therefore, beyond the scope of the FBI's authority to change this date.

8. Proposed § 100.11(a)(1) (''Allowable costs''; Pre January 1, 1995 modifications; Significant upgrade): This subsection establishes the allowability of all reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modifications. Half of the commenters requested that the FBI define the phrase ''replaced or significantly upgraded or otherwise undergoes major modifications'' (hereafter referred to as ''significant upgrade or major modification''). These commenters pointed out that eligibility for reimbursement is dependent upon how the FBI interprets ''significant upgrade or major modification.''

Given the dynamic nature of the telecommunications industry and the potential impact on eligibility for reimbursement, the FBI acknowledges that ''significant upgrade and major modification'' must be defined. However, this issue affects only those carriers who have made modifications or upgrades to their equipment, facilities, and/or services installed or deployed on or before January 1, 1995. The reimbursement eligibility of any equipment, facility, or service which has undergone no modification or upgrade since January 1, 1995 is not affected by this definition. In addition, ''significant upgrade or major modification'' does not pertain to cases of reimbursement for capability modifications which have been deemed not reasonably achievable by the FCC under CALEA section 109(b)(2) or to reimbursement for capacity modifications under CALEA section 104(e). Therefore, given that many of the potential reimbursement scenarios allowed by CALEA, and, therefore, by this rule, are not affected by the definition of ''significant upgrade and major modification,'' the FBI has elected, as noted below, to handle this

[4] It should be noted that line costs associated with delivery of intercepted communications to law enforcement are not reimbursable under CALEA. However, it is anticipated that the delivery costs associated with interceptions will continue to be borne by the requesting law enforcement agency.

issue separately in order to expedite the CALEA implementation process. This decision is in both the best interests of the government and of the carriers given that CALEA funds are now available to begin the reimbursement effort.[5] Severing the ''significant upgrade and major modification'' issue from this rule for separate consideration allows the FBI as soon as possible to begin reimbursing those carriers who have made no modifications or upgrades since January 1, 1995.

On November 19, 1996, the FBI published an Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register (61 FR 58799), which solicited the submission of potential definitions of ''significant upgrade or major modification'' from the telecommunications industry and the general public. This ANPRM was also sent to a large number of associations representing the interests of the various telecommunications carriers, both wireline and wireless. The FBI is currently considering the comments received and anticipates making a determination with regard to this issue in the near future.

9. Proposed § 100.11(a)(2) (''Allowable costs''; Post January 1, 1995 modifications; Plant specific costs): In conformance with the changes to proposed § 100.10(k), as discussed above in response 4, the term ''plant specific costs'' has been replaced with the term ''plant costs.''

10. Proposed § 100.11(a)(2) (''Allowable costs''; Post January 1, 1995, modifications; Additional reasonable costs): This subsection establishes the allowability of the additional reasonable plant costs directly associated with making the assistance capability requirements found in section 103 of CALEA reasonably achievable with respect to equipment, facilities, or services installed or deployed after January 1, 1995, in accordance with the procedures established in CALEA section 109(b). Several commenters wanted to know how the FBI planned to define ''additional reasonable costs.'' CALEA section 109(b)(1) places the responsibility of determining whether modifications to equipment, facilities, and services installed or deployed after January 1, 1995, are ''reasonably achievable'' with the FCC, which will make its rulings based on specific petitions by carriers. At its most basic level, additional reasonable costs means those costs which are above and beyond what the FCC determines to be ''reasonably achievable'' in each instance. The specifics of this issue fall within the purview of the FCC's CALEA implementation responsibilities; it would, therefore, be inappropriate for the FBI to address this issue further in this rule.

11. Proposed § 100.11(a)(3) (''Allowable costs''; Capacity modifications; Plant specific costs): In conformance with the changes to proposed § 100.10(k), as discussed above in response 4, the term ''plant specific costs'' has been replaced with the term ''plant costs.''

12. Proposed § 100.11(b) (''Allowable costs''; Allowable plant specific costs): Several commenters expressed concern over the use of plant specific and plant non-specific as qualifiers for allowability for reimbursement purposes under CALEA. These commenters pointed out that there could be certain plant non-specific costs which could be allowable.

The FBI is persuaded by these arguments and has amended the final rule as follows.

First, the FBI has removed the definitions of plant specific and plant non-specific costs from § 100.10, Definitions, and has replaced them with an all-encompassing definition of ''plant costs.'' Second, the FBI has amended § 100.11(b) to reflect allowable plant costs, whether plant specific or plant non-specific. Third, the FBI has amended § 100.15(c) to reflect disallowed plant costs, whether plant specific or plant non-specific.

13. Proposed § 100.11(b)(2) (''Allowable costs''; Allowable plant specific costs; first-line supervision): One comment was received from a small wireless carrier which expressed concern over the nature and definition of ''first-line supervision.'' This commenter interpreted this subsection as excluding from eligibility for reimbursement the work of some individuals who, of necessity, perform many different functions in a small business. The FBI has replaced this term with ''direct supervision'' and has provided a definition of ''direct supervision'' in § 100.10 of the final rule to clarify this issue.

The FBI also wishes to note that, for the purposes of reimbursement, it is not job title which matters, but rather the nature of the work performed. Therefore, if the Chief Executive Officer (CEO) of a company also happens to be the engineer responsible for network engineering, the time that individual spends coordinating the integration of the CALEA compliant solution into the network will be reimbursable, while the time spent managing the general business affairs of the company will not be reimbursable.

14. Proposed § 100.11(c) (''Allowable costs''; Incremental costs): Both CALEA[6] and the proposed rule establish that ''[i]n the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a government law enforcement agency, . . . only the incremental cost of making the modification suitable for such law enforcement purposes'' is recoverable. Some commenters wished to know the methodology the FBI intends to use to determine (1) whether a modification could be used for any other purpose; and (2) the nature and amount of these ''incremental costs.''

The determination of whether or not a modification could be used for any purpose other than lawfully authorized electronic surveillance by a government law enforcement agency is outside the scope of this accounting rule.

In the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a government law enforcement agency, the carrier may only recover the incremental cost of making the modification suitable for such law enforcement purposes. With regard to the determination of the nature and amount of the ''incremental costs,'' this determination will be dependent on the nature of the proposed solution. Therefore, the nature and amount of any ''incremental costs'' will be identified and proposed by specific carriers as part of specific cooperative agreements.

15. Proposed § 100.11(d) (''Allowable costs''): In the proposed rule, ''direct cost'' was used interchangeably with ''directly assignable cost'' which could potentially create confusion. Therefore, in order to maintain consistency within the document and to clarify the original intent of this subsection, ''direct and directly allocable costs'' has been amended to read ''directly assignable and directly allocable costs.''

16. Proposed § 100.12 (''Reasonable costs''; General): In this section, the FBI has set forth the guidelines for determining whether a cost is reasonable for reimbursement purposes. Several commenters requested that the FBI clarify how the ''reasonableness'' of costs will be determined for the purposes of reimbursement. While the guidelines set forth in § 100.12 may seem somewhat vague and subjective, it must be noted that they are consistent with the standard guidelines used in

[5] Public Law 104–208, Item 28: (16) ''Telecommunications Carrier Compliance Fund.''

[6] § 109(e)(2)(B)

government contracting.[7] It is not the Government's intent to ''second guess'' the carrier's judgement; the Government simply requires that the carrier's decisions involve the use of reasonable and prudent judgement. Stated another way, all the Government requires is that the carrier treat the taxpayers' money with the same prudence and care the carrier would apply to its own corporate funds. Therefore, no change has been made in the final rule.

17. Proposed § 100.12(a)(1) and (a)(2) (''Reasonable costs''; Presumption of reasonableness and burden of proof): These subsections establish that no presumption of reasonableness is attached to the incurrence of costs by a carrier and that the burden of proof that a cost is reasonable for the purposes of CALEA reimbursement rests with the carrier. Some carriers objected to these requirements, arguing that the burden of proof that a cost was not reasonable ought to rest with the Government. These subsections follow standard Government cost principles.[8] Therefore, no change has been made in the final rule.

For purposes of clarity, however, it must be noted that the FBI is not requiring that supplementary documentation necessary to meet the burden of proof be submitted with the initial cost estimate or request for payment; those submissions require only the level of supporting documentation outlined in § 100.16 and § 100.17 of the final rule. It is only when a review of these submissions results in a question regarding a specific cost that the carrier will be required to meet the burden of proof with appropriate supporting documentation.

In addition, the nature and extent of the supporting documentation which might be required will be addressed during the cooperative agreement process to allow flexibility (1) for the various accounting systems in use throughout the industry and (2) for the special needs of small entities as discussed in the *Final Regulatory Flexibility Analysis* below.

18. Proposed § 100.13(a)(3) (''Directly assignable costs''; Burden of proof): This subsection establishes that the burden of proof that a cost is directly assignable to the CALEA implementation effort rests with the carrier. Some carriers objected to these requirements, arguing that the burden of proof that a cost was not directly assignable to the CALEA implementation effort ought to rest with the Government. This subsection follows standard Government cost principles.[9] Therefore, no change has been made in the final rule.

For purposes of clarity, however, it must be noted that the FBI is not requiring that supplementary documentation necessary to meet the burden of proof be submitted with the initial cost estimate or request for payment; those submissions require only the level of supporting documentation outlined in § 100.16 and § 100.17 of the final rule. It is only when a review of these submissions results in a question regarding a specific cost that the carrier will be required to meet the burden of proof with appropriate supporting documentation.

In addition, the nature and extent of the supporting documentation which might be required will be addressed during the cooperative agreement process to allow flexibility (1) for the various accounting systems in use throughout the industry and (2) for the special needs of small entities as discussed in the *Final Regulatory Flexibility Analysis* below.

19. Proposed § 100.13(b) (''Directly assignable costs''; Minor dollar amounts): The FBI has stricken the reference to minor dollar amounts in this subsection as unnecessary.

20. Proposed § 100.13 (''Directly allocable costs''; General): This section sets forth the requirements for treating costs as directly allocable costs for the purposes of the CALEA reimbursement process. One commenter argued that the definition of and requirements for ''directly allocable costs'' are largely meaningless in that they appear to be inconsistent with the FAR. The FBI has, as noted above, amended the definition of ''directly allocable costs'' in proposed § 100.10(e) in the final rule. In addition to this emendation, the FBI wishes to point out that it is not possible for this rule to be completely consistent with the FAR because CALEA specifically disallows costs which the FAR treats as allowable. Furthermore, the treatment of ''directly allocable costs'' is the direct result of the FBI's intent to allow carriers to use their existing accounting systems to comply with these rules. Therefore, no change has been made in the final rule.

21. Proposed § 100.14(b) (''Directly allocable costs''; Burden of proof): This subsection establishes that burden of proof that a cost is directly allocable (as defined in this rule) to the CALEA implementation effort rests with the carrier. Some carriers objected to these requirements, arguing that the burden of proof that a cost was not directly allocable to the CALEA implementation effort ought to rest with the Government. This subsection follows standard Government cost principles.[10] Therefore, no change has been made in the final rule.

For purposes of clarity, however, it must be noted that the FBI is not requiring that supplementary documentation necessary to meet the burden of proof be submitted with the initial cost estimate or request for payment; those submissions require only the level of supporting documentation outlined in § 100.16 and § 100.17 of the final rule. It is only when a review of these submissions results in a question regarding specific cost that the carrier will be required to meet the burden of proof with appropriate supporting documentation.

In addition, the nature and extent of the supporting documentation which might be required will be addressed during the cooperative agreement process to allow flexibility (1) for the various accounting systems in use throughout the industry and (2) for the special needs of small entities as discussed in the *Final Regulatory Flexibility Analysis* below.

22. Proposed § 100.14(d)(4) (''Directly allocable costs''; Distribution base): Some commenters objected to this subsection because they interpreted it to mean that the FBI was reserving the right to approve or disapprove of each carrier's entire cost accounting system based on the phrase ''has been accepted by the FBI.'' This was never the intent of the proposed rule, nor is it the intent of the final rule. The FBI intended to ensure the following: (1) that the base for distributing allocable costs is definitized in the cooperative agreement between the carrier and the FBI and (2) that the carrier makes no significant changes [i.e. changes which will affect the level of reimbursement from the government] to this distribution base once it has been agreed to without the written approval of the FBI. Given the apparent misinterpretation on the part of some of the commenters, the FBI has amended the final rule to more clearly reflect this intent.

23. Proposed § 100.14(d)(5)(i) (''Directly allocable costs''; Allocation methodology; cost patterns): One commenter asked whether this subsection required that carriers submit to the FBI evidence of how the carrier

[7] See, for example, the Federal Acquisition Regulation (FAR) 31.201–3 for procurement contracts and OMB Circulars A–122, ''Cost Principles for Nonprofit Organizations'' and A–21, ''Principles for Determining Costs Applicable to Grants, Cooperative Agreements, and Other Agreements with Educational Institutions'' for grants and cooperative agreements.

[8] See FAR 31.201–3 for procurement contracts.

[9] Id.

[10] See FAR 31.201–3 for procurement contracts.

allocated common costs on other projects as a mechanism for checking the appropriateness of the proposed allocation methodology for CALEA reimbursement. The FBI is not requiring submission of such evidence; however, such evidence could be used as an example of the carrier's typical practices if a question regarding the allocation methodology arose.

24. Proposed § 100.14(d)(5)(iii) (''Directly allocable costs''; Allocation methodology; site-specific records): One commenter asserted that the requirement of this subsection that carriers maintain CALEA-specific records supporting cost allocations that are site-specific would be burdensome to carriers with multiple switches requiring CALEA modifications.

Given that CALEA restricts reimbursement to directly associated costs only, it will be necessary for carriers to maintain CALEA-specific records. As these records will, of necessity, need to indicate work done on specific equipment, facilities, and services, there is no apparent means of relieving carriers of the requirement to maintain site-specific records. Therefore, no change has been made in the final rule.

25. Proposed § 100.14(d)(6) (''Directly allocable costs''; Base periods): One commenter asserted that it did not use ''base periods'' for allocating allocable costs. However, whether this commenter calls it a ''base period'' or not, the commenter does use a fiscal year for financial reporting purposes. Therefore, in the case of this commenter, the ''base period'' could be the fiscal year. The FBI crafted these rules to allow the carriers as much flexibility as possible in reporting requirements in order to minimize the burden imposed upon them. Hence, the exact definition of the ''base period'' is left up to each carrier.

26. Proposed § 100.15 (''Disallowed costs''; General): Many commenters questioned the restrictions set forth in this section. All commenters addressing the issue had specific types of costs which they believed should not be disallowed. Of these, most could be subsumed into the areas of General and Administrative (G&A) costs and Plant Non-Specific costs, which are addressed below. In general, the FBI wishes to point out that it is the authority to expend funds found in CALEA which limits reimbursable costs to directly associated costs. The FBI would be in direct violation of law if it were to allow costs which are, either expressly or implicitly, disallowed by CALEA. Therefore, other than as discussed in response 28, below, with regard to the clarification as to the definitions of plant specific and plant non-specific costs, no costs disallowed in the proposed rule have been removed from this section in the final rule.

27. Proposed § 100.15(a) (''Disallowed costs''; G&A costs): G&A costs are costs which are normally considered indirect (i.e. not directly associated with final cost objectives). The FBI cannot disburse funds to a carrier under CALEA for costs that the carrier would have incurred (e.g. external relations and information management costs) had CALEA not been enacted. However, the FBI recognizes that certain CALEA-specific expenses, which might normally be considered G&A costs, may, in accordance with § 100.11 of these rules, be charged directly to the CALEA implementation effort. Section 100.15, Directly Allocable Costs, was written in order to provide the carriers with the ability to recover these costs.

28. Proposed § 100.15(c) (''Disallowed costs''; Plant non-specific costs): Several commenters expressed concern over the use of plant specific and plant non-specific as qualifiers for allowability for reimbursement purposes under CALEA. These commenters pointed out that there could be certain plant non-specific costs which would be allowable. The FBI is persuaded by these arguments and has amended the final rule as follows:

First, the FBI has removed the definitions of plant specific and plant non-specific costs from § 100.10, Definitions, and has replaced them with an all-encompassing definition of ''plants costs.'' Second, the FBI has amended § 100.11(b) to reflect allowable plants costs, whether plant specific or plant non-specific. Third, the FBI has amended § 100.15(c) to reflect disallowed plant costs, whether plant specific or plant non-specific.

29. Final § 100.15(f) (''Additional costs''; Agreed upon): The FBI has, for the purposes of clarity, changed ''agreed upon'' to ''agreed to by the government and the carrier.''

30. Final § 100.15(h), formerly part of Proposed § 100.20 (''Disallowed costs''; Accounting provisions): Some commenters asserted that Proposed § 100.20, Accounting for Unallowable Costs, was unnecessary and burdensome because carriers must fully account for and document allowable expenses.

The original intent of Proposed § 100.20 was to ensure that, should a carrier's accounting system require that unallowable costs be used in any way to calculate the nature and amount of allowable costs (i.e. to determine the level of allocable costs), the unallowable costs were accurately identified as such, and were properly removed from the calculation of the reimbursement amount. However, the FBI acknowledges that this section appeared confusing and that it could be streamlined. Therefore, Proposed § 100.20, Accounting for Unallowable Costs, has been deleted and the necessary elements have been added as new subsection (h) to Final § 100.15, Disallowed Costs.

31. Proposed § 100.16 and § 100.17 (''Cost estimate submission'' and ''Request for payment''; General): Many commenters stated that the reporting requirements of these sections are unnecessarily duplicative of each other and generally require too much detail.

Any expenditure of CALEA funds must meet minimal recordkeeping requirements and must be auditable by the Inspector General of the Department of Justice and the Comptroller General of the United States.[11] The rule defines the minimum amount of financial data and supporting documentation that the FBI must retain if it is to reimburse carriers. The FBI has required the least burdensome reporting level possible which still allows it to meet its fiscal accountability requirements.

However, the FBI has also learned from the comments received that certain aspects of these sections describing the requirements could benefit from further explanation and some emendation for the purposes of clarity with regard to the level of detail required to be submitted. These explanations and emendations are addressed by subsection below.

As for the perceived duplicativeness of § 100.16 and § 100.17, the commenters appear to have been confused by the cooperative agreement process, an explanation of which appears above in Section B, Establishment of Cost Recovery Rules and Procedures, subheading ''Cooperative Agreement Process.'' In addition to the explanation of the cooperative agreement process above, the FBI presents the following additional clarification. Estimates are needed because the FBI must have a clear idea of how much each proposed modification is expected to cost so that it may weigh the proposed costs of each modification against the anticipated

[11] 31 U.S.C. 712 authorizes the Comptroller General to investigate all matters related to the receipt, disbursement, and use of public money. 47 U.S.C. 1010(b) (as amended by Public Law 104–316) requires the Inspector General of the Department of Justice to report to Congress on the ''reasonableness and cost-effectiveness of the payments made by the Attorney General to telecommunications carriers for modifications necessary to ensure compliance with [CALEA].''

benefits to the pubic safety.[12] Clearly, the FBI must require that carriers submit sufficient information for cost-benefit analyses to be performed. Furthermore, CALEA specifically requires that the cost recovery regulations prescribed must ''seek to minimize the cost to the Federal Government. . . .'' [13] The FBI must, therefore, be able to determine that the solution proposed and its associated costs are appropriate and reasonable prior to entering into cooperative agreements for reimbursement with carriers.

The need for supporting documentation at the request for payment stage is required by CALEA. While the FBI does not anticipate any intentional fraud, honest mistakes are sometimes made and the FBI is required to ensure that the Federal Government does not inappropriately expend taxpayer funds on disallowed costs.

In addition, the similarities between the cost estimate and the request for payment remarked upon by several commenters are intended to simplify the reporting and recordkeeping done by carriers and will help ensure that the request for payment can adequately be correlated to the cost estimate for review purposes.

32. Proposed § 100.16 and § 100.17 (''Cost estimate submissions'' and ''Request for payment''; General; Wireless Carrier Concerns): Comments were received from representatives of the wireless industry which expressed concern that the reporting requirements of § 100.16, Cost Estimate Submission, and § 100.17, Request for Payment, are too burdensome for wireless providers because their accounting systems are not equipped to generate the level of detail wireline providers' systems are.

As long as such carriers are using accounting systems which generate financial statements which are in accordance with generally accepted accounting principles, the final rule will allow wireless providers to use their current accounting systems to meet these reporting requirements.

33. Proposed § 100.16 and § 100.17 (''Cost estimate submission'' and ''Request for payment''; General; Small Business Concerns): Several commenters, either classified as small businesses for regulatory purposes or representing the interests of such small businesses, expressed concern that the reporting requirements of these sections would place an undue burden on small businesses. While this issue is addressed at length in the *Final Regulatory Flexibility Analysis* below, a brief discussion is merited here. The reporting requirements of these sections are flexible enough to allow small carriers to submit cost estimates and requests for payment from the level of detail available to their existing accounting systems. As stated above in comment response 17, and as will be made clear by the responses to specific comments which follow, the FBI only requires the submission of supporting data if a question arises regarding specific items. In addition, a Small Business Compliance Guide, as required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II of Public Law 104–121) will be forthcoming from the FBI. This Guide, which will be tailored to the needs of small businesses, will provide detailed instructions for complying with all aspects of this final rule. The FBI has consulted with the Office of Advocacy of the Small Business Administration (SBA) and the Office of Communications Business Opportunities at the FCC regarding this final rule and is committed to imposing the least regulatory burden possible on small businesses and assisting them in achieving CALEA-compliance with respect to this rule.

34. Proposed § 100.16(c) (''Cost estimate submission''; Higher authority): A few commenters pointed out that the reference to a ''higher authority'' was ambiguous. The FBI accepts this comment and has amended the final rule accordingly.

35. Proposed § 100.16(d)(1) (''Cost estimate submission''; Supporting documentation): Several commenters were concerned about the required submission of what they perceived as an extremely high level of supporting documentation of § 100.16(d)(1). The FBI accepts this comment and has, for the purposes of clarity, removed the descriptive phrase ''adequately cross-referenced, suitable for detailed analysis'' from this subsection.

36. Proposed § 100.16(d)(2) (''Cost estimate submission''; Cost element breakdown): One commenter was concerned that this subsection's inclusion of the phrase ''and must reflect any specific requirements established by the FBI'' gave the FBI too much latitude in requiring additional documentation submission. While this was not the intent of this phrase, the FBI accepts that it could be read in such a manner and has, therefore, stricken it from the final rule.

37. Proposed § 100.16(d)(5)(iii) (''Cost estimate submission''; ''Allocable direct costs''): A few commenters found the phrase ''showing trends and budgetary data'' both burdensome and requiring further explanation. In the interests of minimizing the reporting burden on carriers and clarifying the requirements, the FBI has streamlined this subsection by removing this phrase and deleting the requirement to ''indicate the rates used and provide an appropriate explanation.''

38. Proposed § 100.16(e)(1) (''Cost estimate submission''; Judgmental factors): One commenter requested clarification of the term ''judgmental factors.'' The FBI has amended the final rule to include an example of such judgmental factors in the text of this subsection.

39. Proposed § 100.16(f) (''Cost estimate submission''; Continuous submission of cost data): A few commenters interpreted this subsection's requirement that cost data be submitted as it becomes available up until the time of final reimbursement as requiring a continuous submission of data. This was not the FBI's intent; rather, the FBI sought to ensure that, in the event that information significantly affecting the cost estimate should become available, the carrier would provide that information to the FBI. However, the FBI has determined that this requirement is met by § 100.17(d)(2) of the final rule and has, therefore, amended Proposed § 100.16(d)(2) accordingly.

40. Proposed § 100.17(b)(1) (''Request for Payment''; Supporting documentation): Several commenters were concerned about the required submission of what they perceived as an extremely high level of supporting documentation in § 100.17(b)(1). The FBI accepts this comment and has, for the purposes of clarity, removed the descriptive phrase ''adequately cross-referenced, suitable for detailed analysis'' from this subsection.

41. Proposed § 100.17(b)(2) (''Request for Payment''; Cost element breakdown): One commenter was concerned that this subsection's inclusion of the phrase ''and must reflect any specific requirements established by the FBI'' gave the FBI too much latitude in requiring additional documentation submission. While this was not the intent of this phrase, the FBI accepts that it could be read in such a manner and has, therefore, stricken it from the final rule.

42. Proposed § 100.17(c) (''Request for Payment''; Forward costing factors): The FBI has stricken the reference to forward costing factors in this subsection as unnecessary.

[12] CALEA § 109(c) states that ''The Attorney General shall allocate funds appropriated to carry out this title in accordance with law enforcement priorities determined by the Attorney General.''

[13] CALEA § 109(e)(2)

43. Proposed § 100.17(c)(2) (''Request for Payment''; Direct labor): A few commenters found this subsection to be confusing and requiring a potentially overburdensome submission of documentation. The FBI has streamlined this subsection and clarified its document submission requirements such that they impose the least burden possible. Specifically, the FBI has added the phrase ''have available for audit in accordance with § 100.18'' to the text to better define the documentation requirements. This phrase has also been added to Proposed subsections 100.17(c) (3), (4), and (5) for the same purpose.

44. Proposed § 100.17(d)(1) (''Request for Payment''; Specific identification of cost data): The FBI has amended this subsection to clarify the phrase ''by specific identification.''

45. Proposed § 100.17(d)(2) (''Request for Payment''; Continuous submission of cost data): A few commenters interpreted this subsection's requirement that cost data be submitted as it becomes available up until the time of final reimbursement as requiring a continuous submission of data. This was not the FBI's intent; rather, the FBI sought to ensure that, in the event that information significantly affecting the cost estimate should become available, that the carrier would provide that information to the FBI. This subsection has been amended to better reflect that intent.

46. Proposed § 100.17(e) (''Request for Payment''; Index): The FBI has streamlined this subsection to minimize the indexing requirements.

47. Proposed § 100.18 (''Audit''; General): One commenter questioned the FBI's right to audit with regard to CALEA reimbursements. The right to audit is implicit in a federal agency's stewardship responsibilities with respect to the disbursement of taxpayer funds. Furthermore, conducting audits of CALEA reimbursements is an important and integral part of the FBI's internal financial controls, which are required under 31 U.S.C. Subtitle III, Financial Management.

48. Proposed § 100.18 (''Audit''; Attorney-Client Privileged Material and Attorney Work Product): Two commenters seemed to interpret this section as granting the FBI the right to examine attorney-client privileged material and attorney work product during the normal course of an audit. This is not the FBI's intent. Audit materials do not include privileged communications or work product as protected by law. It must be noted, however, that the burden proving that the communication or material is privileged is on the party claiming the privilege.[14]

49. Proposed § 100.18(d) (''Audit''; ''Availability''; Reasonable availability): A few commenters found the requirement that a carrier ''shall make available at its office at all reasonable times the cost and support material described herein, for examination, audit, or reproduction . . .'' to be burdensome given that many carriers store such information offsite. These commenters interpreted this subsection as requiring carrier to store such information on-site, thereby requiring them to alter their existing record keeping regimes.

The FBI agrees that requiring carriers to store such records on-site would be burdensome; however, this was not the intent of Proposed § 100.18(d). The pivotal phrase here is ''at all reasonable times.'' Given the wide range of accounting and record keeping methods in use in the telecommunications industry, the FBI recognizes that ''reasonable'' might be 24 hours for one carrier or 3–5 business days for another carrier. Therefore, to meet the specific needs of individual carriers, a ''reasonable'' time frame will be defined as part of the cooperative agreement entered into with each carrier.

50. Proposed § 100.18(d) (''Audit''; ''Availability''; Record retention): Several commenters asserted that the five (5) year record retention requirement was too long and inconsistent with other federal regulatory record retention requirements. In the interest of minimizing the regulatory burden on private industry, the FBI accepts this comment. The record retention period in the final rule is amended to three (3) years.

51. Proposed § 100.19 (''Reduction for defective cost data''): A few commenters expressed concern that this section could be interpreted as a penalty clause. This was not the FBI's intent; rather, this section was included to allow for equitable adjustments to an agreed-to amount to reflect actual costs. To clarify this intent, the FBI has expanded § 100.19 to include adjustment procedures for revisions of the agreed-to amount: (1) prior to the incurrence of a cost; (2) subsequent to the incurrence of a cost; and (3) subsequent to the discovery that cost data was defective.

52. Proposed § 100.19(c)(1) (''Reduction for defective cost data''; Sole source supplier): Several commenters, either classified as small businesses for regulatory purposes or representing the interests of such small businesses, expressed concern that holding small businesses responsible for the cost data of their sole source suppliers was unduly burdensome. This issue is addressed at length in the *Final Regulatory Flexibility Analysis* below.

53. Proposed § 100.19(c)(4) (''Reduction for defective cost data''; Interest): A few commenters requested that a subsection be added requiring the Government to pay the carrier interest in the event of an underpayment or late payment by the Government. The FBI originally believed that such payments were mandated by the Prompt Payment Act (31 U.S.C. 3901 *et seq.*, as amended), which requires the payment of interest on the part of the Government and OMB Circular A–125 (Revised), ''Prompt Payment,'' which establishes the procedures for the payment of interest to parties in the event of late payment by the Government. It has since determined, however, that both the Prompt Payment Act and OMB Circular A–125 apply only to procurement contracts. Given this, the FBI does not derive statutory authority to pay interest under the Prompt Payment Act. However, the FBI may contractually bind itself with such provisions. Therefore, the FBI can incorporate such a clause into its cooperative agreements with carriers. Rather than develop duplicate procedures, the FBI intends to incorporate the procedures for the payment of interest on late payment of invoice payments (including progress payments) set forth in OMB Circular A–125 into all cooperative agreements with carriers. Therefore, the FBI has not amended the final rule.

54. Proposed § 100.20 (''Accounting for unallowable costs''): Some commenters asserted that Proposed § 100.20, Accounting for Unallowable Costs, was unnecessary and burdensome because carriers must fully account for and document allowable expenses.

The original intent of Proposed § 100.20 was to ensure that, should a carrier's accounting system require that unallowable costs be used in any way to calculate the nature and amount of allowable costs (i.e. to determine the level of allocable costs), the unallowable costs were accurately identified as such, and were properly removed from the calculation of the reimbursement amount. However, the FBI acknowledges that this section appeared confusing and that it could be streamlined. Therefore, Proposed § 100.20, Accounting for Unallowable

[14] *SEC* v. *Gulf & Western Industries, Inc.*, 518 F. Supp. 675 (D.D.C. 1981). *See also Olender* v. *United States*, 210 F.2d 795 (9th Cir. 1954) (privilege not applicable to communications with attorney where he has been ''employed as an accountant solely and simply'' in preparing tax returns).

Costs, has been deleted and the necessary elements have been added as new subsection (h) to Final § 100.15, Disallowed Costs.

55. Proposed § 100.21 (''Confidentiality of trade secrets/ proprietary information''): One commenter requested that the FBI amend this section to ensure that company proprietary information is not indiscriminately disclosed to Government employees. While this was not the FBI's intent, it accepts the comment and has amended the final rule accordingly.

General Comments

1. *Capacity Requirements:* Several commenters felt that they could not adequately comment on the proposed cost recovery rules without knowing what the final capacity requirements were. These commenters asserted that they needed to know the estimated costs prior to assessing the proposed rule.

These comments are not accepted. The Cost Recovery Rules are accounting principles addressing allowability and reasonableness which will be applied universally to carriers' costs, regardless of amount.

2. *Takings:* Two commenters asserted that carrier compliance with CALEA would require the carriers to expend funds or lose profits which would constitute a taking for which the carriers would be entitled to full compensation pursuant to the Just Compensation Clause of the Fifth Amendment of the Constitution of the United States. One commenter asserted that this was so regardless of whether Congress provides funding for CALEA cost reimbursement.

No set formula exists for identifying when Government regulatory action constitutes a ''taking'' under the Constitution; the Supreme Court has instead generally relied on an ad hoc, factual inquiry into the circumstances of each particular case. The Supreme Court has, however, indicated that the following factors have particular significance: (1) the severity of the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the government action. See *Concrete Pipe and Products of California, Inc.* v. *Construction Laborers Pension Trust for So. California*, 508 U.S. 602, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993); *Connolly* v. *Pension Benefit Guaranty Corp.* 475 U.S. 211, 106 S.Ct. 1018, 89 L.Ed.2d 166 (1986); *see also Lucas* v. *South Carolina Coastal Commission*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992).

In response to the comments received, the FBI has analyzed these factors and has concluded that CALEA's requirements do not amount to a compensable taking. First, the FBI does not believe that the economic impact of these CALEA regulations on carriers will rise to the level of a taking requiring compensation. These regulations will not significantly impair the economically beneficial use of the carrier's property, and the value of such property will not be substantially reduced. If any such reduction does occur, these regulations provide that it may be offset by Congressional funding available to reimburse carriers. Moreover, it has been held that ''mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.'' *Concrete Pipe*, 508 U.S. at 645. Second, these regulations will not interfere with investment-backed expectations of the carriers. Carriers have cooperated with the execution of court-ordered electronic surveillance for some time now. Carriers could, consequently, readily anticipate that such wiretapping would continue and that the mechanisms of such wiretapping would evolve as telecommunications technology advanced. These regulations do not expand law enforcement authority but merely maintain the ability of law enforcement to conduct court-ordered surveillance. Carriers had no reasonable expectation that they would not be required to continue to provide assistance to law enforcement. Finally, the character of the government action involved suggests that these regulations do not involve a compensable taking. In carrying out CALEA, no law enforcement agency will physically invade any carriers' property or appropriate any carriers' assets for its own use. The FBI feels that these CALEA regulations substantially advance the Nation's legitimate interests in preserving public safety and national security. These interests would unquestionably be jeopardized without the ability to conduct court-ordered electronic surveillance. Such wiretaps are critical to saving lives and solving crimes. In sum, the FBI does not believe that the carriers are being forced to bear a burden ''which, in all fairness and justice, should be borne by the public as a whole.'' *Armstong* v. *United States*, 364 U.S. 40, 49 (1960).

3. *Manufacture Date of Equipment:* One commenter seemed to assert that it was the manufacture date of the equipment which determined its eligibility for reimbursement. This comment is non-germane given that CALEA specifically addresses ''equipment, facilities, and services *installed or deployed* on or before January 1, 1995'' [§ 109(a), emphasis added], and ''equipment, facilit[ies] and service[s] *installed or deployed* after January 1, 1995'' [§ 109(b)(1), emphasis added]. Clearly, it is the installation or deployment date rather than the manufacture date which determines eligibility for reimbursement.

4. *Dispute Resolution:* A few commenters requested that the FBI identify a means of dispute resolution should a disagreement occur between a carrier and the FBI regarding the cooperative agreement process. As discussed above, carriers are in no way obligated to expend funds on modifications that are eligible for reimbursement under sections 109 and 104 prior to the execution of a cooperative agreement. Furthermore, should a carrier and the FBI fail to reach agreement as to the terms of the cooperative agreement, that carrier will remain in compliance with CALEA until such time as the equipment, facility or service in question is no longer eligible for reimbursement, either because it has undergone a ''significant upgrade or major modification'' or because the modification required has been determined to be reasonably achievable by the FCC.[15] Nevertheless, if a dispute does arise which has resulted in an impasse to the negotiations, there may be benefits to both the FBI and the carrier that would warrant additional efforts at resolving the dispute, so that a cooperative agreement could be agreed upon. The FBI is also aware of the Attorney General's April 6, 1995 Policy on Alternative Dispute Resolution (ADR), as well as Executive Order 12988, and the Congressional endorsement of ADR as found in the recently reauthorized Administrative Dispute Resolution Act of 1996. For all these reasons, the FBI has decided that, where an impasse in the negotiations precludes it from executing a cooperative agreement with a carrier, it will consider using mediation (where the carrier agrees) to achieve, in a timely fashion, a consensual resolution of all outstanding issues through facilitated negotiations. The FBI expects that the costs of mediation would be shared equally by the parties, and that each mediation would be governed by a separate mediation agreement prepared by the FBI and the carrier. Accordingly, § 100.21 ''Alternative Dispute Resolution'' has been added to the Final Rule.

[15] CALEA § 109(d) and § 109(b)(1).

5. *ESI Document:* Two commenters expressed concern about the FBI's Electronic Surveillance Interface (ESI) document. The commenters asserted their belief that the requirements in the ESI exceeded those of CALEA. The ESI document is not a requirements document, rather it is law enforcement's recommendation for the delivery interface between carrier systems and the law enforcement collection equipment. It relates only to the delivery of intercepted communications. It does not dictate interception solutions. The ESI document is merely a contribution to the standard setting process by law enforcement. The FBI coordinated the development of the ESI document with the law enforcement community and the Department of Justice to ensure that the recommendations were consistent with the scope and intent of CALEA and with existing electronic surveillance laws. As such, all costs directly associated with this approach will be eligible for reimbursement.

6. *Safe Harbor.* Two commenters requested a blanket statement that all costs associated with meeting a ''safe harbor'' standard as described in CALEA § 107(a)(2) are reimbursable. Once an industry standard has been established in accordance with CALEA § 107, the costs associated with the implementation of that standard will be reviewed for allowability and reasonableness under this rule.

D. Applicable Administrative Procedures and Executive Orders

Executive Order 12612

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

Executive Order 12866

The FBI has completed its examination of this final rule in light of Executive Order 12866 and has found that it constitutes a significant regulatory action only under section 3(f)(4). In accordance with section 6 of Executive Order 12866, the FBI has submitted this rule, and the proposed rule which preceded it to the Office of Information and Regulatory Affairs (OIRA), OMB, for review, and has met all of the requirements of this section.

Unfunded Mandates Reform Act of 1995

The FBI has completed its examination of this final rule in light of the Unfunded Mandates Reform Act of 1995 and has determined, after consultation with OIRA, that it does not impose an unfunded mandate as defined in that Act.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, public comment has twice been solicited on the reporting and recordkeeping requirements of this final rule (61 FR 21396 and 61 FR 58592). As noted above, all comments have been considered in preparing this final rule, and significant comments received have been discussed above in Section C of the Supplementary Information. These reporting and recordkeeping requirements have been assigned OMB Control Number 1110–0022 which expires on September 30, 1998.

Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a summary of the Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the NPRM. The FBI's Final Regulatory Flexibility Analysis (FRFA) conforms with the RFA as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[16]

A. Need for and Objectives of this Final Rule

This rule implements section 109 of the Communications Assistance for Law Enforcement Act (CALEA) which requires the Attorney General to establish regulations which set forth the procedures telecommunications carriers must follow in order to receive reimbursement under sections 109 and 104 of CALEA. CALEA requires that this rule enable carriers to recover costs in a timely and cost-efficient manner while minimizing the cost to the Federal Government. Specifically, this rule sets forth the means of determining allowable costs, reasonable costs, and disallowed costs. Furthermore, it establishes the requirements carriers must meet in their submission of cost estimates and requests for payment to the Federal Government for the disbursement of CALEA funds. Finally, this rule protects the confidentiality of trade secrets and proprietary information from unnecessary disclosure. The FBI seeks to subject all carriers to the same regulatory policy, while allowing carriers to use their existing accounting systems in the reimbursement process. Pursuant to the goal of imposing the least burden on carriers while also fulfilling the obligation to adhere to Government fiscal accountability requirements, this rule specifies reporting objectives rather than specifying the manner in which these records must be kept.

B. Description and Estimates of the Number of Small Entities Affected by this Final Rule

The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the regulating agency has developed or adopted one or more definitions that are appropriate to its activities and are approved by the Small Business Administration.[17] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[18] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[19] The total number of small telephone companies falling within both of those SIC categories in general is discussed first. The number of small businesses within the two subcategories an attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used by the FCC follows.

1. Telephone Companies (SIC 481)

Total Number of Telephone Companies Affected. The rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein,

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

[17] See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[18] 15 U.S.C. 632. See, e.g., Brown Transport Truckload, Inv. V. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

[19] 13 CFR 121.201.

for at least one year.[20] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMRS providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' [21] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this rule.

Wireless Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[22] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[23] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, the FBI is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by this rule.

Local Exchange Carriers. Neither the FCC nor the SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the Telecommunications Relay Service (TRS). According to the FCC's most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[24] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 1,347 small incumbent LECs that may be affected by this rule.

Interexchange Carriers and Resellers. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.

The most reliable source of information regarding the number of IXCs only nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with TRS. According to the FCC's most recent data, 97 companies reported that they were engaged in the provision of interexchange services.[25] Although it seems certain that some of these carriers are not independently owned and operated, or have fewer than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of IXCs only that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 97 small entity IXCs only that may be affected by this rule.

Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers only nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the TRS. According to the FCC's most recent data, 206 companies reported that they were engaged in the resale of telephone services.[26] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of resellers only that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 206 small entity resellers only that may be affected by this rule.

However, the FCC does have more recent data which combines IXCs and resellers. According to the FCC's most recent combined data, 583 companies were determined to be either IXCs or resellers.[27] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the combined number of IXCs and resellers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 583 small entity IXCs and resellers that may be affected by this rule.

Competitive Access Providers. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the TRS. According to the FCC's most recent data, 30 companies reported that they were engaged in the provision of competitive access services.[28] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's

[20] United States Department of Commerce, Bureau of Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (1992 Census).

[21] 15 U.S.C. 632(a)(1).

[22] 1992 Census, supra, at Firm Size 1–123.

[23] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[24] Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996) (TRS Worksheet).

[25] Id.

[26] Id.

[27] Federal Communications Commission, CCB, Industrial Analysis Division, Long Distance Market Shares, 2nd Quarter, 1996, (September, 1996).

[28] Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Fbe. 1996) (TRS Worksheet).

definition. Consequently, the FBI estimates that there are fewer than 30 small entity CAPs that may be affected by this rule.

Operator Service Providers. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the TRS. According to the FCC's most recent data, 29 companies reported that they were engaged in the provisions of operator services.[29] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 29 small entity operator service providers that may be affected by this rule.

Pay Telephone Operators. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the TRS. According to the FCC's most recent data, 197 companies reported that they were engaged in the provision of pay telephone services.[30] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 197 small entity pay telephone operators that may be affected by this rule.

Wireless (Radiotelephone) Carriers. The SBA has developed a definition of small entities of radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[31] According to the SBA's definition a small business radiotelephone company is one employing fewer than 1,500 persons.[32] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated, the FBI is unable at this time to estimate with greater precision the number of radiotelephone carriers and services providers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 1,164 small entity radiotelephone companies that may be affected by this rule.

Cellular Service Carriers. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the TRS. According to the FCC's most recent data, 789 companies reported that they were engaged in the provision of cellular services.[33] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 789 small entity cellular service carriers that may be affected by this rule.

Mobile Service Carriers. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which the FBI is aware appears to be the data that the FCC collects annually in connection with the TRS. According to the FCC's most recent data, 117 companies reported that they were engaged in the provision of mobile services.[34] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the FBI is unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, the FBI estimates that there are fewer than 117 small entity mobile service carriers that may be affected by this rule.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 C.F.R. § 24.720(b), the FCC has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. The FCC's definition of a ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[35] The FCC has auctioned broadband PCS licenses in Blocks A, B, and C. Neither the FCC nor the FBI has sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, the FBI concludes that the number of broadband PCS licensees affected by this rule includes, at a minimum, 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small business currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which began on August 26, 1996. Eligibility for the 483 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million.[36] The FBI cannot estimate the number of licenses that will be won by small entities under the FCC's definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone

[29] Id.

[30] Id.

[31] 1992 Census, supra, at Firm Size 1–123.

[32] 13 C.F.R. 121.201, SIC Code 4812.

[33] Id.

[34] Id.

[35] See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[36] Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, Report and Order, GN Docket No. 90314, FCC 96–278 (rel. June 24, 1996).

companies have fewer than 1,000 employees[37] and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, the FBI assumes, for the purposes of this FRFA, that all of the licensees in the D, E, and F Block Broadband PCS auctions may be awarded to small entities which may be affected by this rule.

SMRS Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the FCC had defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMRS licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMRA has been approved by the SBA.[38] This rule may apply to SMRS providers in the 800 MHz and 900 MHz band that either hold geographic area licenses or have obtained extended implementation authorizations. The FBI does not know how many firms provide 800 MHz or 900 MHz geographic area SMRS service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The FBI assumes, for purpose of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by this rule.

The FCC recently held auctions for geographic area licenses in the 900 MHz SMRS bands. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the FBI concludes that the number of geographic area SMRS licensees affected by this rule includes these 60 small entities. No auctions have been held for the 800 MHz geographic area SMRS licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMRS auction. However, the FCC has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMRS auction. There is no basis moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the FBI assumes, for purposes of this FRFA, that all of the licenses may be awarded to small entities who may be affected by this rule.

Commerical Paging and Commercial 220 MHz Radio Services. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of paging services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies.[39] With respect to commercial 220 MHz services, the FCC has proposed a two-tiered definition of small business for purposes of auctions: (1) for EA licensees,[40] a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding 3 years.[41] Since this definition has not yet been approved by the SBA, the FBI will use the SBA's definition applicable to radiotelephone companies. The FBI notes that while there are incumbents in this service, they are not commercial providers and will not, therefore, be affected by this rule. Since there have been no auctions for either service as of yet and the parameters of the industry have not been fully defined, any estimate of the number of small businesses who will seek to bid in the future auctions is not yet determined. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees,[42] and that no reliable estimate of the number of prospective licensees can be made, the FBI assumes, for the purposes of its evaluations and conclusion in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Interconnected Business Services. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of for-profit interconnected business services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies.[43] The size data provided by the SBA does not enable the FBI to make a meaningful estimate of the number of for-profit interconnected business service providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[44] The Census Bureau reports that only 12 out of a total of 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees.[45] However, the FCC does not know how many of the 1,178 firms were for-profit interconnected business service companies. Although there are in excess of 13,000 for-profit interconnected business service licenses, the FCC is unable to determine the number of for-profit interconnected business service licensees because a single licensee may own several licenses.[46] Given these facts, the FBI assumes, for purposes of this FRFA, that all of the current inter-connected business service licensees are small entities, as that term is defined by the SBA.

2. Cable System Operators (SIC 4841)

The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census

[37] 1992 Census, Table 5, Employment Size of Firms: 1992, SIC Code.

[38] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMRS Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

[39] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[40] EA licenses refer to the 60 channels in the 172 geographic economic areas as defined by the Bureau of Economic Analysis, Department of Commerce. See In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making, GN Docket 93–252, 10 FCC Rcd 188 (1995).

[41] See In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making, GN Docket 93–252, 10 FCC Rcd 188 (1995).

[42] See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

[43] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[44] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[45] 1992 Census, supra, at Firm Size 1–123.

[46] Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 96–6, 11 FCC Rcd 8965, 9025 (1996).

Bureau, there were 1,323 such cable and other pay television services generating less and $11 million in revenue that were in operation for at least one year at the end of 1992.[47]

The FCC has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the FCC's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[48] Based on the FCC's most recent information, the FBI estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[49] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. In addition, it is unlikely that many of the ''small cable companies'' will be engaging in activities as ''telecommunications carriers'' as defined by CALEA. Consequently, the FBI estimates that there are significantly fewer than 1,439 small entity cable system operators that may be affected by this rule.

The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [50] There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than one percent (631,960) of subscribers.[51] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the FBI is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition of small cable system operator in the Communications Act of 1934.

[47] 1992 Census, supra, at Firm Size 1–123.

[48] 47 CFR § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order and Reconsideration, 10 FCC Red 7393.

[49] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[50] 47 U.S.C. 543(m)(2).

[51] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

C. Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of This Report and Order on Small Entities, Including the Significant Alternatives Considered and Rejected

Structure of the Analysis. In this section of the FRFA, the FBI analyzes the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this rule.[52] As a part of this discussion, the FBI mentions some of the types of skills that will be needed to meet the new requirements. The FBI also describes the steps taken to minimize the economic impact of this rule on small entities, including the significant alternatives considered and rejected.[53]

The FBI provides this information to provide context for its analysis in this FRFA. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to this rule, the rule shall be controlling.

1. Reporting, Recordkeeping, and Other Compliance Requirements

This rule requires carriers to submit cost estimates and requests for payment to the FBI to receive reimbursement with CALEA funds. To meet the reporting requirements for these submissions, carriers must submit quantitative cost data, such as labor rates, estimates, and invoices for equipment or services procured from subcontractors. This data is necessary to evaluate cooperative agreement proposals and subsequent requests for reimbursement under CALEA, and will be used to determine whether agreement prices are fair and reasonable.

No forms are prescribed for these submissions; rather, in order to allow carriers to use their existing accounting systems, the rule simply prescribes the types of information and the headings for submissions. Carriers may then determine the best means of meeting the required submission of data in the way least burdensome for their staffs. The FBI anticipates that small carriers will have the least difficulty meeting the requirements because their accounting systems are less likely to require complex calculations or extensive explanations of such calculations.

The FBI estimates that there are fewer than 3,497 small carriers, as discussed above, which could be affected by this rule over a 5 year period. Given the difficulty in determining with any accuracy the number of small carriers, for purposes of the Paperwork Reduction Act of 1995, the FBI has calculated its estimate of the reporting and recordkeeping requirements on a per switch basis. There are approximately 23,000 switches which may require modification at some point during the 5 year CALEA implementation period. Therefore, given this 5 year time span, the total maximum number of annual responses from all carriers is estimated at 4,600. However, the very nature of small carriers ensures that the number of switches affect per year which are owned and operated by small carriers will be significantly less than 4,600. Based on the collection of similar data under the Federal Acquisition Regulation (FAR) and on the nature of the telecommunications industry, the time to read and prepare the required information for one switch is estimated at 4 hours. Therefore, an extremely small carrier with only one switch might have only 4 burden hours imposed whereas a larger carrier with 50 switches might have 200 burden hours imposed.

The recordkeeping necessitated by this rule is, for the most part, the same as that the carriers would do in the normal course of business. The only exception might be in the case of carriers which do not maintain site-specific records. These carriers would be required to maintain CALEA-specific records for audit purposes. This requirement is as much for the carrier's protection as for the needs of the Government, given that the development and maintenance of such records assure that the carrier will be able to provide the required information with the least disruption of its business should its acceptance and use of appropriated funds be audited by the Comptroller General.[54] Finally, given that carriers are using their existing accounting systems, the accounting and financial management skills of their current personnel are all that is required by this rule.

2. Steps taken to Minimize Burdens on Small Entities

First, the guiding principle in the development of this rule was to allow the maximum range of compliance options to carriers dependent upon their own accounting systems. The rule was crafted such that it requires the minimum level of data submission possible which still allows the FBI to

[52] See 5 U.S.C. § 604(a)(4).

[53] See 5 U.S.C. § 604(a)(5).

[54] 31 U.S.C. 701 *et seq.* specifically, 31 U.S.C. 712 authorizes the Comptroller General to investigate all matters related to the receipt, disbursement, and use of public money.

meet its good stewardship responsibilities with respect to taxpayer funds. Furthermore, the dual mandate of CALEA requiring this rule to permit timely and cost-effective payment to carriers of costs directly associated with the compliance effort while minimizing the costs to the Government has limited the FBI's ability to be flexible in some areas such as the determination of allowable costs.

Within this framework, the FBI has sought industry input at all stages of the rulemaking process. Initially, the FBI met with carriers and associations, such as NECA and PCIA, in order to explain the requirements of CALEA § 109 and to solicit questions and comments from the industry.[55] Using the industry input from these meetings, the FBI drafted the initial versions of the proposed rule. As each draft was completed, the FBI incorporated its outline and sections of actual text into the presentations the FBI continued to make to the industry. At this stage, the FBI met with representatives of both wireline and wireless carriers.[56] In addition, the FBI presented to the Electronic Communications Service Provider (ECSP) committee both the outline of the draft proposed rule and an explanation of how such concepts as allowability and reasonableness of costs were being treated. In addition to carrier representatives, ECSP membership includes representatives of various associations, including CTIA, NECA, PCIA, and USTA. Again the FBI solicited comments and issued an open invitation to meet with anyone who wished to discuss the cost recovery rules further.[57] Once the proposed rule was published, the FBI met again with the ECSP committee and with a variety of individual carriers and associations to provide supplemental explanations of the proposed rule and to once again solicit comments and extend the invitation to discuss the rule further.[58] Finally, the FBI has maintained an on-going dialogue with the telecommunications industry with regard to the CALEA cost recovery rules, both through meetings and in the responses to comments in the Supplementary Information of this document.

In addition to industry input, the FBI solicited advice from a number of other government entities including the Department of Justice, the FCC, the General Accounting Office, and the Office of Management and Budget. With specific regard to the needs of small carriers, the FBI has also actively sought the assistance of both the Office of Advocacy at the SBA and the Office of Communications Business Opportunities at the FCC.

In addition the FBI is currently drafting a Small Business Compliance Guide (Guide) in accordance with SBREFA. This Guide will be provided to the SBA and the various associations representing the interests of small entities in telecommunications industry. It will also be available upon request from the FBI. and FBI small business liaison able to assist small carriers with the compliance process will also be identified in the Guide.

3. Significant Alternatives Considered and Rejected

The FBI considered and rejected a number of alternatives prior to drafting its proposed rule. Initially, the FBI considered whether a new regulation was actually necessary. That some procedures were required was obvious from the mandate of CALEA 109(e) which directs the Attorney General to ''establish regulations necessary to effectuate timely and cost-effective payment to telecommunications carriers'' to reimburse carriers for certain compliance costs. However, it seemed possible that some existing regulations might be used for this purpose.

First, the FBI considered using the FAR as a vehicle for carrying out reimbursement. However, it became readily apparent that this approach was nonproductive. The FAR was designed for Federal procurement actions in which the contractor not only recovers direct and indirect costs, but also makes a profit. CALEA specifically restricts reimbursement to costs directly associated with the modifications performed for CALEA compliance. In addition, the FAR could require that contractors maintain and use accounting systems which are compliant with the Cost Accounting Standards as set forth in 48 CFR 30, ''Cost Accounting Standards'' (Part 30). Given that many of the telecommunications carriers, particularly those classified as small entities, could be required to implement entirely new accounting systems to meet this requirement,[59] the FBI determined that using the FAR would impose far too great a burden. In addition, using the FAR could also violate the Paperwork Reduction Act of 1995 by requiring some carriers already subject to FCC reporting requirements to maintain duplicate records. Therefore, the FBI rejected this alternative.

Second, the FBI considered using the FCC's accounting regulations found in 47 CFR 32, ''Uniform System of Accounts for Telecommunications Companies'' (Part 32) as a vehicle for carrying out reimbursement. However, it became readily apparent that this approach was also non-productive. While large wireline carriers dealt with these regulations on a regular basis, many small wireline carriers were exempt from detailed reporting requirements. Furthermore, wireless carriers, a large number of which are classified as small entities, had never been bound by these regulations. Given that many of these small wireline and wireless carriers would be required to implement entirely new accounting systems to meet this requirement, the FBI determined that using Part 32 of the FCC's regulations would impose far too great a burden. Therefore, the FBI rejected this alternative.

The FBI could identify no other existing regulations which might provide viable alternatives. Ultimately, the FBI determined that it was necessary to develop new regulations which were both industry and CALEA specific; this rule is the result of that development effort.

In developing this rule, the FBI explored two options which might ease the regulatory burden on small entities. The FBI considered using a tiered system similar to those the FCC uses. The FBI also considered allowing small carriers to seek waivers of certain reporting requirements. However, this rule was crafted to permit reimbursement for the maximum amount allowable under CALEA and requires the minimum level of data submission possible that allows (1) The FBI to meet its good stewardship responsibilities with respect to taxpayer funds; and (2) the carriers to meet the requirements of an audit by the Comptroller General. In addition, the flexibility of the cooperative agreement process and the minimal nature of the reporting requirements obviate the need for any issuance of waivers. Therefore, the FBI determined that no special

[55] January through September, 1995.

[56] October, 1995 through April, 1996.

[57] ECSP meeting held at Telecommunications Industry Liaison Unit's facility on November 15, 1995.

[58] May through July, 1996. ECSP meeting held at the Telecommunications Industry Liaison Unit's facility on June 26, 1996.

[59] 48 CFR 9901.306 states that ''Cost Accounting Standards promulgated by the [Cost Accounting Standards Board] shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $500,000. * * *''

exemptions or waivers for small carriers were viable.

D. Issues Raised and Alternatives Suggested in Response to the IRFA

No comments were submitted specifically in response to the IRFA. In general comments on the proposed rule, however, some commenters raised issues that might affect small entities. Some commenters also proposed alternatives which they believed might ease the burden on small carriers.

1. Issues Raised

Reporting and Recordkeeping Requirements. Several commenters either classified as small entities for regulatory purposes or representing such small entities were concerned about what they perceived to be the excessive reporting and recordkeeping requirements of § 100.16 and § 100.17 of the proposed rule. These comments have been addressed at length both in the discussion of general comments received (Section C., Significant Comments and Changes) and in the discussion of reporting and recordkeeping requirements in this FRFA (Section C., 1. Reporting, Recordkeeping, and Other Compliance Requirements) above. In Section C., Significant Comments and Changes, small entities are specifically referred to comment responses 30 through 45, with emphasis on response 32. The FBI has considerably clarified and streamlined the reporting and recordkeeping requirements and believes that this final rule reflects the least burdensome reporting and recordkeeping requirements possible with regard to small entities.

Definition of ''First-Line Supervision''. One small wireless carrier expressed concern over the nature and definition of ''first-line supervision'' as that phrase was used in proposed § 100.11(b)(2) (''Allowable costs''; Allowable plant specific costs; first-line supervision). This commenter interpreted this subsection as excluding from eligibility for reimbursement the work of some individuals who, of necessity, perform many different functions in a small business. This was not the FBI's intent. For the purposes of reimbursement, it is not job title which matters, but rather the nature of the work performed. Therefore, if the CEO of a company also happens to be the engineer responsible for network engineering, the time that individual spends coordinating the integration of the CALEA compliant solution into the network will be reimbursable, while the time spent managing the general business affairs of the company will not be reimbursable. In addition to this explanation, the FBI has changed the term ''first-line supervision'' to the more commonly used ''direct supervision'' and has provided a definition of ''direct supervision'' in § 100.10 of the final rule to clarify this issue in the rule.

Burden of Proof. A few commenters either classified as small entities for regulatory purposes or representing such small entities were concerned about the burden of proof requirements in proposed § 100.12(a)(1), § 100.12(a)(2), § 100.13(a)(3), and § 100.14(b). These subsections establish that no presumption of reasonableness is attached to the incurrence of costs by a carrier and that burden of proof that a cost is reasonable for the purposes of CALEA reimbursement rests with the carrier. The commenters believed that the burden of proof might be too onerous for small entities, particularly with respect to supporting documentation submission. These comments have been specifically addressed in the discussion of general comments received (Section C., Significant Comments and Changes) and generally addressed in the discussion of reporting and recordkeeping requirements in this FRFA (Section C., 1. Reporting, Recordkeeping, and Other Compliance Requirements) above. In Section C., Significant Comments and Changes, small entities are specifically referred to comment responses 17, 18, and 21.

It must be noted that small entities will be required to submit supplementary documentation meeting the burden of proof only if a question arises regarding a specific cost on a cost estimate or request for payment. In addition, the specifics of what constitutes adequate documentation to meet the burden of proof will be definitized during the cooperative agreement process. The FBI is cognizant of the special needs of small carriers and will make every effort to work with small carriers to tailor the burden of proof requirements to meet their needs during the cooperative agreement process. Furthermore, the FBI anticipates that small carriers will have the least difficulty meeting the requirements because their accounting systems are less likely to entail complex calculations and, therefore, less likely to require extensive supporting explanations of such calculations.

Carrier Responsibility for Sole-Source Suppliers. Several commenters, either classified as small entities for regulatory purposes or representing the interests of such small entities, expressed concern that holding small carriers responsible for the cost data of their sole-source suppliers [proposed § 100.19(c)(1)] was unduly burdensome. Specifically, these commenters asserted that small entities have little control over their sole-source suppliers because of the nature of their networks and their inability to make bulk purchases. The FBI is cognizant of this situation and is prepared to make accommodations for such situations during the cooperative agreement process with small carriers. However, this provision exists to ensure that all carriers make a good faith effort to seek the most cost-effective solutions for their networks. The FBI requires only that small carriers negotiate prices with their sole-source suppliers for CALEA-related work in the same manner that these small carriers would negotiate if the work were solely to benefit their businesses. Therefore, the FBI cannot relieve small carriers of this responsibility.

2. Alternatives Suggested

Tiered System. One association representing the interests of small carriers suggested that the FBI institute a tiered system, similar to the FCC's, for the reporting requirements of this rule. In developing this rule, the FBI did consider using a tiered system as a means of easing the burden on small entities. However, this rule permits reimbursement for the maximum amount allowable under CALEA and requires the minimum level of data submission possible that allows (1) The FBI to meet its good stewardship responsibilities with respect to taxpayer funds; and (2) the carriers to meet the requirements of an audit by the Comptroller General. Therefore, the FBI determined that no exemptions based upon carrier size were feasible and that no tiered system could be implemented. Therefore, this proposed alternative was rejected.

FCC Collaboration/Rulemaking. One commenter, which was not a small entity, suggested that the FBI and DOJ collaborate with the FCC to determine the best mechanism for ensuring compliance with CALEA. The commenter asserted that this would yield greater input from industry, allow for coordination and consistent application of telecommunications law and policy, and allow the FBI to use FCC developed rules and procedures permitting the use of established industry cost allocation manuals.

First, the FBI did consult with the FCC in the development of these rules. Specifically, the FBI consulted with the FCC in order to ensure consistent application of telecommunications law and policy in the development of this rule. The FBI also drew on the FCC's

considerable knowledge of the telecommunications industry during the development of this rule. Second, the FBI strove for the maximum industry input, not only by publishing the proposed notice in the Federal Register requesting comment, but also by meeting with industry representatives and associations during the development process and, concurrent with publication, directly soliciting input by all parties which had requested that they be included on the proposed rule distribution list. Furthermore, the FBI made every effort to distribute the proposed rule to the various industry-related associations in order to reach the broadest commenter possible. Thus, the FBI is confident that it did receive input from the industry. Lastly, using industry established cost allocation manuals, which establish fully distributed cost methodologies, is not a viable option under CALEA's mandate to reimburse only for directly associated costs. Therefore, this proposed alternative was rejected.

Keep Cost System. One commenter, which was not a small entity, suggested that the FBI allow carriers to use their existing keep cost system. This system, which is used by many large carriers, is a cost accumulation system that allows the user to identify costs to specific accumulation points. These rules do not preclude the use of carriers existing systems to the extent that the system can exclude or specifically identify costs that are not allowable under CALEA. However, if the FBI were to prescribe this type of system, many carriers, especially those classified as small entities, could be forced to alter their existing accounting systems. Therefore, this proposed alternative was rejected.

Rural Utility Services Loan Proposal Forms. One association representing the interest of small carriers suggested that the FBI use the existing Rural Utility Services loan proposal form for cost data submission given that it already exists and that small carriers understand the form. The FBI reviewed the form and its underlying requirements and found that some of the information required is similar. However, the form itself requires unnecessary details and information not applicable to CALEA. Use of this form could, therefore, cause confusion within the industry as to what is required under CALEA. Additionally, not all small carriers are familiar with this form. Therefore, this potential alternative was rejected.

Separate Rules for the Wireless Industry. One association representing the interests of wireless carriers suggested that the FBI implement separate rules for wireless carriers because their accounting systems were different from those prescribed for wireline carriers. However, as long as wireless carriers are using accounting systems which generate financial statements which are in accordance with generally accepted accounting principles, the final rule will allow wireless providers to use their current accounting systems to meet requirements of this rule. Therefore, this potential alternative was rejected.

E. Conclusion

The FBI believes this rule is fair to small entities and is committed to assisting them in complying with it. The FBI intends to maintain an on-going dialogue with the Office of Advocacy at the SBA and with representatives of small carriers, both wireline and wireless, with regard to the development of the Small Business Compliance Guide. In addition, the FBI is in the process of identifying a small business liaison for CALEA reimbursement issues to ensure that small carriers are provided with the information and assistance they need to comply with this rule in the least burdensome manner possible.

Finally, small carriers are reminded that they are in no way obligated to expend funds on modifications eligible for reimbursement pursuant to CALEA sections 109(a), 109(b)(2) and 104(e) prior to the execution of a cooperative agreement. Therefore, in the event they are selected for reimbursement, they will have both the direct assistance of the FBI's contracting officer and the opportunity to tailor the cooperative agreement to meet their special needs.

List of Subjects in 28 CFR Part 100

Accounting, Law enforcement, Reporting and recordkeeping requirements, Telecommunications, Wiretapping and electronic surveillance.

For the reasons set out in the preamble, 28 CFR chapter I is amended by adding part 100 to read as follows:

PART 100—COST RECOVERY REGULATIONS, COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT OF 1994

Sec.

Authority: 47 U.S.C. 1001–1010; 28 CFR 0.85(o).

§ 100.9 General.

These Cost Recovery Regulations were developed to define allowable costs and establish reimbursement procedures in accordance with section 109(e) of Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103–414, 108 Stat. 4279, 47 U.S.C. 1001–1010). Reimbursement of costs is subject to the availability of funds, the reasonableness of costs, and an agreement by the Attorney General or designee to reimburse costs prior to the carrier's incurrence of said costs.

§ 100.10 Definitions.

Allocable means chargeable to one or more cost objectives and can be distributed to them in reasonable proportion to the benefits received.

Business unit means any segment of an organization for which cost data are routinely accumulated by the carrier for tracking and measurement purposes.

Cooperative agreement means the legal instrument reflecting a relationship between the government and a party when—

(1) The principal purpose of the relationship is to reimburse the carrier to carry out a public purpose of support or stimulation authorized by a law of the United States; and

(2) Substantial involvement is expected between the government and carrier when carrying out the activity contemplated in the agreement.

Cost element means a distinct component or category of costs (e.g. materials, direct labor, allocable direct costs, subcontracting costs, other costs) which is assigned to a cost objective.

Cost objective means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

Cost pool means groupings of incurred costs identified with two or more cost objectives, but not identified specifically with any final cost objective.

Direct supervision means immediate or first-level supervision.

Directly allocable cost means any cost that is directly chargeable to one or more cost objectives and can be distributed to them in reasonable proportion to the benefits received.

Directly assignable cost means any cost that can be wholly attributed to a cost objective.

Directly associated cost means any directly assignable cost or directly allocable cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the said cost not been incurred.

Final cost objective means a cost objective that has allocated to it, both assignable and allocable costs and, in the carrier's accumulation system, is one of the final accumulation points.

Installed or deployed means that, on a specific switching system, equipment, facilities, or services are operable and available for use by the carrier's customers.

Labor cost means the sum of the payroll cost, payroll taxes, and directly associated benefits.

Network operations costs means all directly associated costs related to the ongoing management and maintenance of a telecommunications carrier's network.

Plant costs means the directly associated costs related to the modifications of specific kinds of telecommunications plants, such as switches, intelligent peripherals and other network elements. These costs shall include the costs of inspecting, testing and reporting on the condition of telecommunications plant to determine the need for replacements, rearranges and changes; rearranging and changing the location of plant not retired; inspecting after modifications have been made; the costs of modifying equipment records, such as administering trunking and circuit layout work; modifying operating procedures; property held for future telecommunications use; provisioning costs; network operations costs; and receiving training to perform plant work. Also included are the costs of direct supervision and office support of this work.

Provisioning costs means all costs directly associated with the resources expended within a telecommunications carrier's network to provide a connection and/or service to an end user of the telecommunications service.

Trade secrets/proprietary information means information which is in the possession of a carrier but not generally available to the public, which that carrier desires to protect against unrestricted disclosure or competitive use, and which is clearly identified as such at the time of its disclosure to the government.

Unit cost means the directly associated cost of a single unit of a good or service which is included in a cost element.

§ 100.11 Allowable costs.

(a) Costs that are eligible for reimbursement under section 109(e) CALEA are:

(1) All reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modifications;

(2) Additional reasonable plant costs directly associated with making the assistance capability requirements found in section 103 of CALEA reasonably achievable with respect to equipment, facilities, or services installed or deployed after January 1, 1995, in accordance with the procedures established in CALEA section 109(b); and

(3) Reasonable plant costs directly associated with modifications to any of a carrier's systems or services, as identified in the Carrier Statement required by CALEA section 104(d), that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the Capacity Notice(s) published in accordance with CALEA section 104.

(b) Allowable plant costs shall include:

(1) The costs of installation, inspection, and testing of the telecommunications plant, and inspection after modifications have been made; and

(2) The costs of direct supervision and office support for this work for plant costs.

(c) In the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a government law enforcement agency, this part permits recovery of only the incremental cost of making the modification suitable for such law enforcement purposes.

(d) Reasonable costs that are directly associated with the modifications performed by a carrier as described in § 100.11(a) are recoverable. These allowable costs are limited to directly assignable and directly allocable costs incurred by the business units whose efforts are expended on the implementation of CALEA requirements.

§ 100.12 Reasonable costs.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with the carrier or its separate divisions that may not be subject to effective competitive restraints.

(1) No presumption of reasonableness shall be attached to the incurrence of costs by a carrier.

(2) The burden of proof shall be upon the carrier to justify that such cost is reasonable under this part.

(b) Reasonableness depends upon considerations and circumstances, including, but not limited to:

(1) Whether a cost is of the type generally recognized as ordinary and necessary for the conduct of the carrier's business or the performance of this obligation; or

(2) Whether it is a generally accepted sound business practice, arm's-length bargaining or the result of Federal or State laws and/or regulations.

(c) It is the carrier's responsibility to inform the Government of any deviation from the carrier's established practices.

§ 100.13 Directly assignable costs.

(a) A cost is directly assignable to the CALEA compliance effort if it is a plant cost incurred specifically to meet the requirements of CALEA sections 103 and 104.

(1) A cost which has been incurred for the same purpose, in like circumstances, and which has been included in any allocable cost pool to be assigned to any final cost objective other than the CALEA compliance effort, shall not be assigned to the CALEA compliance effort (or any portion thereof).

(2) Costs identified specifically with the work performed are directly assignable costs to be charged directly to the CALEA compliance effort. All costs specifically identified with other projects, business units, or cost objectives of the carrier shall not be charged to the CALEA compliance effort, directly or indirectly.

(3) The burden of proof shall be upon the carrier to justify that such cost is an assignable cost under this part.

(b) For reasons of practicality, any directly assignable cost may be treated as a directly allocable cost if the accounting treatment is consistently applied within the carrier's accounting system and the application produces substantially the same results as treating the cost as a directly assignable cost.

§ 100.14 Directly allocable costs.

(a) A cost is directly allocable to the CALEA compliance effort:

(1) If it is a plant cost incurred specifically to meet the requirements of CALEA sections 103 and 104; or

(2) If it benefits both the CALEA compliance effort and other work, and can be distributed to them in reasonable proportion to the benefits received.

(b) The burden of proof shall be upon the carrier to justify that such cost is an allocable cost under this part.

(c) An allocable cost shall not be assigned to the CALEA compliance effort if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that, or any other, cost objective.

(d) The accumulation of allocable costs shall be as follows:

(1) Allocable costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs.

(i) Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the multiple cost objectives.

(ii) Similarly, the particular case may require subdivision of these groupings (e.g., building occupancy costs might be separable from those of personnel administration within the engineering group).

(2) Such allocation necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the multiple cost objectives.

(3) When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(4) Once a methodology for determining an appropriate base for distributing allocable costs has been agreed to, it shall not be modified without written approval of the FBI, if that modification affects the level of reimbursement from the government. All items properly includable in an allocable cost base should bear a pro rata share of allocable costs irrespective of their acceptance as reimbursable under this part.

(5) The carrier's method of allocating allocable costs shall be in accordance with the accounting principles used by the carrier in the preparation of their externally audited financial statements and consistently applied, to the extent that the expenses are allowable under there regulations. The method may require further examination when:

(i) Substantial differences occur between the cost patterns of work under CALEA compliance effort and the carrier's other work;

(ii) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the carrier's products, or other relevant circumstances; or

(iii) Allocable cost groupings developed for a carrier's primary location are applied to off-site locations. Separate cost groupings for costs allocable to off-site locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the multiple cost objectives.

(6) The base period for allocating allocable costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The base period for allocating allocable costs will normally be the carrier's fiscal year. A shorter period may be appropriate when performance involves only a minor portion of the fiscal year, or when it is general practice to use a shorter period. When the compliance effort is performed over an extended period, as many base periods shall be used as are required to accurately represent the period of performance.

§ 100.15 Disallowed costs.

(a) General and Administrative (G&A) costs are disallowed. G&A costs include, but are not limited to, any management, financial, and other expenditures which are incurred by or allocated to a business unit as a whole. These include, but are not limited to:

(1) Accounting and Finance, External Relations, Human Resources, Information Management, Legal, Procurement; and

(2) Other general administrative activities such as library services, food services, archives, and general security investigation services.

(b) Customer Service costs are disallowed. These costs include, but are not limited to, any Marketing, Sales, Product Management, and Advertising expenses.

(c) Plant costs that are not directly associated with the modifications identified in § 100.11 are disallowed. These include, but are not limited to, repairing materials for reuse, performing routine work to prevent trouble; expenses related to property held for future telecommunications use; provisioning costs; network operations costs; and depreciation and amortization expenses.

(d) Costs that have already been recovered from any governmental or nongovernmental entity are disallowed.

(e) Costs that cannot be either directly assigned or directly allocated are disallowed.

(f) Additional costs that are incurred due to the carrier's failure to complete the CALEA compliance effort in the time frame agreed to by the government and the carrier are disallowed.

(g) Costs associated with modifications of any equipment, facility or service installed or deployed after January 1, 1995 which are deemed reasonably achievable by the Federal Communications Commission under section 109(b) of CALEA are disallowed.

(h) To ensure that the Government does not reimburse carriers for disallowed costs, the following provisions are included:

(1) Costs that are expressly disallowed or mutually agreed to be disallowed, including mutually agreed to be disallowed directly associated costs, shall be excluded from any billing, claim, or proposal applicable to reimbursement under CALEA. When a disallowed cost is incurred, its directly associated costs are also disallowed.

(2) Disallowed costs involved in determining rates used for standard costs, or for allocable cost proposals or billing, need be identified only at the time rates are proposed, established, revised, or adjusted. These requirements may be satisfied by any form of cost identification which is adequate for purposes of cost determination and verification.

§ 100.16 Cost estimate submission.

(a) The carrier shall provide sufficient cost data at the time of proposal submission to allow adequate analysis and evaluation of the estimated costs. The FBI reserves the right to request additional cost data from carriers in order to ensure compliance with this part.

(b) The requirement for submission of cost data is met if, as determined by the FBI, all cost data reasonably available to the carrier are either submitted or identified in writing by the date of agreement on the costs.

(c) If cost data and information to explain the estimating process are required by the FBI and the carrier refuses to provide necessary data, or the FBI determines that the data provided are so deficient as to preclude adequate analysis and evaluation, the FBI will attempt to obtain the data and/or elicit corrective action.

(d) Instructions for submission of the cost data for the estimate are as follows:

(1) The carrier shall submit to the FBI estimated costs by line item with supporting information.

(2) A cost element breakdown as described in § 100.16(h) shall be attached for each proposed line item.

(3) Supporting breakdowns shall be furnished for each cost element, consistent with the carrier's cost accounting system.

(4) When more than one line item is proposed, summary total amounts covering all line items shall be furnished for each cost element.

(5) Depending on the carrier's accounting system, the carrier shall provide breakdowns for the following categories of cost elements, as applicable:

(i) *Materials.* Provide a consolidated cost summary of individual material quantities included in the various tasks, orders, or agreement line items being proposed and the basis upon which they were developed (vendor quotes, invoice prices, etc.). Include raw materials, parts, software, components, and assemblies. For all items proposed, identify the item, source, quantity, and cost.

(ii) *Direct labor.* Provide a time-phased (e.g., monthly, quarterly) breakdown of labor hours, rates, and costs by appropriate category, and furnish the methodologies used in developing estimates.

(iii) *Allocable direct costs.* Indicate how allocable costs are computed and applied, including cost breakdowns that provide a basis for evaluating the reasonableness of proposed rates.

(iv) *Subcontracting costs.* For any subcontractor costs submitted for reimbursement, the carrier is responsible for ensuring that documentation requirements set forth herein are passed on to any and all subcontractors utilized in the carrier's efforts to meet CALEA requirements.

(v) *Other costs.* List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services) and provide bases for costs.

(e) As part of the specific information required, the carrier shall submit with its cost estimate and clearly identify as such, costs that are verifiable and factual. In addition, the carrier shall submit information reasonably required to explain its estimating process, including:

(1) The judgmental factors applied, such as trends or budgetary data, and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed estimate.

(f) There is a clear distinction between submitting cost data and merely making available books, records, and other documents without identification. The requirement for submission of cost data is met when all accurate cost data reasonably available to the carrier have been submitted, either actually or by specific identification, to the FBI.

(g) In submitting its estimate, the carrier must include an index, appropriately referenced, of all the cost data and information accompanying or identified in the estimate. In addition, any future additions and/or revisions, up to the date of agreement on the costs, must be annotated in a supplemental index.

(h) Headings for submission are as follows:

(1) Total Project Cost: Summary

(i) Cost Elements (Enter appropriate cost elements.)

(ii) Proposed Cost Estimate—Total Cost (Enter those necessary and reasonable costs that in the carrier's judgment will properly be incurred in efficient completion of CALEA requirements. When any of the costs in this have already been incurred (e.g., under a letter contract), describe them on an attached supporting schedule.)

(iii) Proposed Cost Estimate—Unit Cost (Enter the unit costs for each cost element.)

(iv) Supporting Material (Identify the attachment in which the information supporting the specific cost element may be found.)

(2) Total Project Costs: Detail (at Switch Level or Project Level, as appropriate)

(i) Cost Elements (Enter appropriate cost elements.)

(ii) Proposed Cost Estimate—Total Cost (Enter those necessary and reasonable costs that in the carrier's judgment will properly be incurred in efficient completion of CALEA requirements. When any of the costs in this have already been incurred (e.g., under a letter contract), describe them on an attached supporting schedule.)

(iii) Proposed Cost Estimate—Unit Cost (Enter the unit costs for each cost element.)

(iv) Supporting Material (Identify the attachment in which the information supporting the specific cost element may be found.)

§ 100.17 Request for payment.

(a) The carrier shall provide sufficient supporting documentation at the time of submission of request for payment to allow adequate analysis and evaluation of the incurred costs. The FBI reserves the right to request additional cost data from carriers in order to ensure compliance with this part.

(b) Instructions for submission of the supporting documentation for the request for payment are as follows:

(1) The carrier shall submit to the FBI incurred costs by line item with supporting information.

(2) A cost element breakdown as described in § 100.17(f) shall be attached for each agreed upon line item.

(3) Supporting breakdowns shall be furnished for each cost element, consistent with the carrier's cost accounting system.

(c) When more than one line item has been agreed upon, summary total amounts covering all line items shall be furnished for each cost element. Depending on the carrier's accounting system, breakdowns shall be provided to the FBI for the following categories of cost elements, as applicable:

(1) *Materials.* Provide a consolidated cost summary of individual material quantities included in the various tasks, orders, or agreement line items and the basis upon which they were determined (vendor invoices, time sheets, payroll records, etc.). Include raw materials, parts, software, components, and assemblies. For all reimbursable items, identify the item, source, quantity, and cost.

(2) *Direct labor.* Provide a breakdown of labor hours, rates, and cost by appropriate category, and furnish the methodologies used in identifying these costs. Have available for audit, in accordance with § 100.18, time sheet and labor rate calculation justification for all direct labor charged to the agreement.

(3) *Allocable direct costs.* Indicate how allocable costs are computed and applied, including cost breakdowns, comparing estimates to actual data as a basis for evaluating the reasonableness of actual costs.

(4) *Subcontracting costs.* For any subcontractor costs submitted for reimbursement, along with a copy of the invoice, the carrier must have available for audit in accordance with § 100.18, documentation that costs incurred are just and reasonable.

(5) *Other costs.* List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services) and have available for audit in accordance with § 100.18, documentation that costs incurred are just and reasonable.

(d) There is a clear distinction between submitting cost data and merely making available books, records,

and other documents without identification.

(1) The requirement for submission of cost data is met when all accurate cost data reasonably available to the carrier have been submitted, either actually or by specific identification of the data that are available for review in the carrier's files, to the FBI.

(2) Should later information which affects the level of reimbursement come into the carrier's possession, it must be promptly submitted to the FBI.

(3) The requirement for submission of cost data continues up to the time of final reimbursement.

(e) In submitting its invoice, the carrier must include an index, which cross references the actual cost data submitted with the cost estimate.

(f) Headings for submission are as follows:

(1) Total Project Cost: Summary

(i) Cost Elements (Enter appropriate cost elements.)

(ii) Actual Costs Incurred—Total Cost (Enter those necessary and reasonable costs that were incurred in the efficient completion of CALEA requirements.)

(iii) Actual Costs Incurred—Unit Cost (Enter the unit costs for each cost element.)

(iv) Supporting Material (Identify the attachment in which the information supporting the specific cost element may be found.)

(2) Total Project Costs: Detail (at Switch Level or Project Level, as appropriate.)

(i) Cost Elements (Enter appropriate cost elements.)

(ii) Actual Costs Incurred—Total Cost (Enter those necessary and reasonable costs that were incurred in the efficient completion of CALEA requirements.)

(iii) Actual Costs Incurred—Unit Cost (Enter the unit costs for each cost element.)

(iv) Supporting Material (Identify the attachment in which the information supporting the specific cost element may be found.)

§ 100.18 Audit.

(a) *General.* In order to evaluate the accuracy, completeness, and timeliness of the cost data, the FBI or other representatives of the Government shall have the right to examine and audit all of the carrier's supporting materials.

(1) These materials include, but are not limited to books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape) or type (e.g., data bases, applications software, data base management software, utilities), including computations and projections related to proposing, negotiating, costing, or performing CALEA compliance efforts or modifications.

(2) The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost data submitted, along with the computations and projections used.

(b) *Audits of request for payment.* The carrier shall maintain and the FBI or representatives of the Government shall have the right to examine and audit supporting materials.

(1) These materials include, but are not limited to, books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape) or type (e.g., date bases, applications software, data base management software, utilities), sufficient to reflect properly all costs claimed to have been incurred, or anticipated to be incurred, in performing the CALEA compliance effort.

(2) This right of examination shall include inspection at all reasonable times of the carrier's plants, or parts of them, engaged in performing the effort.

(c) *Reports.* If the carrier is required to furnish cost, funding, or performance reports, the FBI or representatives of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating the effectiveness of the carrier's policies and procedures to produce data compatible with the objectives of these reports and the data reported.

(d) *Availability.* The carrier shall make available at its office at all reasonable times the costs and support material described herein, for examination, audit, or reproduction, until three (3) years after final reimbursement payment. In addition,

(1) If the CALEA compliance effort is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and

(2) Records relating to appeals, litigation or the settlement of claims arising under or relating to the CALEA compliance effort shall be made available until such appeals, litigation, or claims are disposed of.

(e) *Subcontractors.* The carrier shall ensure that all terms and conditions herein are incorporated in any agreement with a subcontractor that may be utilized by the carrier to perform any or all portions of the agreement.

§ 100.19 Adjustments to agreement estimate.

(a) Adjustments prior to the incurrence of a cost.

(1) In accordance with § 100.17(d)(2), the carrier shall notify the FBI when any change affecting the level of reimbursement occurs.

(2) Upon such notification, if the adjustment results in an increase in the estimated reimbursement, the FBI will review the submission and determine if

(i) Funds are available;

(ii) The adjustment is justified and necessary to accomplish the goals of the agreement; and

(iii) It is in the best interest of the government to approve the expenditure.

(3) The FBI will provide the decision as to the acceptability of any increase to the carrier in writing.

(b) Adjustments after the incurrence of a cost. Any cost incurred that exceeds the provision in § 100.16(e)(2) will be reviewed by the FBI to determine reasonability, allowability, and if it is in the best interest of the government to approve the expenditure for reimbursement.

(c) Reduction for defective cost data.

(1) The cost shall be reduced accordingly and the agreement shall be modified to reflect the reduction if any cost estimate negotiated in connection with the CALEA compliance effort, or any cost reimbursable under the effort is increased because:

(i) The carrier or a subcontractor furnished cost data to the government that were not complete, accurate, and current;

(ii) A subcontractor or prospective subcontractor furnished the cost data to the carrier that were not complete, accurate, and current; or

(iii) Any of these parties furnished data of any description that were not accurate.

(2) Any reduction in the negotiated cost under § 100.19(c)(1) due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount by which either the actual subcontract or the actual cost to the carrier, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the carrier, provided that the actual subcontract cost was not itself affected by defective cost data.

(3) If the FBI determines under § 100.19(c)(1) that a cost reduction should be made, the carrier shall not raise the following matters as a defense:

(i) The carrier or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the costs of the agreement would not

have been modified even if accurate, complete, and current cost data had been submitted;

(ii) The FBI should have known that the cost data at issue were defective even though the carrier or subcontractor took no affirmative action to bring the character of the data to the attention of the FBI;

(iii) The carrier or subcontractor did not submit accurate cost data. Except as prohibited, an offset in an amount determined appropriate by the FBI based upon the facts shall be allowed against the cost reimbursement of an agreement amount reduction if the carrier certifies to the FBI that, to the best of the carrier's knowledge and belief, the carrier is entitled to the offset in the amount requested and the carrier proves that the cost data were available before the date of agreement on the cost of the agreement (or cost of the modification) and that the data were not submitted before such date. An offset shall not be allowed if the understated data were known by the carrier to be understated when the agreement was signed; or the Government proves that the facts demonstrate that the agreement amount would not have increased even if the available data had been submitted before the date of agreement on cost; or

(4) In the event of an overpayment, the carrier shall be liable to and shall pay the United States at that time such overpayment as was made, with simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the carrier to the date the Government is repaid by the carrier at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

§ 100.20 Confidentiality of trade secrets/ proprietary information.

With respect to any information provided to the FBI under this part that is identified as company proprietary information, it shall be treated as privileged and confidential and only shared within the government on a need-to-know basis. It shall not be disclosed outside the government for any reason inclusive of Freedom of Information requests, without the prior written approval of the company. Information provided will be used exclusively for the implementation of CALEA. This restriction does not limit the government's right to use the information provided if obtained from any other source without limitation.

§ 100.21 Alternative dispute resolution.

(a) If an impasse arises in negotiations between the FBI and the carrier which precludes the execution of a cooperative agreement, the FBI will consider using mediation with the goal of achieving, in a timely fashion, a consensual resolution of all outstanding issues through facilitated negotiations.

(b) Should the carrier agree to mediation, the costs of that mediation process shall be shared equally by the FBI and the carrier.

(c) Each mediation shall be governed by a separate mediation agreement prepared by the FBI and the carrier.

Dated: February 25, 1997.

Louis Freeh,

Director, Federal Bureau of Investigation, Department of Justice.

[FR Doc. 97–7035 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NE 020–1020; FRL–5708–7]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this document, the EPA is approving the Omaha lead emission control plan submitted by the state of Nebraska on August 28, 1996. This plan was submitted by the state to satisfy certain requirements under the Clean Air Act (the Act) to reduce lead emissions sufficient to bring portions of the Omaha area into attainment with the lead National Ambient Air Quality Standard (NAAQS).

DATES: This rule is effective on April 21, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

On January 6, 1992, the EPA designated portions of Omaha surrounding the Asarco, Incorporated primary lead refinery as nonattainment for the lead NAAQS. Specifically, the boundaries for the nonattainment area are: Avenue H and the Iowa-Nebraska border on the north, the Missouri River on the east, Eleventh Street on the west, and Jones Street on the south. Pursuant to the designation, the Act required the state of Nebraska to submit an attainment plan by July 6, 1993, which would bring the area into attainment by January 6, 1997.

On August 28, 1996, the state submitted a plan to the EPA which consists of Compliance Order (Case Number) 1520 and associated work practices. This plan meets the minimum requirements of sections 110 and 172 of the Act and in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748). The rationale regarding the EPA's approval of this plan can be found in the December 4, 1996, Federal Register document (61 FR 64304) proposing the EPA's action on Nebraska's plan and in the technical support document (TSD) for this action.

B. Response to Comments

The EPA received comments from only one commentor. On January 3, 1997, the state of Nebraska submitted the following two comments. The state identified a typographical error made by the EPA in its December 4, 1996, proposal in subsection III.f., ''Contingency Measures.'' Specifically, the EPA's discussion of Nebraska's prohibition on causing a violation of the lead ambient air quality standard should have referenced paragraph 19 of Compliance Order (Case Number) 1520, instead of paragraph 20.

The EPA agrees with this comment and wishes to make one additional correction. The EPA's discussion of street sweeping and production cuts in the same subsection should have referenced paragraph 18 of Compliance Order (Case Number) 1520, instead of paragraph 19.

The EPA has determined that the proposal notice adequately described the issues associated with the substance of the referenced paragraphs. Therefore, despite the incorrect references to paragraph numbers in the proposal, the EPA has determined that the proposal gives adequate notice of the rationale for the EPA's proposed action on the two paragraphs of the Compliance Order referenced above.

In its second comment, the state disagrees with the EPA's proposed nonaction on the provisions pertaining to the direct enforcement of the lead NAAQS contained in paragraph 19 of

the Compliance Order. In support of its comment, the state points to certain provisions of section 110 of the Act which authorize the Administrator to approve a broad spectrum of measures, means, or techniques contained in the state's plan to the extent that they are necessary and appropriate to meet the applicable requirements under the Act. Nebraska indicates that other states use similar provisions to achieve attainment. Nebraska also effectively describes the difficulty in addressing individual sources at a facility of this nature through its traditional regulatory process. Specifically, the large number and variety of sources, the variability of the emissions rates, the weather dependent nature of fugitive emissions, and the source's desire for operational flexibility make it difficult for the state to develop regulations for this source which are both protective of the NAAQS and which are sufficiently flexible to meet Asarco's needs. According to the state, paragraph 19 resolves this issue by protecting the NAAQS while allowing Asarco increased flexibility.

The EPA acknowledges the state's reasons for developing the provisions of paragraph 19. However, the EPA's concerns regarding this provision specifically relate to its general enforceability and its inconsistency with the criteria for contingency measures contained in section 172(c)(9) of the Act, and in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748). Specifically, paragraph 19 does not require the source to implement specific measures which reduce ambient lead concentrations when a violation of the standard occurs. The state's remedy for a violation of this paragraph is to assess a penalty or to seek injunctive relief. Neither of these options has a direct impact on ambient lead concentrations. As noted in the proposal, other provisions of the Order which require specific emission reductions (if the NAAQS are violated) are sufficient to meet the contingency measure requirements in section 172(c)(9). Secondly, the state has not defined the methods by which it will demonstrate that Asarco is the sole source of the ambient violation. Without predefining such methods, successful enforcement of paragraph 19 will be difficult. For the reasons stated above, and as explained in more detail in the TSD for this action, the EPA will not take action on paragraph 19 of Compliance Order (Case Number) 1520 at this time.

II. Final Action

In this document, the EPA takes final action to approve the Nebraska Department of Environmental Quality's Compliance Order (Case Number) 1520, signed June 6, 1996, and Appendix A to that Compliance Order entitled, ''Work Practices Manual.'' Together, these documents, submitted to the EPA on August 28, 1996, comprise the enforceable portion of the Nebraska attainment plan. However, the EPA takes no action on paragraph 19 of Compliance Order (Case Number) 1520 for the reasons stated above.

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

SIP 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 does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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.

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

D. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 27, 1997.

U. Gale Hutton,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(45) A revision to the Nebraska SIP to reduce lead emissions in the Omaha lead nonattainment area sufficient to bring that area back into attainment with the lead National Ambient Air Quality Standard.

(i) Incorporation by reference.

(A) Amended Complaint and Compliance Order Case No. 1520, signed June 6, 1996, except for paragraph 19 and accompanying work practice manual in Appendix A.

(ii) Additional material.

(A) Supplemental document entitled, ''Methods for Determining Compliance'' submitted by the state to provide additional detail regarding the compliance methods for this Order.

[FR Doc. 97–7097 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA59–7134a; FRL–5708-3]

Approval and Promulgation of Implementation Plans: Washington State

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part several minor revisions to the State of Washington Implementation Plan (SIP) and, at the same time, taking no action on one section of this revision which is unrelated to the purpose of the SIP. Pursuant to section 110(a) of the Clean Air Act (CAA), the Director of the Washington Department of Ecology (WDOE) submitted a request to EPA dated August 6, 1996 to revise certain regulations of a local air pollution control agency, namely, the Puget Sound Air Pollution Control Agency (PSAPCA).

DATES: This action is effective on May 19, 1997 unless adverse or critical comments are received by April 21, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the SIP revision request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101; and Washington State Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air Quality, EPA, (206) 553-0180.

SUPPLEMENTARY INFORMATION:

I. Background

The August 6, 1996 submittal from WDOE consisted of minor amendments to PSAPCA Regulations I, II, and III. No action will be taken on Regulation I because it is unrelated to the purpose of the SIP and unassociated with criteria pollutants regulated under the SIP.

Regulation II, section 3.11, Coatings and Ink Manufacturing, is amended to maintain the stringency of the current standard, while allowing those operations consisting solely of manufacturing low vapor pressure coatings and inks to be exempt from regulation. Manufacturers of low vapor pressure coatings and inks contribute an insignificant quantity of air pollutants to the environment. This will have no adverse impact upon air quality and is approved as such. The amendments to Regulation II were adopted by PSAPCA on April 11, 1996 and became effective on May 16, 1996.

Regulation III is being amended to provide the regulated community with a simpler, more concise chromium electroplating and anodizing regulation while incorporating the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. This amendment revises the format of the emission limit regulation and specifies operating and maintainance procedures, monitoring, recordkeeping, and reporting for chromium electroplating and anodizing facilities. The amendments to Regulation III were adopted by PSAPCA on June 13, 1996 and became effective on July 18, 1996.

The PSAPCA amendments submitted by WDOE as SIP revisions are local air pollution regulations which are at least as stringent as the statewide rules of WDOE. EPA has determined that these minor SIP revisions comply with all applicable requirements of the Clean Air Act Amendments of 1990.

II. Summary of Today's Action

EPA is, by today's action, approving the following revisions submitted by WDOE on August 6, 1996 as amendments to the regulations of PSAPCA and for inclusion into the SIP:

Regulation II, Section 3.11, Coatings and Ink Manufacturing.

Regulation III, section 3.01, Hard and Decorative Chromium Electroplating and Chromium Anodizing.

EPA is taking no action on Regulation I, section 3.03, General Regulatory Orders, because it is unrelated to the purpose of the SIP and unassociated with criteria pollutants regulated under the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective May 19, 1997 unless, by April 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 19, 1997.

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

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

EPA has determined that the approval action 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 24, 1997.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (71) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(71) On March 6, 1996, the Director of the Washington State Department of Ecology (Ecology) submitted to the Regional Administrator of EPA a revision to the Puget Sound Air Pollution Control Agency Regulations, Regulations I, II, and III.

(i) Incorporation by reference.

(A) Letter dated August 6, 1996 from the Department of Ecology to EPA revising the Puget Sound Air Pollution Control Agency Regulations; Regulation II Section 3.11 (Coatings and Ink Manufacturing), effective on May 16, 1996; and Regulation III Section 3.01 (Hard and Decorative Chromium Electroplating and Chromium Anodizing), effective on July 18, 1996.

[FR Doc. 97–7098 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[CO–001–0015a; FRL–5700–3]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to Colorado's prevention of significant deterioration (PSD) permitting requirements in Regulation No. 3, which were submitted as revisions to the State Implementation Plan (SIP) by the Governor on August 1, 1996. The revisions were submitted mainly to address the replacement of the total suspended particulate (TSP) increments with increments for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM–10). EPA is also deleting the TSP area designation table and revising the PM–10 area designation table in 40 CFR part 81 for Colorado. With the PM–10 increments becoming

effective in these areas, the TSP area designations no longer serve any useful purpose relative to PSD.

Also in this document, EPA is amending the language in 40 CFR 52.343(a)(3) to further clarify which sources EPA retains PSD permitting authority over in the State of Colorado.

DATES: This action will become effective on May 19, 1997 unless adverse or critical comments are received by April 21, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, at (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

In this document, EPA is acting on revisions to the PSD permitting program in Regulation No. 3 for the State of Colorado. The State's revisions were generally made to address the replacement of the TSP increments with increments for PM–10 in the Federal PSD permitting requirements in 40 CFR 51.166, which were promulgated by EPA on June 3, 1993 (58 FR 31622–31638). The State also made other minor administrative changes to Regulation No. 3. This document evaluates the State's submittal for conformity with the corresponding Federal regulations and the requirements of the Clean Air Act (Act). In addition, this document provides justification regarding the removal of the TSP area designation table in 40 CFR part 81 for Colorado.

Also in this document, EPA is amending the language in 40 CFR 52.343(a)(3) to further clarify which sources EPA retains PSD permitting authority over in the State of Colorado. EPA is making this correction pursuant to section 110(k)(6) of the Act.

II. This Action

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

A public hearing to entertain public comment on the initial PSD SIP revision was held by the State of Colorado on August 17, 1995, and the rule revisions were subsequently adopted by the State. The rule revisions were formally submitted to EPA for approval on August 1, 1996. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated September 26, 1996 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

2. Evaluation of State's Submittal

a. PM–10 Increment Revisions. As discussed above, EPA promulgated increments for PM–10 on June 3, 1993 (see 58 FR 31622–31638). EPA promulgated revisions to the Federal PSD permitting regulations in 40 CFR 52.21, as well as to the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. EPA or its delegated State programs were required to begin implementation of the increments by June 3, 1994, while the implementation date for States with SIP-approved PSD permitting programs (such as Colorado) will be the date on which EPA approves the revised State PSD program containing the PM–10 increments. In accordance with 40 CFR 51.166(a)(6)(i), States with SIP-approved PSD programs were required to adopt the PM–10 increment requirements within nine months of the effective date (or by March 3, 1995). For further background regarding the PM–10 increments, see the June 3, 1993 Federal Register notice.

In order to address the PM–10 increments, Colorado revised the following sections of its PSD permitting regulations in Colorado Regulation No. 3:

(1) The definition of ''baseline area'' in Section I.B.10. of Part A of Regulation No. 3 was revised to conform with 40 CFR 51.166(b)(15)(iii);

(2) The definition of ''minor source baseline date'' in Section I.B.35. of Part A of Regulation No. 3 was revised to conform with 40 CFR 51.166(b)(14)(iv);

(3) The definition of ''net emissions increase'' in Section I.B.37. of Part A of Regulation No. 3 was revised to conform with 40 CFR 51.166(3)(iv);

(4) The State added language to Section IV.D.3.b.(v) of Part B of Regulation No. 3 to address the provisions in 40 CFR 51.166(i)(12), which allows a State to provide an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect;

(5) The State revised the increments tables in Section VII.A.1. of Part B of Regulation No. 3 to incorporate the PM–10 increments in 40 CFR 51.166(c);

(6) The State revised Section X.D. of Part B of Regulation No. 3 to address the changes reflecting PM–10 increments in 40 CFR 51.166(p)(4); and

(7) The State revised Section V.D.11. of Part A of Regulation No. 3, which discusses when modeling is required to determine ambient equivalence of emissions trades, to replace the TSP Class I increments with the PM–10 Class I increments (for determining whether an ambient impact is significant).

EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993.

b. TSP Area Deletions. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, the EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to

as ''section 107 areas''), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable [40 CFR 52.21(i)(3)]. Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

EPA revised the primary and secondary NAAQS for particular matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM–10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM–10 promulgated at that time.[1] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM–10 increments replaced the TSP increments. With the State adoption and implementation of the PM–10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM–10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, i.e., ''PSD areas,'' and to provide the geographic link necessary for implementation of the PM–10 increments.[2]

Thus, in the June 3, 1993 Federal Register notice in which EPA promulgated the PM–10 increments, EPA stated that, for States with SIP-approved PSD programs, EPA would delete the TSP area designations at the same time EPA approves the revision to a State's plan incorporating the PM–10 increments. In deleting any State's TSP area designations, EPA must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM–10 NAAQS.

The following TSP nonattainment areas in Colorado are included in nonattainment designations for PM–10: the Boulder Urbanized Area and the Denver Urbanized Area. The State has adopted a PM–10 SIP for the Denver Metropolitan area (which includes the Boulder area). Thus, EPA believes it is appropriate at this time to delete the TSP area designations for these areas.

Colorado has three areas listed in 40 CFR part 81 as nonattainment for the TSP standards but which are not designated nonattainment for PM–10: the cities of Fort Collins and Greeley, the Colorado Springs 3–C urbanized area, and the Grand Junction urbanized area. EPA has reviewed the existing approved particulate matter control strategies for these areas and has determined that the deletion of the TSP nonattainment status for these areas will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP designations for these areas. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for these areas, it must submit a SIP revision to EPA for approval that must meet all applicable Federal requirements.

As stated above, the State has adopted adequate provisions in its PSD program for the implementation of the PM–10 increments. Therefore, EPA is deleting the State's existing TSP designation table in 40 CFR 81.306.

c. Other Administrative Revisions. As discussed above, the State made other minor administrative revisions to Regulation No. 3 in its August 1, 1996 SIP submittal. These revisions included correction of errors in the numbering of certain sections, errors which occurred in the printing of Regulation No. 3 in the Code of Colorado Regulations, and other minor deficiencies. Specifically in Part A of Regulation No. 3, the State revised the numbering of the definitions in Section I.B., Section I.B.36., Sections IV.B. and C., and Section V.C.1. Regarding Section I.B. which contains the definitions applicable to Regulation No. 3, EPA noted additional numbering errors in this section which the State needs to correct. Therefore, EPA is not approving the revisions to this section at this time, with the exception of those specific definitions that were revised to reflect the PM–10 PSD increments (as discussed in Section II.A.2.a. of this document).

EPA believes it is appropriate to approve all of the other minor revisions at this time, with the exception of Section IV.C. of Part A. This provision in this section, which allows for emissions trading under a construction or title V operating permit cap, was originally submitted as a revision to the SIP on November 12, 1993 along with many other revisions to Regulation No. 3. In EPA's January 21, 1997 Federal Register promulgating action on the State's November 12, 1993 submittal, EPA did not take action on Section IV.C. of Part A of Regulation No. 3. For the reasons stated in that Federal Register, EPA is not taking action on the revisions to Section IV.C. in this action. (See 62 FR 2911 for further details.)

B. Amendment to 40 CFR 52.343(a)(3)

On September 2, 1986, EPA approved Colorado's PSD regulations (51 FR 31125). In that approval, EPA indicated that the Federal PSD regulations would remain in effect for sources that had previously received PSD permits from EPA. On June 15, 1987, EPA issued a correction notice regarding the approval of Colorado's PSD regulations (52 FR 22638). In that correction notice, EPA revised language in 40 CFR 52.343(a)(10)[3] to clarify that EPA was retaining PSD authority not only for sources which received a PSD permit from EPA before September 2, 1986, but also for sources that constructed before EPA's September 2, 1986 approval of Colorado's PSD regulations. EPA explained that this correction was needed because Colorado's PSD regulations allowed Colorado to issue PSD permits only to sources that applied for a permit after EPA's approval of Colorado's PSD program. EPA further explained that neither EPA nor Colorado intended to create any gaps in the PSD program through EPA approval of the Colorado regulations.

The approval language in the June 15, 1987 correction notice has led to some confusion. The correction notice focused only on the status of sources as of the date of approval of Colorado's PSD program and did not consider future source changes or permit applications. For example, major sources subject to EPA's PSD regulations may have constructed or modified before September 2, 1986 without applying for a PSD permit. If

[1] The EPA did not promulgate new PM–10 increments simultaneously with the promulgation of the PM–10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments ''not more than 2 years after the date of promulgation of * * * standards.'' Consequently, EPA temporarily retained the TSP increments, as well as the section 107 areas for TSP.

[2] It should be noted that 40 CFR part 81 does not presently list all section 107 areas for PM–10. Only those areas designated ''nonattainment'' appear in the State listings. This is because under the listings published by EPA in the Federal Register on November 6, 1991, EPA's primary objective was to identify nonattainment areas designated as such by operation of law upon enactment of the 1990 Amendments. For States having no PM–10 nonattainment areas designated by operation of law, EPA did not include a new PM–10 listing. Nevertheless, section 107(d)(4)(B)(iii) mandates that all areas not designated nonattainment for PM–10 by operation of law, are designated unclassifiable. The PM–10 increments apply in any area designated unclassifiable for PM–10.

[3] Note: 40 CFR 52.343(a)(10) was redesignated as 40 CFR 52.343(a)(4) on August 18, 1994 (59 FR 42506), and 40 CFR 52.343(a)(4) was redesignated as 40 CFR 52.343(a)(3) on January 21, 1997 (62 FR 2914).

these sources were to apply to Colorado for a PSD permit after September 2, 1986, Colorado would have authority under Colorado law to issue PSD permits to such sources. However, the language in EPA's June 15, 1987 correction notice might be read to require that EPA issue permits to such sources. This would be contrary to EPA's intent in issuing the correction notice which was to eliminate any gaps in coverage, not to retain authority in instances in which Colorado has the authority to issue PSD permits under State law. In addition, the correction notice did not address the question of which agency should issue permits to sources that received permits from EPA before September 2, 1986, but that seek a major modification after September 2, 1986. Similar questions pertain to major sources which constructed before EPA's PSD program became effective, and then later seek a major modification.

Accordingly, EPA believes it is appropriate to correct the language currently in 40 CFR 52.343(a)(3) to clarify that the retention of EPA's PSD authority applies only to sources which constructed prior to September 2, 1986 and which have not otherwise subjected themselves to Colorado's PSD permitting regulations after September 2, 1986, either through application to Colorado for a PSD permit (in the case of those sources which improperly constructed without obtaining a PSD permit) or through application to Colorado for a major modification to the source. This correction is consistent with the manner in which EPA and Colorado have been implementing the PSD program within Colorado. EPA is making this correction under section 110(k)(6) of the Act.

Note that this action does not alter Colorado's PSD permitting jurisdiction. The State does not have authority to issue PSD permits to new or modified stationary sources proposing to locate within the exterior boundaries of Indian reservations or on Indian lands; EPA retains PSD permitting authority for such sources. [See 40 CFR 52.343(a)(1) & (2).]

III. Final Action

Based on the review and justification provided in this document and the accompanying Technical Support Document (TSD), EPA is approving the SIP revision regarding PSD permitting submitted by the State of Colorado on August 1, 1996. However, for the reasons discussed above, EPA is not acting on the minor administrative changes made to Section I.B. of Part A of Regulation No. 3, nor is EPA acting on Section IV.C. of Part A of Regulation No. 3 at this time. In addition, EPA is deleting Colorado's TSP area designation table in 40 CFR 81.306, and EPA is revising the PM–10 area designation table in 40 CFR 81.306 to add the following areas designated as unclassifiable for PM–10:[4] Air Quality Control Region (AQCR) 1, AQCR 2, AQCR 3 (excluding the Denver Metropolitan moderate PM–10 nonattainment area), AQCR 4, AQCR 5, AQCR 6 (excluding the Lamar moderate PM–10 nonattainment area), AQCR 7, AQCR 8, AQCR 9 (excluding the Pagosa Springs moderate PM–10 nonattainment area), AQCR 10 (excluding the Telluride moderate PM–10 nonattainment area), AQCR 11, AQCR 12 (excluding the Aspen/Pitkin County and Steamboat Springs Area Airshed moderate PM–10 nonattainment areas), and AQCR 13 (excluding the Canon City moderate PM–10 nonattainment area). Since these AQCRs encompass the entire State, EPA is deleting the ''Rest of State'' PM–10 area.

EPA is also amending the language in 40 CFR 52.343(a)(3) to further clarify which sources EPA retains PSD permitting authority over in the State of Colorado.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 19, 1997 unless, by April 21, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 19, 1997.

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

[4] EPA is designating the PM–10 areas as unclassifiable, rather than attainment, at this time to be consistent with section 107(d)(4)(B) of the Act which stated that any area which was not initially designated as nonattainment for PM–10 shall be designated unclassifiable. EPA will consider redesignating these areas to ''attainment'' status at a later date. Both ''unclassifiable'' and ''attainment'' areas have the same status for PSD purposes.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the

aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 27, 1997.

Patricia D. Hull,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for parts 52 and 81 continue to read as follows:

Authority: 42 U.S.C. 7401–7671q.

PART 52—[AMENDED]

2. Section 52.320 is amended by adding paragraph (c)(81) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(81) On August 1, 1996, the Governor of Colorado submitted revisions to the prevention of significant deterioration regulations in Regulation No. 3 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments and to make other minor administrative revisions.

(i) Incorporation by reference.

(A) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/17/95, effective 10/30/95, as follows: Part A, Section I.B., as follows: the definition of ''baseline area'' in subsection 10, the definition of ''minor source baseline date'' in subsection 35, and the definition of ''net emissions increase'' in subsection 37; Part A: Sections IV.B., V.C.1., and V.D.11.c.; Part B: Sections IV.D.3.b.(v), VII.A.1., and X.D.

3. Section 52.343 is amended by revising paragraph (a)(3) to read as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(a) * * *

(3) Sources which constructed prior to September 2, 1986 and which have not otherwise subjected themselves to Colorado's PSD permitting regulations after September 2, 1986, either through application to Colorado for a PSD permit (in the case of those sources which improperly constructed without obtaining a PSD permit) or through application to Colorado for a major modification to the source.

* * * * *

PART 81—[AMENDED]

4. Section 81.306 is amended by removing the table for ''Colorado-TSP'' and by removing the entry in the table for ''Colorado-PM–10'' for ''Rest of State.''

5. Section 81.306 is amended by adding entries at the end of the table for ''Colorado-PM–10'' for ''AQCR 1'', ''AQCR 2,'' ''AQCR 3,'' ''AQCR 4,'' ''AQCR 5,'' ''AQCR 6,'' AQCR 7,'' AQCR 8,'' ''AQCR 9,'' ''AQCR 10,'' ''AQCR 11,'' ''AQCR 12,'' and ''AQCR 13'' to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	*		
AQCR 1	11/15/90	Unclassifiable		
AQCR 2	11/15/90	Unclassifiable		
AQCR 3 (excluding the Denver Metropolitan PM–10 nonattainment area)	11/15/90	Unclassifiable		
AQCR 4	11/15/90	Unclassifiable		
AQCR 5	11/15/90	Unclassifiable		
AQCR 6 (excluding the Lamar PM–10 nonattainment area)	11/15/90	Unclassifiable		
AQCR 7	11/15/90	Unclassifiable		
AQCR 8	11/15/90	Unclassifiable		
AQCR 9 (excluding the Pagosa Springs PM–10 nonattainment area)	11/15/90	Unclassifiable		
AQCR 10 (excluding the Telluride PM–10 nonattainment area)	11/15/95	Unclassifiable		
AQCR 11	11/15/95	Unclassifiable		

COLORADO—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
AQCR 12 (excluding the Aspen/Pitkin County and Steamboat Springs Area Airshed PM–10 nonattainment areas).	11/15/90	Unclassifiable		
AQCR 13 (excluding the Canon City PM–10 nonattainment area)	1/15/90	Unclassifiable		

[FR Doc. 97–7096 Filed 3–19–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300461; FRL–5595–3]

RIN 2070–AC78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the insecticide tebufenozide in or on the raw agricultural commodities sugar beet roots, sugar beet tops, sugar beet molasses, sugar beet refined sugar and sugar beet dried pulp in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of tebufenozide on sugar beets in California. This regulation establishes maximum permissible levels for residues of tebufenozide on sugar beets. These tolerances will expire on March 30, 1998.

DATES: This regulation becomes effective March 20, 1997. This entries in the table expire on March 30, 1998. Objections and requests for hearings must be received by EPA on May 19, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300461], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300461], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300461]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328, e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on sugar beet roots at 0.3 parts per million (ppm), sugar beet tops at 0.6 ppm, sugar beet dried pulp at 6.0 ppm, and sugar beet molasses and refined sugar at 4.0 ppm. These tolerances will expire by EPA on March 30, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub.L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new FFDCA section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' FFDCA section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency

exemption granted by EPA under section 18 of FIFRA.

FFDCA section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under FFDCA section 408(l)(6) and requires that the regulations be consistent with FFDCA section 408(b)(2) and (c)(2) and FIFRA section 18.

FFDCA section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of FFFDCA section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing FIFRA section 18-related tolerances and exemptions during this interim period before EPA issues the FFDCA section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new FFDCA section 408, EPA does not intend to set precedents for the application of FFDCA section 408 and the new safety standard to other tolerances and exemptions. Rather, these early FIFRA section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on FIFRA section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Tebufenozide on Sugar Beets and FFDCA Tolerances

On October 11, 1996, the California Environmental Protection Agency, Department of Pesticide Regulation requested a specific exemption under FIFRA section 18 for the use of tebufenozide to control Granulate Cutworm (*Agrotis subterranea*) on sugar beets. Sugar beets grown in Imperial County, California are severely infested with granulate cutworms and growers have already experienced economic loss from this pest. The registered alternative products do not provide control of this pest and lack of a viable alternative is responsible for acreage loss over the last several years. Growers will experience significant economic loss if the pest is not controlled. After having reviewed their submission, EPA concurs that an emergency condition exists.

As part of its assessment of these applications for emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide on sugar beets. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the FIFRA section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for tebufenozide will permit the marketing of sugar beets treated in accordance with the provisions of the FIFRA section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under FFDCA section 408(e) as provided in FFDCA section 408(l)(6). Although these tolerances will expire and be revoked by EPA on March 30, 1998, under FFDCA section 408(l)(5), residues of tebufenozide not in excess of the amount specified in the tolerances remaining in or on sugar beets after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether tebufenozide meets the requirements for registration under FIFRA section 3 for use on sugar beets or whether permanent tolerances for tebufenozide for sugar beets would be appropriate. This action by EPA does not serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than California to use this product on this crop under section 18 of FIFRA without following all provisions of FIFRA section 18 as identified in 40 CFR 180.166. For additional information regarding the emergency exemptions for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose a reasonable certainty of no harm.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other

non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Tebufenozide is not registered by EPA for indoor or outdoor residential use. Existing food and feed use tolerances for tebufenozide are listed in 40 CFR 180.482. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for the time-limited tolerances for residues of tebufenozide in or on sugar beet roots at 0.3 ppm, sugar beet tops at 0.6 ppm, sugar beet dried pulp at 6.0 ppm, and sugar beet molasses and refined sugar at 4.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the EPA's Office of Pesticide Programs (OPP) has established the RfD for tebufenozide at 0.018 milligrams/kilogram/day (mg/kg/day). The RfD is based on a 1–year feeding study in dogs with a NOEL of 1.8 mg/kg/day and an uncertainty factor of 100. Decreased red blood cells, hematocrit, and hemoglobin and increased heinz bodies, reticulocytes, and platelets were observed at the Lowest-Observed Effect Level (LOEL) of 8.7 mg/kg/day.

2. *Acute toxicity.* No appropriate acute dietary endpoint was identified by OPP. This risk assessment is not required.

3. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), OPP has classified tebufenozide as a Group ''E'' chemical (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in a 2–year rat study and an 18–month mouse study.

B. Aggregate Exposure

Tolerances for residues of tebufenozide are currently expressed as benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide. Tolerances currently exist for residues on apples and walnuts (see 40 CFR 180.482).

For purposes of assessing the potential dietary exposure under this tolerance, EPA assumed tolerance level residues and 100 percent of crop treated to estimate the TMRC from all established food uses for tebufenozide (walnuts and import tolerances for apples) as well as other recently granted emergency exemption uses (peppers) and the proposed use on sugar beets. There are sugar beet animal feed items. However, the residue levels in animal commodities potentially resulting from feeding of these commodities would most likely be undetectable. For purposes of the FIFRA section 18 emergency exemption only, the Agency is not recommending establishment of time-limited tolerances for tebufenozide on animal commodities.

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Based on the available studies used in EPA's assessment of environmental risk, tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. There is no established Maximum Concentration Level for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide. There is no entry for tebufenozide in the ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992).

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. A more detailed description of this analysis is included in the docket for this rulemaking. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all well below the level that would cause tebufenozide to exceed the RfD if the tolerances being considered in this document were granted.

The Agency has therefore concluded that the potential exposures associated with tebufenozide in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerances are granted.

C. Cumulative Exposure to Substances with Common Mechanism of Toxicity

FFDCA section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity. ''The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out

to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances.

D. Safety Determinations for U.S. Population

Based on the completeness and reliability of the toxicity data and the conservative TMRC dietary exposure assumptions, EPA has concluded that dietary exposure from food to tebufenozide will utilize 11.9 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Whatever reasonable bounding figure the Agency eventually decides upon for the contribution from water, that number is expected to be well below 88.1% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was 1,000 mg/kg/day (HDT), which is the limit dose for testing in developmental studies.

In the two-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 12.1 mg/kg/day was fourteenfold higher than the parental (systemic) toxicity NOEL (0.85 mg/kg/day). The reproductive (pup) LOEL of 171.1 mg/kg/day was based on a slight increase in both generations in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed. In addition, the length of gestation increased and implantation sites decreased significantly in F1 dams. Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. EPA believes that reliable data support using the standard margin of exposure (usually 100x for combined inter- and intra-species variability) and not the additional tenfold margin of exposure when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin of exposure. Based on current toxicological data requirements, the database for tebufenozide relative to pre- (provided by rat and rabbit developmental studies) and post-natal (provided by the rat reproduction study) toxicity is complete. The additional uncertainty factor is not needed to protect the safety of infants and children.

Based on TMRC exposure estimates for food, as described above, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure to residues of tebufenozide ranges from 18.8 percent for children 7 to 12 years old, up to 53.3 percent for non-nursing infants (the most highly exposed population subgroup). Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

V. Other Considerations

The metabolism of tebufenozide in plants is adequately understood for the purposes of this tolerance. There is no Codex maximum residue level established for residues of tebufenozide on sugar beets. There is a practical analytical method (liquid chromatography with ultraviolet detection) for detecting and measuring levels of tebufenozide in or on food with a limit of detection that allows monitoring of food with residues at or above the level set by the tebufenozide tolerance. EPA has provided information on this method to the Food and Drug Administration. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5805.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of tebufenozide in or on sugar beet roots at 0.3 ppm, sugar beet tops at 0.6 ppm, dried pulp at 6.0 ppm, and molasses and refined sugar at 4.0 ppm. These tolerances will expire and be revoked on March 30, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new FFDCA section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 19, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300461]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: March 11, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180 [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482(b), by adding alphabetically the following entries to the table:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *		
Sugar beet, tops	0.6	March 30, 1998
Sugar beet, roots	0.3	March 30, 1998
Sugar beet, dried pulp	6.0	March 30, 1998
Sugar beet, molasses	4.0	March 30, 1998
Sugar beet, refined sugar	4.0	March 30, 1998
* * * * *		

[FR Doc. 97–7062 Filed 3–19–97; 8:45 am]
BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 301

[FTR Am. 56]

RIN 3090–AG36

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends Federal Travel Regulation (FTR) Amendment 52, published in the Federal Register on Thursday, November 21, 1996 (61 FR 59185) to add per diem localities in the States of Louisiana and Virginia, and to add the State of North Dakota with a clarifying footnote (number 5), explaining that all locations within that State are subject to the standard CONUS rate. This rule also corrects footnote number three and an incorrect entry listed in the prescribed maximum per diem rate for Gettysburg (Adams County), Pennsylvania.

DATES: This final rule is effective January 1, 1997, and applies for travel performed on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. For reasons set out in the preamble, under 5 U.S.C. 5701–5709, title 41, Chapter 301 of the Code of Federal Regulation is revised to read as follows:

CHAPTER 301—TRAVEL ALLOWANCES

1. Appendix A to Chapter 301 is amended by adding and correcting the following per diem localities and footnote [3] to read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2,3]					
Louisiana:						
St. Francisville	West Feliciana	85		30		115
North Dakota: (See footnote 5)						
Pennsylvania:						
Gettysburg	Adams	.....		.....		.....
	(May 1–October 31)	68		34		102
	(November 1–April 30)	62		34		96
Virginia:						
Harrisonburg	Harrisonburg	51		30		81

[1] Unless otherwise specified, the per diem locality is defined as ''all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries.''

[2] Per diem localities with county definitions shall include ''all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties.''

[3] When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the two rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual review.

[5] The standard CONUS rate of $80 ($50 for lodging and $30 for M&IE) applies to all per diem localities in the State of North Dakota.

Dated: January 22, 1997.
David J. Barram,
Acting Administrator of General Services.
[FR Doc. 97–7037 Filed 3–19–97; 8:45 am]
BILLING CODE 6820–34–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7661]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Executive Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Executive Associate Director finds that the delayed effective dates would be contrary to the public interest. The Executive Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Executive Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia: Terrell County, unincorporated areas	130400	February 13, 1997	July 16, 1976.
South Dakota:			
Dewey County, unincorporated areas	460023	February 12, 1997	
Corson County, unincorporated areas	460237	.....do	
Hand County, unincorporated areas	460269	.....do	
Stanley County, unincorporated areas	460287	.....do	
Turner County, unincorporated areas	460290	.....do	
Hartford, city of, Minnehaha County	460180	February 13, 1997	
Ziebach County, unincorporated areas	460292	.....do	
Pollock, town of, Campbell County	460132	February 14, 1997	
Gettysburg, city of, Potter County	460299	.....do	
Faulk County, unincorporated areas	460265	February 13, 1997	
Campbell County, unincorporated areas	460256	.....do	
Hyde County, unincorporated areas	460272	.....do	
Haakon County, unincorporated areas	460268	February 14, 1997	
Webster, city of, Day County	460227	.....do	
Iowa:			
Marion County, unincorporated areas	190889	February 21, 1997	October 18, 1977.

State/location	Community No.	Effective date of eligibility	Current effective map date
Riceville, city of, Howard County	190418	.....do	March 19, 1979.
South Dakota:			
Cresbard, town of, Faulk County	460107	.....do	July 18, 1975.
Waubay, city of, Day County	460226	.....do	
Clark County, unincorporated areas	460258	.....do	
Isabel, city of, Dewey County	460122	February 20, 1997	
Dupree, city of, Ziebach County	460169	.....do	April 25, 1975.
Lyman County, unincorporated areas	460278	.....do	
Lennox, city of, Lincoln County	460192	.....do	
North Dakota:			
Manvel, city of, Grand Forks County	380037	February 21, 1997	
Amenia, township of, Cass County	380686	.....do	
Corinne, township of, Stutsman County	380687	.....do	
North Carolina: Franklin County, unincorporated areas	370377	.....do	September 15, 1978.
Texas: McLendon-Chishom, city of, Rockwall County	480546	.....do	September 26, 1975.
North Dakota:			
Eagle, township of, Richland county	380688	February 24, 1997	
McIntosh County, unincorporated areas	380689	February 26, 1997	
Davenport, township of, Cass County	380690	.....do	
Richland County, unincorporated areas	380098	.....do	February 3, 1981.
South Dakota:			
Orient, town of, Faulk County	461202	February 24, 1997	
Buffalo County, unincorporated areas	460255	.....do	
Herreid, city of, Campbell County	460181	.....do	July 11, 1975.
Hughes County, unincorporated areas	460271	.....do	January 10, 1978.
Corsica, city of, Douglas County	460167	.....do	
Warner, city of, Brown County	460298	February 26, 1997	
Raymond, city of, Clark County	461205	.....do	
Bristol, city of, Day County	460101	.....do	
Colton, city of, Minnehaha County	460166	.....do	
Yankton Sioux Tribe, Charles Mix County	461204	.....do	
Hanson County, unincorporated areas	460270	.....do	August 16, 1977.
Bon Homme County, unincorporated areas	460252	February 25, 1997	
Cheyenne River Indian Reservation Dewey, Ziebach County.	461203	.....do	
Duel County, unincorporated areas	460262	.....do	
Marshall County, unincorporated areas	460279	.....do	
Parker, city of, Turner County	460211	.....do	
Missouri: Morgan County, unincorporated areas	290244	February 28, 1997	September 30, 1983.
Minnesota:			
Clarkfield, city of, Yellow Medicine County	270764	.....do	
Climax, city of, Polk County	270363	.....do	June 11, 1976.
Ohio: Hamler, village of, Henry County	390264	.....do	April 15, 1977.
Texas: St. Hedwig, town of, Bexar County	481132	February 5, 1997	February 16, 1996.
Georgia: Taylor County, unincorporated areas	130522	February 13, 1997	September 20, 1996.
North Carolina:			
Pikeville, town of, Wayne County	370429	February 14, 1997	April 1, 1982.
Foxfire, village of, Moore County	370402	.....do	December 15, 1989.
Spring Lake, town of, Cumberland County [1]	370484	.....do	February 17, 1982.
Watha, town of, Pender County [2]	370486	.....do	January 6, 1995.
Princeton, town of, Johnston County [3]	370485	.....do	November 2, 1995.
Chimney Rock, village of, Rutherford County [4]	370487	.....do	June 1, 1987.
Granville County, unincorporated areas	370325	February 20, 1997	September 28, 1990.
Montgomery County, unincorporated areas	370336	.....do	June 1, 1981.
Minnesota: Fayal, town of, St. Louis County [5]	270739	February 21, 1997	February 19, 1992.
New Hampshire: Troy, town of, Cheshire County	330173	.....do	July 23, 1976.
North Carolina: Erwin, town of, Harnett County	370456	February 28, 1997	April 16, 1990.
Minnesota: Cohasset, city of, Itasca County [6]	270202	.....do	November 1, 1978.
Missouri: Wildwood, city of, St. Louis County [7]	290922	.....do	August 5, 1995.
Reinstatements			
Pennsylvania:			
Sewickley Heights, borough of, Allegheny County	420071	December 21, 1978, Emerg.; May 1, 1986, Reg.; October 4, 1995, Susp.; February 5, 1997, Rein.	October 4, 1995.
Newlin, township of, Chester County	421486	October 24, 1975, Emerg.; August 1, 1984, Reg.; November 20, 1996, Susp.; February 5, 1997, Rein.	November 20, 1996
Kentucky:			
Florence, city of, Boone County	210238	April 5, 1977, July 3, 1986, Reg.; July 3, 1986, Susp.; February 3, 1997, Rein.	July 3, 1986.
Hustonville, city of, Lincoln County	210144	August 26, 1975, Emerg.; September 27, 1985, Reg.; November 1, 1985, Susp.; February 3, 1997, Rein.	September 27, 1985.

State/location	Community No.	Effective date of eligibility	Current effective map date
Simpson County, unincorporated areas	210316	July 31, 1975, Emerg.; May 1, 1987, Reg.; September 15, 1993, Susp.; February 5, 1997, Rein.	September 15, 1993.
Iowa: Cushing, city of, Woodbury County	190289	April 28, 1975, Emerg.; September 18, 1985, Reg.; September 18, 1985, Susp.; February 5, 1997, Rein.	September 18, 1985.
Virginia: Powhatan County	510117	February 5, 1975, Emerg.; September 15, 1978, Reg.; September 15, 1978, Susp.; February 14, 1997, Rein.	September 15, 1978.
North Carolina:			
Speed, town of, Edgecombe County	370093	September 4, 1979, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; February 21, 1997, Rein.	July 2, 1987.
Franklinville, town of, Randolph County	370197	July 10, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; February 21, 1997, Rein.	July 1, 1987.
Iowa: Alburnett, city of, Linn County	190692	March 2, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; February 21, 1997, Rein.	June 1, 1987.
Regular Program Conversions			
Region I			
Connecticut:			
East Granby, town of, Hartford County	090025	February 5, 1997, Suspension Withdrawn.	February 5, 1997.
Ellington, town of, Tolland County	090158	.....do	Do.
Region III			
West Virginia: Moorefield, town of, Hardy County	540052	.....do	Do.
Region IV			
Florida: Destin, city of, Oklaoosa County	125158	.....do	Do.
Region V			
Wisconsin: Shell Lake, city of, Washburn County	550469	.....do	Do.
Region VI			
Arkansas:			
Elkins, city of, Washington County	050214	.....do	Do.
Fayetteville, city of, Washington County	050216	.....do	Do.
Searcy, city of, White County	050229	.....do	Do.
Washington County, unincorporated areas	050212	.....do	Do.
Oklahoma:			
Adair County, unincorporated areas	400501	.....do	Do.
Stilwell, city of, Adair County	400001	.....do	Do.
Region IX			
California:			
Grass Valley, city of, Nevada County	060211	.....do	Do.
Nevada County, unincorporated areas	060210	.....do	Do.
San Joaquin County, unincorporated areas	060299	.....do	Do.
Tehama County, unincorporated areas	065064	.....do	Do.
Region I			
Vermont: Londonderry, town of, Windham County	500132	February 19, 1997 Suspension Withdrawn.	January 3, 1997
Region II			
New Jersey: Jackson, township of, Ocean County	340375	.....do	Do.
New York:			
Newport, town of, Herkimer County	361111	.....do	Do.
Trenton, town of, Oneida County	360556	.....do	Do.
Region III			
Pennsylvania:			
Ambler, borough of, Montgomery County	420947	.....do	December 19, 1996.
Collegeville, borough of, Montgomery County	421900	.....do	Do.
Schwenksville, borough of, Montgomery County	421905	.....do	Do.
Springfield, township of, Montgomery County	425388	.....do	Do.
Towamencin, township of, Montgomery County	422236	.....do	Do.
Upper Merion, township of, Montgomery County	420957	.....do	Do.
West Virginia: Martinsburg, city of, Berkeley County	540006	.....do	January 3, 1997.
Region IV			
Georgia: Macon, city of, and Bibb County	130011	February 19, 1997	Do.
Region V			
Ohio: Oxford, city of, Butler County	390731	January 3, 1997	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region VII			
Missouri:			
Butler County, unincorporated areas	290044	February 19, 1997	Do.
Poplar Bluff, city of, Butler County	290047	.....do	Do.

[1] The Town of Spring Lake, North Carolina has adopted the Cumberland County (CID 370076) Flood Insurance Rate Map (FIRM) dated February 17, 1982, panels 0035B, 0040B, 0075B, 0080B.
[2] The Town of Watha, North Carolina has adopted the Pender County (CID 370344) Flood Insurance Rate Map dated January 6, 1995, panel 0065.
[3] The Town of Princeton, North Carolina has adopted the Johnston County (CID 370138) Flood Insurance Rate Map dated November 2, 1995, panels 0110, 0115, and 0140.
[4] The Village of Chimney Rock, North Carolina has adopted the Rutherford County (CID 370217) Flood Insurance Rate Map dated June 1, 1987.
[5] The Town of Fayal, Minnesota has adopted the St. Louis County (CID 270416) Flood Insurance Rate Map dated February 19, 1992, panels 0950 and 1075.
[6] The City of Cohasset, Minnesota has adopted the Itasca County (CID 270200) Flood Insurance Rate Map dated November 1, 1978.
[7] The City of Wildwood, Missouri has adopted the St. Louis County (CID 290327) Flood Insurance Rate Map dated August 2, 1995.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: March 13, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–7042 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–05–P

44 CFR Part 78

RIN 3067–AC45

Flood Mitigation Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements §§ 553 and 554 of the National Flood Insurance Reform Act of 1994. Section 553 authorizes a Mitigation Assistance Program, which authorizes FEMA to provide grants to States and communities for planning assistance and for mitigation projects that reduce the risk of flood damages to structures covered under contracts for flood insurance. Section 554 establishes the National Flood Mitigation Fund to fund assistance provided under § 553.

DATES: This interim final rule is effective April 29, 1997. We invite comments on this interim final rule, which should be received by June 18, 1997.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104.

SUPPLEMENTARY INFORMATION: The enactment of Title V of the Community Development and Regulatory Reform Act, also known as the National Flood Insurance Reform Act of 1994 (the Act), created significant opportunities for mitigation. Section 553 of the Act, authorizes a Mitigation Assistance Program which FEMA has designated Flood Mitigation Assistance (FMA). Section 554 establishes the National Flood Mitigation Fund to provide assistance under § 553. These regulations implement the requirements of §§ 553 and 554 of the Act. FMA was developed to address concerns regarding repetitively or substantially damaged structures, or both, and the associated claims on the National Flood Insurance Fund. The overall goal of FMA is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures.

FEMA will ask the Governor of each State to identify a point of contact (POC) for FMA. Each State, through the POC, will receive annual funding for technical assistance and planning grants through the annual Cooperative Agreements. States will distribute the planning grants at their discretion, in accordance with the specified grant limitations. The purpose of the planning grants is to develop or update a Flood Mitigation Plan that FEMA must approve before approving a project grant. In addition, States will be notified as to the allocation for FMA project grants each year. States will solicit and evaluate project applications, choosing those they wish to fund. The POC will review the applications for completeness, basic eligibility, and consistency with the approved Flood Mitigation Plan. The POC will forward these projects to FEMA for final approval and funding through a supplement to the annual Cooperative Agreement. All project applications, as well as Flood Mitigation Plans, must go through the POC to be accepted by FEMA, unless a State chooses not to coordinate the program. Alternative procedures allowing for direct coordination with FEMA are available in the following two circumstances. If a Governor chooses not to identify a POC to coordinate the FMA, communities may submit applications and plans directly to FEMA.

The regulations outline a basic planning process with minimum standards for the Flood Mitigation Plans. Existing plans, such as those credited through the Community Rating System or those prepared in conformance with § 409 of the Stafford Act, 42 U.S.C. 5176, may meet the requirements of FMA with few or no modifications. The plan should summarize the planning process, and should be reviewed periodically by the community in order to remain a viable document. Flood Mitigation Plans must be formally adopted by the legal entity submitting the plan for FEMA approval.

All FMA projects must be consistent with the goals of FMA, that is, to reduce the risk of flood damage to structures insured under the National Flood Insurance Program (NFIP). Specifically, project eligibility is dependent on two components: the type of activity must be eligible (elevation, acquisition, etc.) and each project must meet a set of minimum criteria (cost effectiveness, environmental considerations, etc.).

The regulations address the need for States and communities to maintain liaisons with other organizations and agencies to better coordinate available programs. FMA strongly encourages

States to maintain a multi-hazard interagency mitigation team or other coordinating body. The regulations for FMA were developed to be flexible enough to work with existing programs with complementary goals. With the limited funds available in FMA and in other mitigation programs, the ability to package programs will be important to potential applicants.

FEMA used an open process in the development of these regulations, coordinating with many of our constituent groups. Several forums were held to help identify issues and approaches to implementing FMA, and draft regulations were circulated for comment.

National Environmental Policy Act

An environmental review pursuant to the requirements of 44 CFR Part 10, Environmental Consideration, will be completed before publication of the final rule.

Executive Order 12898, Environmental Justice

Review of the socioeconomic conditions relating to this interim rule will be completed before publication of the final rule.

Executive Order 12866, Regulatory Planning and Review

This interim final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

P.L. 104–121, Congressional Review of Agency Rulemaking

This interim final rule is not a ''major rule'' within the meaning of § 804 of P.L. 104–121, Congressional Review of Agency Rulemaking. FEMA has submitted a report to Congress summarizing the scope and effect of the rule, as required by § 801 of P.L.104–121.

Paperwork Reduction Act

A notice of the proposed information collections has been published in the Federal Register requesting comments on the planning requirements and other information collection instruments. FEMA will be submitting an OMB clearance package to OMB after the comment period is closed. Until OMB approval, FEMA cannot collect information under this rule. This includes Flood Mitigation Plans, Project Grant applications, and post-grant reports. FEMA will publish a Federal Register notice to notify potential applicants of OMB's approval and implementation for information collection purposes.

Executive Order 12612, Federalism

This interim final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 78

Flood insurance, Flood mitigation assistance, Grant programs.

Accordingly, Chapter I, Subchapter B of Title 44 of the Code of Federal Regulations is amended by adding Part 78 to read as follows:

PART 78—FLOOD MITIGATION ASSISTANCE

Authority: 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 78.1 Purpose.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the Flood Mitigation Assistance (FMA) program, authorized by Sections 1366 and 1367 of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c and 4104d.

(b) The purpose of FMA is to assist State and local governments in funding cost-effective actions that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures. The long-term goal of FMA is to reduce or eliminate claims under the National Flood Insurance Program (NFIP) through mitigation activities. The program provides cost-shared grants for three purposes: Planning Grants to States and communities to assess the flood risk and identify actions to reduce that risk; Project Grants to execute measures to reduce flood losses; and Technical Assistance Grants that States may use to assist communities to develop viable FMA applications and implement FMA projects. FMA also outlines a process for development and approval of Flood Mitigation Plans.

§ 78.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) *Community* means

(1) A political subdivision, including any Indian tribe or authorized tribal organization or Alaskan native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP; or

(2) A political subdivision of a State, or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of paragraph (b)(1) of this section.

§ 78.3 Responsibilities.

(a) *Federal.* The Director will allocate available funds to each FEMA Region. The FEMA Regional Director will:

(1) Allocate Technical Assistance and Planning Grants to each State through the annual Cooperative Agreements;

(2) Approve Flood Mitigation Plans in accordance with § 78.6; and

(3) Award all FMA project grants, after evaluating applications for minimum eligibility criteria and ensuring compliance with applicable Federal laws.

(b) *State.* The State will serve as grantee through the State Point of Contact (POC) designated by the Governor. The POC must have working knowledge of NFIP goals and processes and will ensure that FMA is coordinated with other mitigation activities at the State level. If a Governor chooses not to identify a POC to coordinate the FMA, communities may follow alternative procedures as described in § 78.14. States will:

(1) Provide technical assistance to communities to assist them in developing applications and implementing approved applications;

(2) Award planning grants;

(3) Submit plans to the FEMA Regional Director for approval;

(4) Evaluate project applications, selecting projects to forward to the FEMA Regional Director for final approval; and

(5) Submit performance and financial reports to FEMA in compliance with 44 CFR 13.40 and 13.41.

(c) *Community.* The community will:

(1) Complete and submit applications to the State POC for the Planning and Projects Grants;

(2) Prepare and submit the Flood Mitigation Plan;

(3) Implement all approved projects;

(4) Comply with FMA requirements, 44 CFR parts 13 and 14, the grant agreement, applicable Federal, State and local laws and regulations (as applicable); and

(5) Account for the appropriate use of grant funds to the State POC.

§ 78.4 Applicant eligibility.

(a) The State is eligible to apply for grants for Technical Assistance.

(b) State agencies and communities are eligible to apply for Planning and Project Grants and to act as subgrantee. Communities on probation or suspended under 44 CFR part 60 of the NFIP are not eligible. To be eligible for Project Grants, an eligible applicant will develop, and have approved by the FEMA Regional Director, a Flood Mitigation Plan in accordance with § 78.5.

§ 78.5 Flood Mitigation Plan development.

A Flood Mitigation Plan will articulate a comprehensive strategy for implementing technically feasible flood mitigation activities for the area affected by the plan. At a minimum, plans will include the following elements:

(a) Description of the planning process and public involvement. Public involvement may include workshops, public meetings, or public hearings.

(b) Description of the existing flood hazard and identification of the flood risk, including estimates of the number and type of structures at risk, repetitive loss properties, and the extent of flood depth and damage potential.

(c) The applicant's floodplain management goals for the area covered by the plan.

(d) Identification and evaluation of cost-effective and technically feasible mitigation actions considered.

(e) Presentation of the strategy for reducing flood risks and continued compliance with the NFIP, and procedures for ensuring implementation, reviewing progress, and recommending revisions to the plan.

(f) Documentation of formal plan adoption by the legal entity submitting the plan (e.g., Governor, Mayor, County Executive).

§ 78.6 Flood Mitigation Plan approval process.

The State POC will forward all Flood Mitigation Plans to the FEMA Regional Director for approval. The Regional Director will notify the State POC of the approval or disapproval of the plan within 120 days after submission. If the Regional Director does not approve a mitigation plan, the Regional Director will notify the State POC of the reasons for non-approval and offer suggestions for improvement.

§ 78.7 Grant application procedures.

States will apply for Technical Assistance and Planning Grants through the annual Cooperative Agreement between FEMA and the State. The State POC will be notified regarding their available funds for project grants each fiscal year. The State may forward project applications to FEMA for review at any time.

§ 78.8 Grant funding limitations.

(a) The Director will allocate the available funds for FMA each fiscal year. Each State will receive a base amount of $10,000 for Planning Grants and $100,000 for Project Grants, with the remaining funds distributed based on the number of NFIP policies, repetitive loss structures, and other such criteria as the Director may determine in furtherance of the disaster resistant community concept.

(b) A maximum of $1,500,000 may be allocated for Planning Grants nationally each fiscal year. A Planning Grant will not be awarded to a State or community more than once every 5 years, and an individual Planning Grant will not exceed $150,000 to any State agency applicant, or $50,000 to any community applicant. The total Planning Grant made in any fiscal year to any State, including all communities located in the State, will not exceed $300,000.

(c) A maximum of ten percent of the funds available for Project Grants will be allocated to Technical Assistance grants each fiscal year.

(d) The total amount of FMA Project Grant funds provided during any 5-year period will not exceed $10,000,000 to any State or $3,300,000 to any community. The total amount of Project Grant funds provided to any State, including all communities located in the State will not exceed $20,000,000 during any 5-year period.

§ 78.9 Planning grant approval process.

The State POC will evaluate and approve applications for Planning Grants. Funds will be provided only for the flood portion of any mitigation plan, and Planning Grants will not be awarded to develop new or improved floodplain maps. The performance period for each Planning Grant will not exceed 3 years.

§ 78.10 Project grant approval process.

The State POC will solicit applications from eligible applicants, review projects for eligibility, and select applications for funding. Those project applications will then be forwarded to FEMA for final approval. FEMA will provide funding on a project by project basis through a supplement to the annual Cooperative Agreement. The FEMA Regional Director will notify States regarding the program schedule at the beginning of each fiscal year.

§ 78.11 Minimum project eligibility criteria.

The identification of a project or activity in an approved Flood Mitigation Plan does not mean it meets FMA eligibility criteria. Projects must:

(a) Be cost-effective, not costing more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future floods were to occur. Both costs and benefits are computed on a net present value basis.

(b) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands; Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction; 44 CFR part 10, Environmental Considerations; and any applicable environmental laws and regulations.

(c) Be technically feasible.

(d) Be in conformance with the minimum standards of the NFIP Floodplain Management Regulations at 44 CFR part 60.

(e) Be in conformance with the Flood Mitigation Plan; the type of project being proposed must be identified in the plan.

(f) Be located physically in a participating NFIP community that is not on probation or must benefit such community directly by reducing future flood damages.

§ 78.12 Eligible types of projects.

The following types of projects are eligible for funding through FMA, providing they meet all other eligibility criteria.

(a) Acquisition of insured structures and underlying real property in fee simple and easements restricting real property to open space uses.

(b) Relocation of insured structures from acquired or restricted real property to non hazard-prone sites.

(c) Demolition and removal of insured structures on acquired or restricted real property.

(d) Elevation of insured residential structures in accordance with 44 CFR 60.3.

(e) Elevation or dry floodproofing of insured non-residential structures in accordance with 44 CFR 60.3.

(f) Other activities that bring an insured structure into compliance with the floodplain management requirements at 44 CFR 60.3.

(g) Minor physical flood mitigation projects that reduce localized flooding problems and do not duplicate the flood prevention activities of other Federal agencies.

(h) Beach nourishment activities.

§ 78.13 Grant administration.

(a) FEMA may contribute up to 75 percent of the total eligible costs of each grant. At least 25 percent of the total eligible costs will be provided from a nonfederal source. Of this amount, not more than one half will be provided from in-kind contributions. Allowable costs will be governed by OMB Circular A–87 and 44 CFR part 13.

(b) The grantee must submit performance and financial reports to FEMA and must ensure that all subgrantees are aware of their responsibilities under 44 CFR parts 13 and 14.

(c) FEMA will recapture any funds provided to a State or a community under FMA and deposit the amounts in the National Flood Mitigation Fund if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in the regulations in this part.

§ 78.14 Alternative procedures.

For the purposes of this part, alternative procedures are available which allow the community to coordinate directly with FEMA in implementing the program. These alternative procedures are available in the following circumstances. Native American tribes or authorized tribal organizations may submit plans and applications to the State POC or directly to the FEMA Regional Director. If a Governor chooses not to identify a POC to coordinate the FMA, communities may also submit plans and applications to the FEMA Regional Director.

Dated: March 13, 1997.

James L. Witt,

Director.

[FR Doc. 97–6910 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–165; RM–8247]

Radio Broadcasting Services; Athens, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; application for review.

SUMMARY: This document dismisses an Application for Review filed by David A. Ringer directed to an earlier *Memorandum Opinion and Order* which denied a petition for reconsideration in the proceeding relating to the establishment of a filing window for the filing of applications for authorization to operate on Channel 240A in Athens, Ohio. *See* 60 FR 53878, published October 18, 1995. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket No. 93–165, adopted February 26, 1997, and released March 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–6423 Filed 3–19–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 44]

RIN 2130–AA81

Random Alcohol and Drug Testing: Determination of 1997 Minimum Testing Rate

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the rail industry random drug testing positive rate for 1995 was .93 percent. Since the industry-wide random drug positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 1997 through December 31, 1997 will remain at 25 percent of covered railroad employees.

Since random alcohol testing was not fully implemented until January 1, 1996, FRA has insufficient data to adjust the minimum testing rate. Therefore, the minimum random alcohol testing rate will remain at the current 25 percent of covered railroad employees for the period January 1, 1997 through December 31, 1997.

DATES: The minimum annual random drug and alcohol testing rate is 25 percent of covered railroad employees for the period January 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, SW., Room 8314, Washington, DC 20590, (Telephone: (202) 632–3378).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1997 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random alcohol and drug testing rates according to the rail industry's overall violation rate, which is determined using annual railroad alcohol and drug program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a Federal Register notice each year, announcing the minimum random alcohol and drug

testing rates for the following year. (See 49 CFR 219.602 and 219.608.)

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both alcohol and drugs, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this notice, FRA announces the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1997 through December 31, 1997, since the industry random positive rate for 1995 is below 1.0 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .05 percent for two calendar years while testing at a higher rate. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than .05 percent, the rate will remain at 25 percent.

Random alcohol testing was fully implemented at a 25 percent minimum testing rate on January 1, 1996. Since FRA does not yet have two years of data for the entire rail industry, the current random alcohol testing rate will remain at 25 percent of covered railroad employees for the period January 1, 1997 through December 31, 1997.

Issued in Washington, DC on March 13 1997.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 97–6831 Filed 3–19–97; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 012197D]

Atlantic Swordfish Fishery; Quota adjustment; Closure

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

ACTION: Quota adjustment; closure; bycatch limit adjustment.

SUMMARY: NMFS is reducing the directed fishery quota for the second semiannual swordfish season (December 1, 1996, to May 31, 1997), due to updated estimates of dead discards in 1995 and 1996. The directed fishery quota is reduced from 1,064.4 metric tons (mt) dressed weight to 749.7 mt. Based upon landings to date in the second semiannual season and historical landings, NMFS estimates that this adjusted fishery landings quota will be reached on or before April 12, 1997. Therefore, NMFS closes the directed fishery effective at 12 noon on April 12, 1997.

EFFECTIVE DATES: The reduction is effective March 14, 1997 through May 31, 1997. The closure is effective at 12 noon on April 12, 1997, through May 31, 1997.

FOR FURTHER INFORMATION CONTACT: Rebecca Lent or James Chambers, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of International Commission for the Conservation of Atlantic Tunas (ICCAT).

The regulations governing the Atlantic swordfish fisheries at 50 CFR 630.24 provide for a specified annual quota to be landed by the directed fishery. The annual quota is divided into two semiannual quotas for each of the 6-month periods, June 1 through November 1, and December 1 through May 31 (61 FR 27304, May 31, 1996). NMFS is required, under § 630.25(a)(1), to monitor the catch and landings statistics and, on the basis of these statistics, to project a date when the catch will equal the quota, and to publish a Federal Register document announcing the closure.

Under § 630.25(b), NMFS is authorized to set aside, during the June 1 through November 30 semi-annual period, swordfish not exceeding 21,500 lb (9,752 kg), dressed weight, for the harpoon segment of the fishery if NMFS determines that the harpoon and longline quota in this semi-annual period will be harvested before the harpoon segment of the fishery has had an opportunity to harvest the set-aside amount (61 FR 34746, July 3, 1996). No set-aside is currently authorized for the December 1 through May 31 semi-annual period. Therefore, this closure is effective for the entire directed swordfish fishery and affects all gear categories.

NMFS is authorized, under § 630.25(c)(2), to adjust the longline bycatch allowance of 15 swordfish per trip during a closure of the directed fishery. The bycatch limit of 15 swordfish was reduced to 6 swordfish during the 1995 closure (60 FR 58245, November 27, 1995). However, while this bycatch allowance of 6 fish was effective for a period of less than one month, it still did not prevent the quota from being exceeded. Accordingly, based on the length of the directed fishery closure (April 12 through May 31, 1997) and the remaining available bycatch quota, NMFS believes it is necessary to further reduce the bycatch allowance to 5 swordfish per trip.

1996 Quota Adjustment

Estimates of longline swordfish dead discards were included in the calculation of the U.S. quota for landings by longline operators. The 1995 final quota rule (60 FR 46775, September 8, 1995) allocated 2,676 mt to the directed swordfish longline fishery, of which 8.4 percent (226 mt) was projected to be discarded dead, yielding a total landings quota of 2,450 mt for the 1995 fishing year. Final 1995 figures indicate that, in fact, swordfish longline dead discards (394.3 mt) accounted for 14.7 percent of the total catch by weight. Thus, actual longline dead discards exceeded the original projection by 168.3 mt. The directed swordfish longline fishery landings quota for the second 1996 semiannual season (December 1, 1996, to May 31, 1997) is reduced by 168.3 mt to correct for this difference. The 1996 fishing year landings quota for the longline fishery must also be adjusted to account for the higher dead discard rate that actually occurred in the 1995 fishing year.

Assuming a discard rate of 14.7 percent, the estimate of dead discards should be revised from 195.2 mt to 341.6 mt, or an increase of 146.4 mt.

The total reduction in the 1996 fishing year landings quota for the longline fishery is 168.3 mt plus 146.4 mt, or 314.7 mt. This leaves a total directed landing quota of 749.7 mt for the Atlantic swordfish fishery.

Closure of the Fishery

The landings of swordfish in the longline fishery in the second semiannual season reached 610 mt by March 1, 1997, leaving 139.7 mt in the landings quota. Additional quota remaining for the second half includes 90 mt from the bridge period quota (January 1–May 31, 1996) and 96 mt from the bycatch quota for 1996. Thus, the total quota remaining as of March 1, 1997, is 325.7 mt (139.7 + 90 + 96 mt). In 1996, landings of swordfish by longliners reached 213 mt in March. If the same rate occurs in March of 1997, this would leave 113 mt for both April and May.

During a two month closure of the directed fishery in 1995, with a bycatch limit of 15 fish per trip for November and 6 fish per trip in December, the bycatch of swordfish was estimated to be 64 mt. Under a bycatch limit of 5 fish per trip during the proposed closure, NMFS estimates that 50 mt could be landed during the two month closure, leaving 63 mt available for the directed fishery during April. At the rate of landings which occurred during April 1996 (43 mt per week), 63 mt would allow 11 days of directed fishing prior to the closure. Thus, NMFS estimates that the directed quota for swordfish will be taken on or before April 12, 1997.

Therefore, NMFS announces that the directed fishery for swordfish is closed at 12 noon on April 12, 1997. All vessels must be in port with their swordfish offloaded on or before this closing date. This notice provides more than a four week period during which swordfish vessel owners can plan their fishing and sale of landings prior to the closure deadline. During the closure of the directed fishery, a person may not fish for swordfish from the North Atlantic stock, and no more than 5 swordfish per vessel per trip may be possessed or landed incidental to longline fishing for other species. As previously stated, no harpoon fishery set-aside has been established for this semi-annual period. Therefore, a person fishing aboard a vessel using or having aboard harpoon gear may not fish for swordfish from the North Atlantic swordfish stock, and no swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean state.

Classification

This action is required by 50 CFR 630.24(d) and is exempt from review under E.O. 12866.

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

Dated: March 14, 1997.

Gary C. Matlock,

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

[FR Doc. 97–6979 Filed 3–14–97; 4:49 pm]

BILLING CODE 3510–22–P

50 CFR Part 679

[I.D. 031497A]

Fisheries of the Exclusive Economic Zone Off Alaska; Season Opening

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

ACTION: Notice of fishing season dates.

SUMMARY: NMFS is opening the directed fishery for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) program. The season will open on 12:00 noon, Alaska local time (A.l.t.), March 15, 1997, and will close 12:00 noon, A.l.t., November 15, 1997. This period runs concurrently with the IFQ season for Pacific halibut announced by the International Pacific Halibut Commission (IPHC).

EFFECTIVE DATE: March 15, 1997, 12:00 noon, A.l.t., through November 15, 1997, 12:00 noon, A.l.t.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586-7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, is contained in the preamble to the final rule implementing the IFQ Program published in the Federal Register, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with 50 CFR 679.23(g)(1), which requires that directed fishing for sablefish managed under the IFQ program be specified by the Administrator, Alaska Region, NMFS (Regional Administrator), and announced by publication in the Federal Register. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Regional Administrator, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ program will open on 12:00 noon, A.l.t., March 15, 1997, and will close 12:00 noon, A.l.t., November 15, 1997. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season was announced by publication in the Federal Register, March 18, 1997.

Classification

This action is taken under § 679.23(g)(1) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: March 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries

National Marine Fisheries Service.

[FR Doc. 97–6965 Filed 3–14–97; 4:34 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 031297A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pollock in the Aleutian Islands Subarea

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of pollock in that area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 12, 1997, until 1200 hrs, A.l.t., March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Patty Britza, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the allowance for the pollock TAC apportioned for vessels catching pollock for processing by the offshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish (62 FR 7168, February 18, 1997) as 16,835 metric tons (mt). The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 14,835 mt, and set aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI was closed to directed fishing under § 679.20(d)(1)(iii) on February 27, 1997, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (62 FR 9379, March 3, 1997).

NMFS has determined that as of March 10, 1997, 5,257 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI effective 1200 hrs, A.l.t., March 12, 1997.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Current information shows the catching capacity of vessels catching pollock for processing by the offshore component is in excess of 2,200 mt per day.

NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI at 1200 hrs, A.l.t., March 14, 1997.

All other closures remain in full force and effect.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 13, 1997.

Bruce Morehead,

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

[FR Doc. 97–6966 Filed 3–14–97; 4:34 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 031497C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 total allowable catch (TAC) of Atka mackerel in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 15, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the TAC of Atka mackerel for the Central Aleutian District was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 19,500 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Atka mackerel specified for the Central Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 18,500 mt and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 14, 1997.

Bruce Morehead,

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

[FR Doc. 97–7028 Filed 3–17–97; 2:51 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 031497D]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 15, 1997, until 1200 hrs, A.l.t., April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and

Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) for the first season, the period January 20, 1997, through March 31, 1997, as 100 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 1997 Pacific halibut bycatch mortality allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, the Regional Administrator is closing directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 14, 1997.

Bruce Morehead,

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

[FR Doc. 97–7027 Filed 3–17–97; 2:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 54
Thursday, March 20, 1997

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AH51

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: As authorized by law, the Office of Personnel Management (OPM) provides in its regulations for the payment of nonforeign area cost-of-living allowances (COLA's) in Alaska, Hawaii, and other nonforeign overseas areas. OPM is proposing four regulatory changes in the COLA program. One change would remove obsolete references that refer to hiring authorities no longer in use. A second change would clarify the application of COLA regulations to two pay systems linked to or equivalent to the Senior Executive Service. A third change would clarify the application of COLA regulations to employees under other pay systems. The fourth change would extend nonforeign area post differentials to employees on long-term temporary assignments in the same manner as is provided by the State Department for employees in foreign areas.

DATES: Comments must be received on or before May 19, 1997.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director, Office of Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX to (202)606–4264.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin (202) 606–2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

Obsolete Regulatory References

Section 591.203 of title 5, Code of Federal Regulations, refers to hiring authorities under 5 CFR 213.3102(v) and (w), which are no longer used. These authorities covered Summer Aids paid the minimum wage and Stay-in-School positions paid less than the lowest rate on the General Schedule. Paragraphs (v) and (w) of § 213.3102 are currently reserved, and OPM proposes to remove the references from § 591.203.

Pay Systems Linked or Equivalent to the Senior Executive Service

OPM proposes to add parenthetical language in § 591.203(a)(1) and (3) to clarify that the Foreign Service includes the Senior Foreign Service and that the Senior Executive Service includes the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) Senior Executive Service. Members of the Senior Foreign Service and the FBI-DEA Senior Executive Service currently receive COLA's. The proposed change is a technical amendment designed to make these references consistent with others used in title 5, Code of Federal Regulations.

Coverage of Employees Under Other Pay Systems

In place of the obsolete references in § 591.203(b), OPM proposes to add language that would authorize agencies to apply subpart B to other positions as authorized by specific statutes applicable to those other positions and consistent with the intent of 5 U.S.C. 5941. Section 5941 authorizes payment of COLA to employees in nonforeign areas whose rates of pay are set by statute. When 5 U.S.C. 5941 was enacted in 1948, the rates of pay for employees under several pay systems, including the General Schedule, were set by statute. Statutes enacted since that time have removed certain positions from the General Schedule and required or allowed the pay for these positions to be set in a different manner. It has long been the policy of the Federal Government to continue the payment of allowances and differentials in such cases unless the enabling statutes prohibited such payments. The regulatory change OPM proposes recognizes this longstanding policy and makes clear that such allowances and differentials are paid in accordance with regulations prescribed by OPM under the authority delegated to it by the President of the United States.

Post Differential and Long-Term Temporary Assignments

As authorized in § 591.210(f), payment of an allowance or differential begins as of the date of arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. OPM proposes to authorize payment of post differentials to employees after 42 consecutive days of temporary assignment in a nonforeign area. The purpose of this regulatory change is to make OPM's post differential program more consistent with the program administered by the State Department for employees temporarily assigned to work in foreign areas. Payment of nonforeign area differentials would stop upon an employee's departure from a differential area.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because the regulation would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.203, paragraphs (a)(1), (a)(3), (a)(6), and (b) are revised to read as follows:

§ 591.203 Agencies and employees covered.

(a) * * *

(1) General Schedule.

* * * * *

(3) Foreign Service (including the Senior Foreign Service).

* * * * *

(6) Senior Executive Service (including the Federal Bureau of Investigation and the Drug Enforcement Administration Senior Executive Service).

* * * * *

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in other positions authorized by specific law applicable to such positions, consistent with the intent of 5 U.S.C. 5941.

3. In § 591.210, paragraph (f) is removed, paragraphs (b) through (e) are redesignated as (c) through (f), respectively, and a new paragraph (b) is added to read as follows:

§ 591.210 Payment of allowances and differentials.

* * * * *

(b) Payment of an allowance or differential begins as of the date of an employee's arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. An employee who is temporarily assigned to duty in a nonforeign area is eligible for a differential, but not an allowance, except that payment of a differential shall not begin until after 42 consecutive calendar days of assignment in the differential area. Payment of an allowance or differential ceases—

(1) On separation;

(2) As of the date of departure on transfer to a new post of regular assignment; or

(3) As of the date of departure in the case of an employee on temporary assignment to the differential area.

* * * * *

[FR Doc. 97–7071 Filed 3–19–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF ENERGY

Office of Civilian and Radioactive Waste Management

10 CFR Part 960

RIN 1901–1172

General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Proposed rule; Reopening of public comment period.

SUMMARY: In response to additional requests from several interested persons, the Department of Energy has granted additional time to comment on proposed amendments to 10 CFR Part 960 that were published at 61 FR 66158, December 16, 1996.[1]

DATES: Comments should be received no later than April 16, 1997.

ADDRESSES: All written comments are to be submitted to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, or provided by electronic mail to 10CFR960@notes.ymp.gov.

FOR FURTHER INFORMATION CONTACT: April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, Las Vegas, Nevada 89193, (800) 967–3477.

Issued in Washington, DC on this 14th day of March, 1997.

Lake Barrett,

Acting Director, U.S. Department of Energy, Office of Civilian Radioactive Waste Management.

[FR Doc. 97–7031 Filed 3–19–97; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1997 4]

Rulemaking Petition: Definition of ''Member'' of a Membership Association; Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urges the Commission to revise its rules defining who is a member of a membership association in view of a recent court decision. The Petition is available for inspection in the commission's Public Records Office.

DATES: Statements in support of, or in opposition to, the Petition must be filed on or before April 21, 1997.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The petitioner is requesting the Commission to revise its rules defining who is a member of a membership association in view of the decision by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States* versus *Federal Election Commission*, 69 F.3d 600 (D.C. Cir 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C. Cir. 1996). The decision held that the current rules at 11 CFR 100.8(b)(4)(iv) and 114.1(e), which require members in most instances to have direct or indirect voting rights for at least one member of the association's highest governing body, cannot be applied to the Chamber of Commerce or the American Medical Association, because of other financial and organizational ties that exist between these entities and their members.

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday though Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FlashFAX service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #232.

Statements in support of, or in opposition to, the Petition for Rulemaking must be submitted in writing by April 21, 1997.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the Federal Register.

[1] See also 62 FR 4941, Feb. 3, 1997.

Dated: March 14, 1997.
John Warren McGarry,
Chairman.
[FR Doc. 97–6955 Filed 3–19–97; 8:45 am]
BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 270, and 275

[Release Nos. 33–7404, 34–38401, IC–22566, and IA–1619; File No. S7–4–97]

RIN 3235–AG62; 3235–AH01

Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments; extension of the comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is extending from February 27 to April 30, 1997, the comment period for proposed amendments to certain definitions of ''small business'' and ''small organization'' that are used for purposes of the Regulatory Flexibility Act in connection with Commission rulemaking under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933 regarding regulatory requirements applicable to investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers. The proposed amendments were published in the Federal Register on January 28, 1997 (62 FR 4106).

DATES: Comments should be received on or before April 30, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–4–97. This file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Public Reference Room, 450 Fifth Street, N.W., Washington D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT:

General

Penelope W. Saltzman, Special Counsel, at (202–942–0915), or Anne H. Sullivan, Senior Counsel, at (202–942–0954), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–6, Washington, D.C. 20549. Offices with Particular Responsibility:

Thomas M.J. Kerwin, Senior Counsel, Division of Investment Management, (definitions applicable to investment companies and investment advisers) (202–942–0690).

Glenn J. Jessee, Special Counsel, Office of the Chief Counsel, Division of Market Regulation (definitions applicable to exchanges, transfer agents and issuers, securities information processors, and broker-dealers) (202–942–0073).

SUPPLEMENTARY INFORMATION:

On January 22, 1997, the Commission proposed amendments to the definitions of ''small business'' and ''small organization'' set forth in Rule 0–10 [17 CFR 270.0–10] under the Investment Company Act of 1940 [15 U.S.C. § 80a–1], Rule 0–7 [17 CFR 275.0–7] under the Investment Advisers Act of 1940 [15 U.S.C. § 80b–1], Rule 0–10 [17 CFR 240.0–10] under the Securities Exchange Act of 1934 [15 U.S.C. § 78a], and Rule 157 [17 CFR 230.157] under the Securities Act of 1933 [15 U.S.C. § 77a]. These definitions are used specifically for purposes of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (1980), as amended, Pub. L. No. 104–121, Title II, Subtitle D, 110 Stat. 864 (1996).

The Commission originally requested that comments on the proposed rulemaking be received by February 27, 1997. The Commission believes that an extension is appropriate in order to give the public additional time to comment on the proposed amendments. Therefore, the comment period for responding to Investment Company Act Release No. 22478, Investment Advisers Act Release No. 1609, Securities Act Release No. 7383, and Securities Exchange Act Release No. 38190, is extended from February 27, 1997 to April 30, 1997.

Dated: March 14, 1997.
By the Commission.
Jonathan G. Katz,
Secretary.
[FR Doc. 97–7051 Filed 3–19–97; 8:45 am]
BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD–FRL–5711–6]

Proposed Implementation Requirements for Reduction of Sulfur Oxide (Sulfur Dioxide) Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period.

SUMMARY: The EPA is announcing the reopening of the public comment period on the proposed implementation requirements to address short-term peak concentrations of sulfur dioxide (SO_2)—also known as the Intervention Level Program—that were published on January 2, 1997 (62 FR 210).

DATES: Written comments on this proposal must be received on or before April 11, 1997.

ADDRESSES: Submit written comments on this proposal (two copies are preferred) to: Office of Air and Radiation Docket and Information Center (Air Docket 6102), Room M 1500, U.S. Environmental Protection Agency, Attention: Docket No. A–94–55, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. The Air Docket may be called at (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Eric L. Crump, Integrated Policies and Strategies Group (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–4719.

SUPPLEMENTARY INFORMATION: To allow sufficient time to review the proposed implementation requirements for reducing short-term concentrations of SO_2 (40 CFR part 51) before submitting comments, the EPA is reopening the public comment period on this proposal from March 3, 1997 to April 11, 1997.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practices and procedure, Air pollution control, Intergovernmental relations, SO_2, Reporting and recordkeeping requirements, State implementation plans.

Dated: March 13, 1997.
Richard Wilson,
Acting Assistant Administrator.
[FR Doc. 97–7068 Filed 3–19–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[WA59–7134b; FRL–5708–4]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of revising Regulations II and III of the Puget Sound Air Pollution Control Agency (PSAPCA) Regulations. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by April 21, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Washington, Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air Quality (OAQ–107), EPA, (206) 553–6985.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: February 24, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–7099 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI58–01–7266; FRL–5711–2]

Approval and Promulgation of State Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On May 16, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the State's New Source Review State Implementation Plan. As part of this submittal, the State included start-up, shutdown and malfunction rules: R 336.1912 Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements; R 336.1913 Malfunction protection, applicability, prohibitions, conditions, and standards; and R 336.1914 Start-up and shutdown protection; applicability, prohibitions, conditions and standards. The Environmental Protection Agency (EPA) is proposing to disapprove these start-up, shutdown and malfunction regulations because they are not consistent with the Clean Air Act and applicable EPA policy.

DATES: Comments on this proposed rule must be received on or before April 21, 1997.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

I. State Submittal

On May 16, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the State's New Source Review State Implementation Plan. As part of this submittal, the State included start-up, shutdown and malfunction rules: R 336.1912 Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements; R 336.1913 Malfunction protection, applicability, prohibitions, conditions, and standards; and R 336.1914 Start up and shutdown protection; applicability, prohibitions, conditions and standards.[1]

Rule 912 requires that a source's owner or operator operate that source in a manner consistent with good air pollution control practices for minimizing emissions during periods of abnormal conditions, start-up, shutdown, and malfunctions (SSM). The rule also contains notice and reporting requirements in the event of start-up, shutdown or malfunction. Rules 913 and 914 require that the notice and reporting requirements in Rule 912 be met in order for a source to be eligible for the affirmative defense provided in Rules 913 and 914.

Rule 913(2) states ''The emission of an air contaminant in excess of an emission standard * * * or an emission limitation * * * or a violation of a continuous emission or parametric monitoring or automated recordkeeping requirement is prohibited, unless caused by the circumstances of a malfunction of a source, process, or process equipment, and the owner or operator complies with all of the applicable requirements of this rule.''

Rule 914(2) states ''The emission of an air contaminant in excess of an emission standard * * * or an emission limitation * * * or a violation of a continuous emission or parametric monitoring or automated recordkeeping requirement is prohibited, unless caused by the circumstances of a start-up or shutdown of a source, process, or process equipment, and the owner or operator complies with all of the applicable requirements of this rule.''

Both Rules 913 and 914 then provide that if the State determines that the owner or operator violated an emission

[1] While the start-up, shutdown and malfunction regulations were submitted along with the State's New Source Review SIP, they are contained in ''Part 9: Emission Limitations and Prohibitions—Miscellaneous'' of Michigan's air pollution control rules; as such, they apply to all sources, not only those which are required to have a permit.

standard or limitation, or monitoring or recordkeeping requirement, and the owner or operator did not meet the requirements of the SSM regulations, then the State may take appropriate enforcement action. In such an enforcement action, the Michigan Department of Natural Resources (now the MDEQ) must provide reasonable notice of the facts constituting the alleged violation and noncompliance with the rule, while the owner or operator seeking SSM protection has the burden of proof. These provisions establish an affirmative defense for certain violations that occur during periods of SSM.

II. Comparison of State Rules to Federal Requirements

Michigan's SSM regulations contain provisions similar to certain operating requirements found in 40 CFR part 63 (general provisions for National Emission Standards for Hazardous Air Pollutants, section 112), 40 CFR part 60 (general provisions for New Source Performance Standards, section 111), and the United States Environmental Protection Agency's (EPA) SIP policy regarding treatment of SSM. See EPA's policy memorandum dated September 28, 1982 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions''. Also see EPA's clarification to the above policy memorandum dated February 15, 1983 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977). However, Michigan's broad SSM regulations do not meet the requirements of the Act because the Act, as interpreted by the applicable EPA policy memoranda, does not allow for automatic exemptions or establish an affirmative defense from violations caused by SSM conditions.

Sections 913(2) and 914(2) establish an affirmative defense by providing an exemption for sources that violate an emission standard, emission limitation, continuous emission or parametric monitoring, or automated recordkeeping requirement if the violation is the result of SSM and the source complies with the applicable requirements of the rules. The Act and EPA policy prohibit approval of malfunction rules which provide such exemptions. See the EPA policy memoranda referenced above.

Under section 110, the EPA can approve malfunction rules which rely on the ''enforcement discretion'' approach. In such an approach, the malfunction rules would establish criteria to be considered by the regulator in determining whether an enforcement action—or the exercise of discretion—is appropriate. These criteria have generally included the following:

1. To the maximum extent practicable, air pollution control equipment, process equipment, and processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

See the EPA policy memoranda referenced above.

There may be various ways in which to structure such an enforcement discretion approach, and EPA will not attempt to provide detailed guidance here. However, EPA notes that certain issues would have to be addressed by the State if it were to craft such an approach using the current State rule as a starting point. Among these, the definition of ''malfunction'' in R 336.1113(d) does not limit malfunctions to failures that are ''infrequent'' and ''not reasonably preventable'', and is therefore too broad. See, e.g., 40 CFR 60.2 and 63.2. The State's air pollution control bypass provisions in R 336.1913(3)(b) and R 336.1914(4)(b) are also broader than that permitted by the Act. See the EPA policy memoranda referenced above. The alternate emission limitations for startups and shutdowns in R 336.1914(4)(d) could (impermissibly) allow relaxations of Act requirements, including NSR limitations, New Source Performance Standards, toxics requirements (NESHAP, MACT), etc. Finally, the State SSM regulations provide no authority for MDEQ to review and require revisions to a source's written emission minimization plan for normal or usual startups and shutdowns. Such authority is appropriate to ensure that operating practices for startups and shutdowns meet good engineering practice for minimizing emissions, similar to the authority R 336.1911 currently provides for State review and revision of written preventative maintenance and malfunction abatement plans.

III. Effect of State Provisions on Federal Enforcement

It should be noted that EPA does not recognize the Michigan SSM regulations as affecting EPA's enforcement capabilities under the Act, and reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of the State's SSM regulations. Similarly, the Michigan rules do not affect citizen suit rights under section 304 of the Act. The EPA will continue to pursue enforcement actions in accordance with its policies on enforcement discretion and any SSM provisions found in applicable Federal regulations.

IV. Proposed Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Wisconsin rule in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated September 28, 1982 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions''; the clarification to the above policy memorandum dated February 15, 1983 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977). Upon completing this review the EPA is proposing to disapprove Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in these documents.

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

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal

Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C.603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: March 5, 1997.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–7100 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[CO–001–0015b; FRL–5700–4]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to approve revisions to Colorado's prevention of significant deterioration (PSD) permitting requirements in Regulation No. 3, which were submitted as revisions to the State Implementation Plan (SIP) by the Governor on August 1, 1996. EPA also proposes to delete the TSP area designation table and to revise the PM–10 area designation table in 40 CFR part 81 for Colorado. In addition, EPA proposes to amend the language in 40 CFR 52.343(a)(3) to clarify Colorado's PSD permitting authority.

In the final rules section of this Federal Register, the EPA is approving the State's SIP revision and promulgating these amendments as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by April 21, 1997.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2–A, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80202–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, at (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final notice of the same title which is located in the Rules Section of this Federal Register.

Dated: February 27, 1997.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 97–7101 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–246; RM–8091]

Television Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies an Application for Review filed by Valley Public Television, Inc. (Valley) and affirms the staff's dismissal of Valley's rulemaking petition. See 58 FR 58833 (November 4, 1993); 60 FR 31258 (June 14, 1995). The petition sought to substitute Channel *41 for vacant Channel *25 (reserved for noncommercial use) at Ridgecrest, CA to eliminate a short-spacing between Valley's application for a new noncommercial station on Channel *39 at Bakersfield, CA and Channel *25 at Ridgecrest. The Commission concluded that the rulemaking petition was properly dismissed as moot because Valley had withdrawn its television application and because no more applications can be filed for Channel *39 at Bakersfield. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 92–246, adopted March 4, 1997, and released March 14, 1997. The full text of this Commission decision is

available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–7007 Filed 3–19–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter II and VI

[I.D. 031197B]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Large Pelagic Committee, Surfclam and Ocean Quahog Committee, Habitat Committee, Atlantic Mackerel, Squid and Butterfish Committee, and Comprehensive Management Committee will hold public meetings.

DATES: The meetings will be held on April 1–3, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Brandywine Suites Hotel, 707 N. King Street, Wilmington, DE 19801; telephone: 1–800–756–0070.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On Tuesday, April 1, the Large Pelagic Committee will meet from 10:00 a.m. until noon. The Surfclam and Ocean Quahog Committee will meet from 1:00 p.m. to 4:00 p.m. The Habitat Committee will meet from 4:00 p.m. to 5:00 p.m. On Wednesday, April 2, the Council will meet from 8:00 a.m. until noon. The Atlantic Mackerel, Squid and Butterfish Committee will meet from 1:00 p.m. to 3:00 p.m. The Comprehensive Management Committee will meet from 3:00 p.m. to 5:00 p.m. On Thursday, April 3, the Council will meet from 8:00 a.m. until approximately noon.

The purpose of these meetings is to review proposed changes to Federal regulations on large pelagics, discuss surfclam and ocean quahog research, discuss proposed essential fish habitat regulations, discuss joint venture and internal waters processing policies, discuss vessel replacement criteria, and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. The meetings may also be closed at any time to discuss employment or other internal administrative matters.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 13, 1997.

Bruce Morehead,

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

[FR Doc. 97–6981 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 600

[Docket No. 970304043–7043–01; I.D. 021997D]

RIN 0648–AJ59

Magnuson-Stevens Act Provisions; Foreign Fishing Vessels in Internal Waters; Reporting Requirements

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes new reporting requirements for foreign fishing vessels (FFV) operating in the internal waters of a state. FFV's so authorized by the Governor of a state may engage in fish processing and support of U.S. fishing vessels within the internal waters of a state in compliance with the terms and conditions set by the authorizing Governor. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA), now requires that FFV's report the tonnage and harvest location of fish received from vessels of the United States. The intent of this rule is to implement the new statutory requirements of the Magnuson-Stevens Act and collect landings information for management and conservation purposes.

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

ADDRESSES: Comments should be sent to George H. Darcy, F/SF3, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this rule should be sent to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Section 112(c) of the SFA amended section 306(c) of the Magnuson-Stevens Act to require that the owner or operator of a FFV engaged in fish processing and support of U.S. fishing vessels within the internal waters of a state submit reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary of Commerce (Secretary), by regulation, shall prescribe. NMFS, on behalf of the Secretary, is proposing revisions to § 600.508(f), which pertains to foreign fishing operations in internal waters, to implement the SFA requirements.

The proposed provisions would require that the owner or operator of each FFV submit weekly reports to the NMFS Regional Administrator. Owners or operators would be required to request the requirements regarding the timing and method of submission of the reports from the Regional Administrator at least 15 days prior to the first receipt of fish from a vessel of the United States. Reports would require vessel identification information; date of receipt of fish; amount of fish received, by species; and location(s) from which the fish received were harvested. The

timing and method of submission of reports would be stipulated by the NMFS Regional Administrator in writing, upon request, and would be determined based on the data collection and fishery monitoring systems in place in the Region at that time.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The only entities affected, namely owners and operators of FFV's, are not domestic entities and, according to regulations implementing the Regulatory Flexibility Act (RFA), are not considered small entities under the RFA. There will be no impacts of this proposed rule on domestic small entities.

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

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 0.5 hours per response to fill out and submit each weekly report to the Regional Administrator, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: March 13, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 600.508, paragraph (f) is revised to read as follows:

§ 600.508 Fishing operations.

* * * * *

(f) *Internal waters.* For FFV's authorized under section 306(c) of the Magnuson-Stevens Act:

(1) Each FFV may engage in fish processing and support of U.S. fishing vessels within the internal waters of that state in compliance with terms and conditions set by the authorizing Governor; and

(2) The owner or operator of each FFV must submit weekly reports on the amount of fish received from vessels of the United States and the location(s) where such fish were harvested.

(i) Reports must include:

(A) Vessel identification information for the FFV.

(B) Date of each receipt of fish.

(C) Amount of fish received, by species.

(D) Location(s) from which the fish received were harvested.

(ii) Owners or operators of FFV's processing fish in internal waters under the provisions of this paragraph (f) must request the requirements regarding the timing and submission of the reports from the Regional Administrator at least 15 days prior to the first receipt of fish from a vessel of the United States, who shall stipulate them in writing.

[FR Doc. 97–6973 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 54
Thursday, March 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 14, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- Rural Housing Service

Title: 7 CFR 1965–B, Security Servicing for Multiple Family Housing Loans.

OMB Control Number: 0575–0100.

Summary: The information collection allows RHS to respond to account servicing actions such as transfers, reamortizations, delinquencies, subordinations and junior liens.

Need and Use of the Information: The information is used to assure compliance with the regulations for projects financed with Multiple Family Housing loan and grant funds.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 945.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,587.

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 97–7043 Filed 3–19–97; 8:45 am]

BILLING CODE 3410–01–M

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for, and revision of, an information collection process currently in effect related to the Standards for Approval of Warehouses for Cotton.

DATES: Comments must be submitted on or before May 19, 1997, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: All comments concerning this notice should be addressed to Mr. Steven Closson, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Ave., SW, Washington DC 20250–0553 FAX (202) 690–3213.

SUPPLEMENTARY INFORMATION:

Title: Standards for Approval of Warehouses for Cotton.

OMB Control Number: 0560–0010.

Expiration Date of Approval: January 31,1997.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The CCC Charter Act, authorizes CCC to enter into storage agreements with commercial warehouse operators for the storage of CCC-owned or CCC-loaned cotton. 15 U.S.C. 714 note. The information collected under Office of Management and Budget (OMB) Number 0560–0010, as identified above, allows CCC to effectively maintain a list of approved warehouses for the storage of cotton as covered by 7 CFR part 1427—Standards for Approval of Warehouses for Cotton or Cotton Linters.

The forms covered by this collection are the Cotton Storage Agreement (Storage Agreement) and supporting documents that allows the warehouse operator to demonstrate to CCC his ability to meet the standards for approval necessary for the CCC contracting officer to enter into or continue an existing storage agreement with a warehouse operator. The Storage Agreement is a contract for services between CCC and the warehouse operator and spells out the terms that will prevail during the period that the warehouse and CCC chose to conduct business. During this period the warehouse is listed on a CCC maintained List of Approved Warehouses and eligible producers may obtain price support loans for cotton stored at the warehouse. The forms are furnished to interested warehouse operators to secure and record information regarding the agreement and permits the warehouse operator to submit the storage and handling rates to be paid by CCC should CCC or eligible producers use the warehouse for the storage and handling of eligible cotton.

Estimate of Burden: The record keeping requirements in this clearance are normal business records and, therefore, have no burden. Public reporting burden for this information collection is estimated to average 1.06 hours per response.

Respondents: Business or other for-profit.

Estimated Number of Responses: 400.

Estimated Number of Responses per Respondent: 3.265.

Estimated Total Annual Burden on Respondents: 1,395.

Comments are sought on these requirements including: (a) whether the continued collection of information is necessary for the proper performance of CCC contracting activities, including whether the information will have practical utility; (b) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information to be collected; (d) minimizing the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Mr. Steven Closson, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Ave., SW, Washington DC 20250–0553. Copies of the information collection may be obtained from Mr. Closson at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on March 12, 1997.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–6786 Filed 3–19–97; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Commonality of the Chemistries Involved in Moisture, Biological, Ultraviolet, and Thermal Degradations of Wood; Notice of Intent To Form a Consortium

Program Description—Purpose. The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to form a Consortium dedicated to understanding the commonality of the chemistries involved in moisture, biological, ultraviolet, and thermal degradations of wood, and developing basic approaches to protecting wood from degradation without loss of other basic properties, under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be a Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the current status of preventing wood degradation is as follows:

(a) Wood is a three-dimensional, polymeric composite made up primarily of cellulose, hemicelluloses, and lignin. These polymers, along with extractives and inorganics, and the matrix they are in, make up the cell wall and are responsible for the characteristics, properties and performance of wood.

When considering wood as a long term engineering material it must be remembered that wood is a hygroscopic resource that was designed to perform, in nature, in a wet environment and that nature is programmed to recycle wood in a timely way through biological, thermal, aqueous, photochemical, chemical, and mechanical degradations.

There are four basic chemical reactions involved in all the degradation reactions of wood: Oxidation, hydrolsis, reduction, and dehydration. Because of the similarities in degradation chemistry, all these degradation reactions will be studied together.

Cell wall polymers are responsible for the properties of wood. Wood changes dimension with changing moisture content because the cell wall polymers contain hydroxyl and other oxygen-containing groups that attract moisture through hydrogen bonding. The hemicelluloses are mainly responsible for moisture sorption, but the accessible cellulose, noncrystalline cellulose, lignin, and surface of crystalline cellulose also play minor parts to major roles. Moisture swells the cell wall and the wood expands until the cell wall is saturated with water (fiber saturation point (FSP)). Beyond this saturation point, moisture exists as free water in the void structure and does not contribute to further expansion. The process is reversible and the wood shrinks as it loses moisture below the FSP.

Wood exposed to moisture frequently is not a equilibrium and has wet areas and drier areas. This exacerbates the moisture problem resulting in differential swelling followed by cracking and/or compression set. Over the long term, wood undergoes cyclic swelling and shrinking as moisture levels change resulting in more severe moisture effects than those encountered under steady moisture conditions.

Wood is degraded biologically because organisms recognize the carbohydrate polymers (mainly the hemicelluloses) in the cell wall and have both specific and non-specific chemical and specific enzyme systems capable of hydrolyzing these polymers into digestible units. Biodegradation of both the matrix and the high molecular weight cellulose weakens the fiber cell wall. Strength is lost as the matrix and cellulose polymer undergo degradation through oxidation, hydrolysis, and dehydration reactions. As degradation continues, removal of cell wall content results in weight loss.

Wood exposed outdoors undergoes photochemical degradation caused by ultraviolet radiation. This degradation takes place primarily in the lignin component, which is responsible for the characteristic color changes. The surface becomes richer in cellulose content as the lignin degrades. In comparison to lignin, cellulose is much less susceptible to ultraviolet radiation degradation. After the lignin has been degraded, the poorly bonded carbohydrate-rich fibers erode easily from the surface, which exposes new lignin to further degradative reactions. In time, the ''weathering'' process causes the surface of the composite to become rough and can account for a significant loss in surface fibers.

Wood burns because the cell wall polymers undergo pyrolysis reactions with increasing temperature to give off volatile, flammable gasses. The hemicelluloses and cellulose polymers are degraded by heat much before the lignin. The lignin and carbohydrate components contribute to char formation, and the charred layer helps insulate the composite from further thermal degradation.

The idea of protecting wood in adverse environments dates back to early human history. Perhaps the earliest reference is in the Old Testament (Genesis 6:14) when God instructed Noah to build an ark of gopher wood (a naturally durable and hard wood) and cover it inside and outside with pitch (for both water repellency and decay protection).

Ancient civilization in Burma, China, Greece, and Italy used various animal, vegetable and mineral oils, tars, pitches or charring to preserve wood. Sometime during the second half of the eighteenth century, the science of wood preservation started with a search for toxic chemicals that could be used to treat wood to stop decay. The time line might include: mercuric chloride first used in 1705, patented in 1832; copper sulfate first introduced in 1767, patented in 1839; zinc chloride first used in 1815; creosote first used in 1836; copper, chromium and arsenic salts introduced in the early 1900's; and pentachlorophenol first introduced in

the 1930's. All of these treatments were based on broad spectra toxicity with little concern for environmental implications.

The earliest references to treating wood for fire retardancy dates back to the first century AD when the Romans used alum and vinegar to protect boats against fire. The science of fire retardancy started in the first half of the nineteenth century. In 1820 Gay-Lussac used ammonium phosphates and borax as fire retardants. Most of the inorganic fire retardants used today were developed between 1800 and 1870.

Protecting wood from moisture damage also dates back into antiquity. Waxes, oils, resins, paints, and coatings have been used to help exclude moisture since shortly after wood was first used by humans.

Protecting wood from damage caused by weathering also dates from the early use of wood. Stains and coatings have been used to cover wood from the degradation caused both by water and ultraviolet radiation.

The process of protecting wood from one type of degradation can cause another type of degradation to take place. For example, in fire retardant formulations involving free phosphoric acid, treated wood has been shown to lose strength. While the wood is very effectively treated for fire retardancy, service life is shortened by the loss in strength. Similarly, wood decking treated with chromated-copper-arsenate (CCA), while having excellent anti-fungal properties, is being replaced after a few years due to cracking and splitting caused by moisture damage.

Since there are only four basic chemistries involved in the degradation mechanisms of wood (hydrolysis, oxidation, dehydration, and reduction), there are many similarities in the degradation pathways regardless of the source of the degradation. Through a better understanding of these common degradation chemistries, it should be possible to protect wood in a more holistic way. That is, controlling one degradation chemistry can lead to the protection of another degradation mechanism. This leads to the idea of combined treatments to control several degradation pathways.

The Forest Products Laboratory is requesting support for this project. The support is in the form of membership in the consortium and funding in the amount of $15,000.00 per year for the three-year proposed duration of the Consortium.

An informational and organizational meeting of the Consortium will be held beginning May 5, 1997, 1 p.m. and ending May 6, 1997, at 12 Noon, at the USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

Technical questions may be directed to Roger M. Rowell at the above address, by fax at (608) 231–9262, or by phone at (608) 231–9416.

Questions of a business or legal nature may be directed to John G. Bachhuber at the above address, by fax at (608) 231–9585, or by phone at (608) 231–9282.

A copy of the proposed Cooperative Research and Development Agreement to be executed by consortium members may be obtained by writing Joanne M. Bosch at the above address, by faxing her at (608) 231–9585, or by phoning her at (608) 231–9205.

Done at Madison, WI, on March 11, 1997.

Thomas E. Hamilton,

Director.

[FR Doc. 97–7084 Filed 3–19–97; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, April 16, 1997, at the U.S. Sheraton Hartford Hotel, Silas Deane Room, 315 Trumbull Street, Hartford, Connecticut 06103. The purpose of the meeting is to 1) provide an orientation for new Committee members, and 2) plan project activities for FY 1997.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Ivor J. Echols, 860–688–2009, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 12, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–7083 Filed 3–19–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questionnaire for Building Permit Official.

Form Number(s): SOC–QBPO.

Agency Approval Number: 0607–0125.

Type of Request: Revision of a currently approved collection.

Burden: 209 hours.

Number of Respondents: 835.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census uses the Questionnaire for Building Permit Official in conjunction with the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as the survey of construction (SOC). Data collected in the SOC are used to produce statistics on residential construction and are needed by economic policy makers to monitor this sector of the economy. Census field interviewers use the Questionnaire for Building Permit Official to obtain information on the operating procedures of a sample of the building permit issuing offices in the United States in order to locate, classify, list, and sample building permits for residential construction. This information is used to carry out the sampling for the SOC and to verify and update the geographic coverage of permit offices.

In July 1997, we plan to convert to an electronic form to collect this data. We have been experimenting with Computer Assisted Personal Interviewing (CAPI) and have been using this technology on a test basis since November 1995. Currently, interviewers use a paper form to record respondents' answers. We have improved the CAPI instrument over the paper form based on a reassessment of our data capture needs and efforts to minimize burden. For example, we have deleted some items that are no longer used, added others that enhance the conduct of the SOC, and improve the flow of questions and overall survey administration.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–6986 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–07–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Phase Equilibria Data for Ceramics.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 400 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 2 hours.

Needs and Uses: NIST seeks to assess the economic impact of its joint program with the American Ceramic Society on the evaluation and distribution of relevant phase equilibria data. The respondents will be U.S. ceramic producers and their customers. The results will be used by NIST for program evaluation purposes.

Affected Public: Businesses or other for-profit organizations, Not-for-profit institutions, and the Federal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5310, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: March 13, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–6987 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–13–M

National Institute of Standards and Technology

Government-owned Invention; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of a government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 95–029/30

Abstract: A permeation tube sealed internally in a commercially available automatic sampler vial provides a simple and convenient method of preparing, using, and storing long-term samples such as retention index standards. The approach is especially suited to the handling of volatile organic compounds (VOCs). Sample can be dispensed at very low concentration, even at infinite dilution.

Dated: March 14, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–7032 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 011597A]

Pacific Salmon Fisheries Off the Coasts of California, Oregon, Washington, Alaska and in the Columbia River Basin

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

ACTION: Notice of intent; scoping meeting; extension of comment period.

SUMMARY: In the Federal Register of January 27, 1997, NMFS announced its intent to hold scoping meetings, prepare Environmental Assessments (EAs) and an Environmental Impact Statement (EIS) on ocean and in-river fisheries that may result in the incidental take of Pacific salmonids currently listed or proposed for listing under the Endangered Species Act. In the Federal Register of March 4, 1997, NMFS announced the time and place for the Alaska meeting and extended the comment period. Due to severe winter weather conditions the Alaska meeting was postponed. NMFS is therefore announcing a new scoping meeting in Alaska and is also extending the comment period on the EIS and EAs.

DATES: Written comments will be accepted through March 31, 1997. The scoping meeting will be held on March 20, 1997, 1:30–3:30 p.m., Sitka, AK.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Joseph R. Blum, Office of Protected Resources, Endangered Species Division (PR3), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

The scoping meeting for Alaska will be held at the Sitka Centennial Building, 330 Harbor Drive, Sitka, AK 99835.

FOR FURTHER INFORMATION CONTACT: Joseph R. Blum (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Background and rationale for this action were provided in the notice of intent (62 FR 3873, January 27, 1997) and are not repeated here.

NMFS announced the time and place for the Alaska meeting and extended the comment period (62 FR 9750, March 4, 1997).

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Tamra Faris (907)

586–7228 at least 3 days before the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*; 42 U.S.C. *et seq.*

Dated: March 13, 1997.

Gary C. Matlock,

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

[FR Doc. 97–6974 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031297B]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC), Bycatch Subcommittee, from April 14 to April 15, 1997.

DATES: The meetings are scheduled as follows:

1. April 14, 1997, 1:00 p.m. - 5 p.m.
2. April 15, 1997, 8:30 a.m. - 5 p.m.

ADDRESSES: The meetings will be held at the Falmouth Inn, 824 Main Street, Falmouth, MA. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard Wheeler, Executive Secretary; telephone: (301) 713–2252.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC or MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, and other national interests.

Matters To Be Considered

Matters to be considered include Bycatch Subcommittee business only:

April 14, 1997

(1) Briefing on NMFS Bycatch Task Force

(2) Briefing on Atlantic States Marine Fisheries Commission Bycatch Initiatives

April 15, 1997

(1) Discussion of Impact of Magnuson-Stevens Act on bycatch considerations within the Fishery Management Plan process.

(2) Briefing and discussion of Take Reduction Team Efforts on Harbor Porpoise and Large Whale TRT efforts.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: March 14, 1997.

Charles Karnella,

Acting Director, Office of Operation, Management and Information, National Marine Fisheries Service.

[FR Doc. 97–6982 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031297D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings to discuss various issues.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council meeting will be held April 8–11, 1997. Various advisory groups will be meeting on Monday, April 7. The Council meeting will begin on Tuesday, April 8, at 8 a.m., in a closed session (not open to the public) to discuss litigation and personnel matters. The open session begins at 8:30 a.m. The Council meeting reconvenes at 8 a.m., Wednesday through Friday, and will adjourn when Council business has been completed.

ADDRESSES: The meetings will be held at the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, CA 94030, (415) 697–8735.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

Council Agenda

A. Call to Order

B. Salmon Management

1. Tentative Adoption of 1997 Ocean Salmon Management Measures for Analysis
2. Clarify Council Direction
3. Methodology Reviews for 1997
4. Identification of Stocks Not Meeting Escapement Goals for 3 Consecutive Years
5. Final Action on 1997 Measures - Including Halibut Incidental Catch

C. Habitat Issues

Report of Steering Group - Consider Adding Marine Habitat Expertise to Steering Group

D. Groundfish Management

1. Status of Federal Regulations Implementing Council Actions
2. Status of Fisheries and Inseason Management Adjustments
3. Revised Stock Assessment Process
4. Review of Harvest Policy
5. Development of Groundfish Fishery Capacity Reduction Program
6. Scoping for Plan Amendments
7. California Gillnet Regulations in the Exclusive Economic Zone
8. Status Report on Oregon Observer Program
9. Report of the Industry Meeting on Salmon Bycatch Avoidance in the Whiting Fishery
10. Composition of the Groundfish Advisory Panel
11. Member, Staff, and Agency Work Load

E. Administrative and Other Matters

1. Report of the Budget Committee
2. Status of Legislation
3. Draft Agenda for June 1997

Other Meetings

The Groundfish Management Team will meet on Monday, April 7, at 8 a.m. to discuss final action on Federal gillnet regulations off California, inseason management adjustments, and initiation of the plan amendment process to meet new requirements of the Magnuson-Stevens Conservation and Management Act.

The Salmon Technical Team will convene as necessary Monday, April 7–11, to address salmon management items on the Council agenda.

The Scientific and Statistical Committee will convene on Monday, April 7, at 9 a.m., and Tuesday, April 8, at 8 a.m., to address scientific issues related to Council agenda items.

The Habitat Steering Group will convene on Monday, April 7, at 10 a.m.,

to address issues affecting the habitat of Council-managed species.

The Salmon Advisory Panel will convene on Monday, April 7, at 9 a.m., and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Groundfish Advisory Panel will convene on Monday, April 7, at 1 p.m., and will continue to meet throughout the week as necessary to address groundfish management items on the Council agenda.

The Budget Committee will convene on Monday, April 7, at 3 p.m., to review the status of 1996 and 1997 Council budgets.

The Enforcement Consultants meet on Tuesday, April 8, at 7 p.m., to address enforcement issues related to Council agenda items.

There will be a Salmon/Whiting Industry Meeting on Wednesday, April 9, to discuss salmon bycatch avoidance in the whiting fishery.

Detailed agendas for the above advisory meetings will be available after March 28, 1997.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 13, 1997.

Bruce Morehead,

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

[FR Doc. 97–6984 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031397C]

Endangered Species; Permits

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

ACTION: Issuance of scientific research permit 1030.

SUMMARY: Notice is hereby given that on March 12, 1997, NMFS issued Scientific Research Permit 1030 to Sarah V. Mitchell, of NOAA Gray's Reef National Marine Sanctuary (P625), to take listed loggerhead sea turtles for the purpose of scientific research subject to certain conditions set forth therein.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on January 17, 1997 (62 FR 2656) that an application had been filed by Sarah V. Mitchell, NOAA Gray's Reef National Marine Sanctuary (P625), to take listed loggerhead sea turtles as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Issuance of this permit allows the applicant to take listed loggerhead sea turtles (*Caretta caretta*) for examination, tagging, observation, collection of morphometric measurements, and release. The purpose of the authorized research, as stated in the application, is to investigate population trends, migrations, habitat, and diving behavior of loggerhead turtles in the Gray's Reef National Marine Sanctuary.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 13, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–6983 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031397B]

Marine Mammals; Scientific Research Permit (PHF# 850–1342)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Lucy W. Keith, Boston University Marine Program, Broderick House/MBL, Woods Hole, Massachusetts 02543, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

DATES: Written comments must be received on or before April 21, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4001); and

Protected Species Coordinator, Pacific Area Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The application requests authorization to capture, physically restrain, and radio tag (and possibly recapture for tag removal) up to 20 immature monk seals of either gender (10 weaned pups, and 10 juveniles up to 3 years of age) over an eight month period in 1997. The applicant also requests authorization to inadvertently harass up to 10 additional seals of any age and gender during the course of the tagging activities. Research activities will involve population assessment, disease assessment, recovery action, and pelagic ecology studies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 13, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–6975 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031397D]

Marine Mammals; Scientific Research Permit (PHF# 662–1345)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dena Matkin, Box 22, Gustavus, Alaska 99826, has applied in due form for a permit to take killer whales (*Orcinus orca*) and humpback whales (*Megaptera novaengliae*) for purposes of scientific research.

DATES: Written comments must be received on or before April 21, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, P.O. Box 21688, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The application requests authorization to unintentionally harass up to 400 killer whales and 100 humpback whales annually over a five year period. The purpose of the research is to continue long-term, year-round photo-identification work in Southeastern Alaska to define the population size, structure and range of killer whales; and to obtain identification of photographs of humpback whales opportunistically in conjunction with the killer whale research.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 14, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–7056 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031397A]

Marine Mammals; Permit No. 957 (P771#71)

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS,7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070, has requested a amendment to permit No. 957.

DATES: Written comments must be received on or before April 21, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 957, issued on May 31, 1995 (60 FR 30065) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 957 authorizes the permit holder to: satellite tag up to 50 beluga whales (*Delphinapterus leucas*) over a 5-year period, but not more than 10 in any one year; and to unintentionally harass up to 900 annually. Activities are authorized to occur in Cook Inlet and along the western Alaska coastline.

The permit holder requests authorization to increase the number of animals taken to 30 annually for the next 3 years (1997 through 1999).

Dated: March 14, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–7057 Filed 3–19–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Columbia River System Operation Review, Selection of a System Operation Strategy (Record of Decision (ROD))

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability of Record of Decision.

SUMMARY: In 1990, the three Federal agencies responsible for management of the Federal Columbia River Power System; the Corps of Engineers, the Bureau of Reclamation, and Bonneville Power Administration; began the System Operation Review (SOR) for the purpose of developing and implementing a coordinated system operating strategy for managing the multiple uses of the system while

meeting the biological needs of species protected under the Endangered Species Act. Pursuant to the National Environmental Policy Act of 1969, selection of a system operation strategy preferred alternative is documented in the SOR Final Environmental Impact Statement, November 1995. This Record of Decision documents the decision of the Corps of Engineers to implement existing and modified plans for reservoir regulation and project operation for the following Corps projects: Bonneville, The Dalles, John Day, and McNary; Oregon and Washington: Ice Harbor, Lower Monumental, Little Goose, Lower Granite, and Chief Joseph; Washington: Dworshak and Albeni Falls, Idaho: and Libby, Montana. The Record of Decision was signed on February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Copies of the record of decision and further information may be requested from: Division Engineer, US Army Engineer Division, North Pacific Division, 220 NW 8th Ave., Portland, Oregon 97209-3589, PO Box 2870, 97208–2870, Attention: Ray Jaren, Telephone (503) 326–5194 ((503) 808–3857 after March 21, 1997).

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision are available for inspection and review at the following Corps of Engineers offices:

Office, Chief of Engineers, 20 Massachusetts Ave. NW, Washington, DC 20314–1000.

Portland District, Robert Duncan Plaza, 333 SW First Ave., Portland, OR 97204–3495, (503) 326–5268.

Seattle District, 4735 East Marginal Way South, Seattle, WA 98134–2385, (206) 764–6578.

Walla Walla District, 201 North 3rd Ave., Walla Walla, WA 99362–1876, (509) 527–7244.

Robert H. Griffin,

Brigadier General, U.S. Army, Division Engineer.

[FR Doc. 97–7005 Filed 3–19–97; 8:45 am]

BILLING CODE 3710–AR–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Eastern Arkansas Region Comprehensive Study, Grand Prairie Area Demonstration Project, General Reevaluation

AGENCY: Memphis District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The purpose of this general reevaluation is to develop a plan of improvement that addresses all of the identified water resource problems and opportunities within the Grand Prairie project area. It will evaluate and determine the optimum plan for providing agricultural water supply and conservaiton while incorporating water quality, fish and wildlife, recreaiton, and environmental protection/restoration measures. The general reevaluation is being conducted in response to congressional direction and funding provided by Energy and Water Development Appropriations Acts. It is a continuation of preconstruction, engineering, and design of the Eastern Arkansas Region Comprehensive Study authorized by the Committee on Public Works and Transportaiton of the U.S. House of Representatives on September 23, 1982. The Grand Prairie—Bayou Metro Project was reauthorized by the Water Resources Development Act of 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Bright, telephone (901) 544–0745, CELMM–PD–F, 167 North Main Street B–202, Memphis, TN 38103–1894. Questions regarding the DEIS may be directed to Mr. Edward Lambert, telephone (901) 544–0707, CELMM–PD–R.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

A Corps feasibility study, completed in 1990, identified the Grand Prairie as one of five geographic areas within eastern Arkansas exhibiting critical groundwater depletion proglems as a result of agricultural irrigation demands on the alluvial aquifer. Subsequent congressional appropriaiton acts directed the Corps to select and develop implementation plans for one of the five areas to serve as an agricultrual water supply demonstraiton project. The Grand Prairie was selected because groundwater depletion is comparably more severe within this area. The Grand Prairie Area Demonstration Project general reevaluation proposes to devleop an economically feasible and environmentally acceptable plan to supply and conserve irrigation water in such a manner as to allow stabilization of the aquifer. An eloborate water distribution system, water conservation measures, groundwater management strategies, retrofit of existing farm irrigation systems, and new on-farm storage reservoirs will be integral components of this plan. In addition, harvested rice fields will be flooded to benefit migratory waterfowl and shore birds. Since a vast tallgrass prairie historically occupied this area, native prairie grasses will be planted within project rights-of-way. This project area encompasses 362,662 acres and includes significant portions of Prairie and Arkansas counties and small portions of Monroe and Lonoke counties.

2. Alternatives

Alternatives being considered include plans that provide various on-farm water conservation measures and additonal water storage and plans that combine conservation measures and additional storage with irrigation water supply from the White River. These plans will be compared to the No Action alternative.

3. Scoping Process

An intensive public involvement program has been maintianed throughout this study to (1) solicit input from individuals and interested parties so that problems, needs, and opportunities within the project area could be properly identified and addressed and (2) provide status updates to concerned organizations and the general public. A formal public meeting was held in Stuttgart, Arkansas, on December 8, 1992, to provide information on the general reevaluation and proposed project alternatives and to discuss project related issues and concerns with the general public. Numerous meetings with the local public, sponsor coordination meetings, interagency environmental meetings, and public project briefings/presentaitons have been conducted. Also, project displays have been exhibited at county fairs and outdoors festivals. No additional public scoping meetings are anticipated, but interagency environmental meetings will continue. Significant issues being analyzed include potential project impacts (negative and positive) to fisheries, water quality, wetlands, upland forests, waterfowl, endangered species, and cultural resources. It is anticipated that the DEIS will be available for public review during the fall or winter of 1997. A public meeting will be held during the reivew period to recieve comments and address questions concerning the DEIS.

Josef R. Hallatschek,

Major, Corps of Engineers, Deputy District Engineer.

[FR Doc. 97–7006 Filed 3–19–97; 8:45 am]

BILLING CODE 3710–KS–M

Department of the Navy

Notice of Closed Meeting of the Board of Visitors to the United States Naval Academy

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on March 17 and 18, 1997, at the United States Naval Academy, Annapolis, MD, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve ongoing criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Under Secretary of the Navy has determined in writing that the special committee meeting shall be closed to the public because the meeting will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, United States Code. Due to a delay in Administrative Processing the normal 15 days notice requirement could not be met.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant Commander Adam S. Levitt, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

Dated: March 11, 1997.

Donald E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–7106 Filed 3–19–97; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 26, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 1:00 p.m. at the same location and will feature a presentation on the Delaware River Sojourn. This conference is also open to the public.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will also address the following matters: Minutes of the February 26, 1997 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Delaware Department of Natural Resources and Environmental Control (DNREC) D–84–10 CP (Supplement No. 3)

An application to supplement Docket No. D–84–10 CP Water Supply Facility Plan for Northern New Castle County, Delaware to increase the interstate transfer of water from the Chester Water Authority (CWA) in New Garden Township, Chester County, Pennsylvania to Artesian Water Company (AWC) in New Castle County, Delaware. Currently, the interstate transfer is 120 million gallons (mg)/30 days (approved via Docket No. D–84–10 CP (Supplement No. 2)). DNREC has requested DRBC to approve an increase to 180 mg/30 days and an extension of the interstate agreement to December 31, 2021. The Pennsylvania Department of Environmental Protection has approved the project transfer by CWA.

2. Village of Deposit D–86–29 CP RENEWAL 2

An application for the renewal of a ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's distribution system from Well Nos. 1 through 4. Commission approval on December 11, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 30 mg/30 days. The project is located in the Village of Deposit, Broome and Delaware Counties, New York.

3. Moyer Packing Company D–96–21

A project to expand the applicant's industrial wastewater treatment plant (IWTP) average monthly capacity from 0.50 million gallons/day (mgd) to 0.705 mgd. The IWTP will continue to serve only the applicant's rendering and meat packing facilities in Franconia Township, Montgomery County, Pennsylvania. The IWTP will continue to provide tertiary filtration after secondary biological treatment via the extended aeration activated sludge process. The IWTP will continue to discharge to Skippack Creek, approximately 1,000 feet west of the plant, which is situated just west of Allentown Road near Souder Road in Franconia Township.

4. Thornbury Township D–96–47 CP

A project to construct a 103,000 gallons/day (gpd) sewage treatment plant (STP) to provide advanced secondary biological treatment (via the sequencing batch reactor/activated sludge process) and tertiary filtration. Depending upon weather conditions, discharge will be to Radley Run, a tributary of Brandywine Creek, and/or to a 10-acre spray irrigation disposal field. The project will be constructed in two phases: In Phase I, the project spray irrigation disposal field will provide capacity for 77,250 gpd; Phase II will provide an additional 3.3 acres for the 103,000 gpd total capacity. The spray irrigation field will be located west of Radley Run and the STP will be located just east of Radley Run, on the proposed Bridlewood Farm residential development in Thornbury Township, Chester County, Pennsylvania. All facilities are just south of Street Road and west of Route 202 in Thornbury Township.

5. Citizens Utilities Water Company of Pennsylvania, Amity District D–96–53 CP

An application for approval of a ground water withdrawal project to supply up to 8.4 mg/30 days of water to the applicant's distribution system from new Well No. DG–11, and to increase the existing withdrawal limit of 12.1 mg/30 days from all wells to 21 mg/30 days. The project is located in Amity Township, Berks County, Pennsylvania.

6. New Garden Township Sewer Authority D–96–64 CP

A project to construct a 0.3 mgd lagoon treatment/spray irrigation system to be known as the East End Wastewater Treatment Plant in New Garden Township, Chester County, Pennsylvania. Currently, sewage generated in the East End of New Garden Township is pumped to the Borough of Kennett Square treatment plant. The proposed project is being built to meet the present and future

wastewater needs of the East End since conveyance to Kennett Square's plant is proposed to end in the near future. The facilities are designed for construction in two phases: an initial 200,000 gpd phase and two additional 50,000 gpd phases as needed. There will be no discharge to surface water.

7. North Coventry Municipal Authority D–97–1 CP

A project to modify and expand the applicant's existing trickling filter STP from an average monthly flow of 0.7 mgd to 1.5 mgd. The expanded STP will provide secondary biological treatment via an oxidation ditch activated sludge process The STP will continue to serve existing and proposed development in North Coventry Township, Chester County, Pennsylvania. The STP is located in the northeastern corner of North Coventry Township and is situated on the south bank of the Schuylkill River to which it will continue to discharge, just downstream from the U.S. Route 442 bridge.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: March 11, 1997

Susan M. Weisman,

Secretary.

[FR Doc. 97–7082 Filed 3–19–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 19, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 14, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Services for Children with Deaf-Blindness Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 58. Burden Hours: 9.

Abstract: Form OMB No. 1820–0532 under the Services for Children with Deaf-Blindness program, is the sole source of data on (a) Number of deaf-blind children served by age, severity, sex, and nature of deaf-blindness; (b) Number of service trained/counseled; and types of services provided. Used annually to report the most accurate count to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Captioned film/videos for the Deaf, Application for Loan Service and Response Form.

Frequency: On Occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 23,000. Burden Hours: 5,100.

Abstract: This package provides an application form for prospective users of the Captioned Films and Videos and response cards to evaluate satisfaction with films/videos.

[FR Doc. 97–6992 Filed 3–19–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 28, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 19, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs,

Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 14, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1997 State Third International Mathematics and Science Study (TIMSS)

Abstract: The 1997 State TIMSS will use forms and procedures from the 1995 Third International Mathematics and Science Study to assess grade 8 students in math and science in states that choose to participate in the 1997 study. These states will be taking the first step toward meeting President Clinton's challenge to adopt national education standards and to voluntarily administer tests to monitor progress toward these standards.

Additional Information: Emergency clearance to reinstate TIMSS, with changes, for 90 days is requested because the need to conduct TIMSS assessments in 1997 was not anticipated until mid-February 1997. At that time, two states, Missouri and Oregon, requested administration of the TIMSS assessment for grade 8 in statewide samples of their schools during the spring 1997 semester. TIMSS for 1997 would be conducted from mid-April to mid-May 1997 in two states only and at grade 8 only, and would exclude any performance tasks, case studies, or videotape studies associated with the original 1997 data collection. Thus, the 1997 study is a substantially reduced version of the original study.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden: Responses: 3,025. Burden Hours: 7,150.

[FR Doc. 97–6993 Filed 3–19–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.215P]

Fund for the Improvement of Education Program—Assessment Development Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To fund projects that develop, evaluate and field-test assessments aligned with challenging State content standards. The Secretary intends to provide Federal financial assistance to assist eligible applicants in the development or modification of such assessments that can be used to improve classroom instruction, motivate all students to improve educational performance, and provide examples for students, teachers and parents of the learning outcomes that can be expected for all students.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, and other public and private agencies, organizations, and institutions, including consortia of such organizations, are eligible to receive funds under these priorities.

Deadline for Transmittal of Applications: May 30, 1997.

Deadline for Intergovernmental Review: July 29, 1997.

Applications Available: March 24, 1997.

Estimated Available Funds: Up to $4,000,000.

Estimated Range of Awards: $100,000 to $1,000,000 per year.

Estimated Average Size of Awards: $400,000 per year.

Estimated Number of Awards: 10 awards.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: The Secretary does not consider an application that proposes a budget exceeding $1,000,000 for the first budget period of 12 months.

Project Period: Up to 48 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR Parts 98, 99, and 700.

Priorities

The priorities in the notice of final priorities for this program, published in the Federal Register on April 1, 1996 (61 FR 14392) and repeated below apply to this competition.

Absolute Priority 1—Projects that develop, field-test, and evaluate assessments that are aligned to State content standards.

Absolute Priority 2—Projects that modify, field-test, and evaluate assessments to address the needs of children and youth with disabilities or limited English proficiency.

Assessments to be modified must be those developed under priority (1) or similar assessments developed for all students and aligned to State content standards.

All projects must—

(a) Examine the validity and reliability of the assessment for the particular purposes for which the assessment was developed;

(b) Ensure that the assessment is consistent with relevant, nationally recognized professional and technical standards for assessments;

(c) Devote special attention to how the assessment treats all students, especially with regard to race, gender, ethnicity, disability, and language proficiency of those students; and

(d) Be developed by, or under the direction of, an SEA, LEA, or consortia of those agencies.

Invitational Priorities

Within the absolute priorities specified in this notice, the Secretary is particularly interested in applications that meet the invitational priorities in the next two paragraphs. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects that focus on the assessment of reading and mathematics and are used to meet the assessment requirements of ESEA Title I.

Invitational Priority 2—Projects that involve consortia of states working together to develop or modify assessment instruments aligned with content standards.

For Applications or Information Contact: Applicants are encouraged to request an application by *facsimile machine:* David Sweet, (202) 219–2135, by *electronic mail:* Paige—Russ@ed.gov, or by *mail:* Assessment Development Grant Application, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 510, Washington, D.C. 20208–5573. However, if that is not convenient, you may use *voicemail:* (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at (gopher://gcs.ed.gov); or on the World Wide Web at (http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program authority: 20 U.S.C. 8001.

Dated: March 14, 1997.

Marshall S. Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–6950 Filed 3–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

NAME: Environmental Management Advisory Board.

DATE AND TIMES: Thursday, April 10, 1997, 8:30 a.m.—2:30 p.m.

PLACE: U.S. Department of Energy/ Forrestal Building, 1000 Independence Avenue, S.W.; Room 1E–245, Washington, D.C. 20585, (202) 586–4400.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Special Assistant to the Assistant Secretary for Environmental Management; Environmental Management Advisory Board (EMAB), EM-22, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and state, local, and tribal governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Thursday, April 10, 1997

8:30 a.m.—Co-Chairmen Open Public Meeting
8:35 a.m.—Opening Remarks Assistant Secretary for Environmental Management
9:30 a.m.—Privatization Committee Presentation and Discussion
10:00 a.m.—Ten Year Plan & Strategic Integration Committees Joint Presentation and Discussion
10:30 a.m.—Technology Development and Transfer Committee Presentation and Discussion
11:00 a.m.—Science Committee Presentation and Discussion
11:30 a.m.—FUSRAP Committee Presentation and Discussion
12:00 p.m.—Lunch
1:00 p.m.—Board Business
2:00 p.m.—Public Comment Session
2:30 p.m.—Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1–(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on April 10, 1997 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 17, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–7030 Filed 3–19–97; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

DATE AND TIME: Thursday, April 10, 9:00 am–4:15 pm, Friday, April, 11, 9:00 am–11:30 am.

PLACE: Holiday Inn-Capitol, 550 C Street, S.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 426–1117.

SUPPLEMENTARY INFORMATION: Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 10, 1997

A. Opening Remarks
B. Major Topics
1. 1997 Residential Energy Consumption Survey
2. Data Needs—Petroleum Marketing—2000
3. Public Comment
4. Results of EIA's Customer Satisfaction Survey
5. Short and Mid-Term Forecast Comparisons
6. NEMS: An Overview
7. Annual Energy Outlook Forecast Evaluation
8. Public Comment

Friday, April 11, 1997

1. Winners of the Statistical Graphs Contest
2. Data for a Changing Electric Utility Power Industry
3. Update on Restructuring the Oil and Gas Proved Reserves
4. Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mr. William Weinig, at (202) 426-1101.

Transcript and Minutes: Available for public review and copying at the Public Reading Room, (Room 1E–290), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 17, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–7029 Filed 3–19–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG97–6–001]

Iroquois Gas Transmission System, L.P.; Notice of Filing

March 14, 1997.

Take notice that on March 6, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2] Iroquois states that it is revising its standards of conduct to comply with the Commission's February 4, 1997 Order on Request for Clarification.[3]

Iroquois states that copies of its filing have been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 31, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6990 Filed 3–19–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 3284 (June 26, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. CP97–277–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

March 14, 1997.

Take notice that on March 6, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP97–277–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205 and 157.212) for authorization to provide NGA jurisdictional service, including transportation pursuant to Subpart G of Part 284 of the Commission Regulations [1] through an existing delivery point to an end-user of natural gas, under the blanket certificate issued in Docket No. CP–82–402–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Natural requests authorization to operate an existing dual 3-inch tap facility and its associated 3-inch meter facility to deliver gas to Acme Brick Company, and end-user of natural gas in Hot Spring County, Arkansas. Natural explains that these

[3] 78 FERC ¶ 61,108 (1997).

[1] Natural was authorized to provide Subpart G service in Docket No. CP–86–582–000.

facilities were constructed for the purpose of transportation pursuant to Section 311(a)(1) of the Natural Gas Policy Act (NGPA) and Subpart B of Part 284 of the Commission's Regulations and were available for service on December 31, 1996. Natural states it has been providing self-implementing transportation service through these facilities pursuant to Subpart B of Part 284 of the Commission's Regulations. Natural asserts that it has sufficient capacity to provide the requested service through these facilities without detriment or disadvantage to Natural's peak day and annual delivery capability. Natural states that the total volume of gas to be delivered after the facilities are authorized to provide NGA jurisdictional service will not exceed the total volume capable of being delivered prior to such request and authorization.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the National Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6989 Filed 3–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–4–000]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Correction to Attachments to Notice of Revised Electronic Filing Specifications for FERC Form Nos. 2 and 2A

March 14, 1997.

The following corrections should be made to the attachments to the notice issued October 31, 1996 in this proceeding (61 FR 57410, November 6, 1996; the attachments were not published in the Federal Register, but are available from the Commission's Public Reference Room).

In the instructions for filing Form No. 2 on paper, FERC Form No. 2: Annual Report of Major Natural Gas Companies, the last line of the instructions on page 355, the first page of the schedule, Distribution of Salaries and Wages, is revised to read: When reporting detail of other accounts, enter as many rows as are necessary numbered sequentially starting with 75.01, 75.02, etc.

Page number 355, the second page of the schedule, Distribution of Salaries and Wages, is revised as follows:

Column a of line 51 is revised to read: Production—Natural Gas (Including Expl. and Dev.) (11. 29 and 41).

Column a of line 53 is revised to read: Storage, LNG Terminating and Processing (Total of 11. 31 and 43).

Insert a new line 60 and renumber current lines 60 through 76 as 61 through 77, respectively. This will require renumbering lines 74.01 through 74.19 as 75.01 through 75.19. Column a of new line 60 reads: Total Operation and Maintenance (Total of lines 50 thru 59). Columns b, c, and d of line 60 are not blocked.

Column a of renumbered line 63 is revised to read: TOTAL All Utility Dept. (Total of lines 25, 60, and 62).

Column a of renumbered line 69 is revised to read: TOTAL Construction (Total of lines 66 thru 68).

Column a of renumbered line 74 is revised to read TOTAL Plant Removal (Total of lines 71 thru 73).

In the Instruction Manual for Electronic Filing of the Form Nos. 2 and 2A, in Schedule F7, Record Type 4, Distribution of Salaries and Wages, the paper copy reference for Item 1099 is revised to 354–3.77–b. On the same schedule, the paper copy schedule, the paper copy reference for Item 1101 is revised to 354–3.77–d.

In Appendix A to the Instruction Manual for Electronic Filing of the Form Nos. 2 and 2A, the last paragraph of the instruction for the schedule, Distribution of Salaries and Wages, Schedule F7, Record ID 4, is revised to read as follows:

When reporting detail of other accounts, enter as many lines as necessary to completely report all information. Number additional lines sequentially 75.01, 75.02, *etc.*

Lois D. Cashell,

Secretary.

[FR Doc. 97–6991 Filed 3–19–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181040; FRL 5596–5]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide flowable Carbofuran [(Furadan 4F Insecticide/Nematicide)] (EPA Reg. No. 279–2876) to treat up to 1.8 million acres of cotton to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

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

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181040,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181040]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be

claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8327; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the state of Texas is likely to experience a non-routine infestation of aphids during the 1997 cotton growing season. The Applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in much of the state will suffer significant economic losses. The Applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The Applicant proposes to make no more than two applications of flowable carbofuran on cotton at the rate of 0.25 lb. active ingredient [(a.i.)] (8 fluid oz.) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1996 growing season (April 1, 1997 until September 30, 1997) in Texas would be 0.5 lb. a.i. (16 fluid oz.) per acre. The Applicant proposes that the maximum acreage which could be treated under the requested exemption would be 1.8 million acres. If all acres were treated at the maximum proposed rates, then 900,000 lbs. a.i. (225,000 gallons Furadan 4F Insecticide/Nematicide) would be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–1810040] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 13, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–7061 Filed 3–19–97 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, April 3, 1997, at 9:30 a.m. to 12:00 noon. The meeting will be held at EX-IM Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of the following: A discussion of the roles and responsibilities of the Advisory Committee, an overview of the Export-Import Bank and a round table discussion by the Advisory Committee of the theme for 1997, ''Global Export Finance.''

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503, not later than September 23, 1996. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 26, 1996, Joyce Herron, Room 1215, 811 Vermont Avenue, N.W.,

Washington, DC 20571, Voice: (202) 565–3955 or TDD: (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503.

Kenneth Hansen,

General Counsel.

[FR Doc. 97–7139 Filed 3–19–97; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

March 14, 1997.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 19, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number 3060–0757.

Title: Auctions Customer Survey.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 45,000.

Estimated Time for Response: .25 hours.

Total Annual Burden: 11,250 hours (.25 x 45,000 responses).

Total Cost to Respondents: 0.

Needs and Uses: Section 309(j)(3) of the Communications Act requires the Commission to establish a competitive bidding methodology for each class of licenses or permits that the Commission grants through the use of a competitive bidding system. The Commission is further directed to test alternative methodologies under appropriate circumstances in order to promote, among other things, ''the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.'' The Commission is directed likewise to promote ''economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excess concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women,'' and by encouraging ''efficient and intensive use of the electromagnetic spectrum.'' In addition, Section 309(j)(12) requires the Commission to evaluate the methodologies established by the Commission for conducting competitive bidding, comparing the advantages and disadvantages of such methodologies in terms of attaining these objectives.

The FCC Auctions Customer Survey is an important step in meeting these congressional requirements. By seeking input from auction participants, the Commission is gathering information to evaluate the effectiveness of competitive bidding methodologies used to date, and to improve the competitive bidding methodologies used in future auctions. Finally, the Auctions Customer Survey provides useful feedback in determining the extent to which the Commission is meeting its goal of providing participants in competitive bidding with the highest level of customer satisfaction through information dissemination and the responsiveness of the Commission staff to customer inquiries.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–7010 Filed 3–19–97; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

March 14, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 21, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0599.
Title: Implementation of Sections 3(n) and 332 of the Communications Act.
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit; State or local governments; non-for-profit insititutions.
Number of Respondents: 85.
Estimated Time Per Response: 1.66 hours.
Total Annual Burden: 141 hours.
Needs and Uses: The information requested under Part 20 is used by the Commission staff in carrying out its duties to determine the technical, legal and other qualifications of applicants to operate a station in the public mobile service. Applicants will submit information such as petitions, certifications, or statements to ensure that commercial mboile service is made available to the public at reasonable rates and on reasonable terms in the competitive marketplace. This collection is being revised to eliminate a one-time collection requirement filed by August 10, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–7009 Filed 3–19–97; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collections Approved by Office of Management and Budget

March 12, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0512.
Expiration Date: 08/31/97.
Title: The ARMIS Annual Summary Report (formerly titled, ''The ARMIS Quarterly Report'').
Form No.: FCC Report 43–01.
Estimated Annual Burden: 150 respondents; 220 hours per response (avg.); 33,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Description: ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. The information contained in the reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten ARMIS reports. The ARMIS Annual Summary Report has been updated to include the new OMB expiration date. A copy of the report may be obtained by contacting Barbara Van Hagen at 202–418–0849.
OMB Control No.: 3060–0763.
Expiration Date: 08/31/97.
Title: The ARMIS Customer Satisfaction Report (formerly titled ''The ARMIS Semi-Annual Service Quality Report'').
Form No.: FCC Report 43–06.
Estimated Annual Burden: 8 respondents; 900 hours per response (avg.); 7,200 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Description: The Customer Satisfaction Report, formerly the Semi-Annual Quality Report, is based on telephone surveys indicating a percentage of satisfied customers, and is collected by the carriers from residential and business customers. The ARMIS Customer Satisfication Report has been updated to include the OMB control number and expiration date. A copy of the report may be obtained by contacting Barbara Van Hagen at 202–418–0849.
OMB Control No.: 3060–0496.
Expiration Date: 08/31/97.
Title: The ARMIS Operating Data Report.
Form No.: FCC Report 43–08.
Estimated Annual Burden: 50 respondents; 160 hours per response (avg.); 8,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping cost Burden: $0.
Description: The ARMIS Operating Data Report consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage, and reliability. The ARMIS Operating Data Report has been updated to include the new OMB expiration date. A copy of the report may be obtained by contacting Barbara Van Hagen at 202–418–0849.
OMB Control No.: 3060–0411.
Expiration Date: 02/28/2000.
Title: Formal Complaints Against Common Carriers—Section 1.720–1.735.
Form No.: N/A.
Estimated Annual Burden: 4965 respondents; 1.53 hours per response (avg): 7600 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $114,000.
Description: Sections 206 to 209 of the Communications Act of 1934, as amended provide the statutory framework for our current rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) specifically states that ''it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'' In 1988, Congress added subsection 208(b) to require that any complaint filed with the Commission concerning the lawfulness of a common carriers charges, practices, classifications or regulations must be resolved by the Commission in a final, appealable order within 12 months from the date filed, or 15 months from the date filed if ''the investigation raises questions of fact of * * * extraordinary complexity.'' Except in very rare circumstances, formal complaints are decided on the basis of a paper record. The Telecommunications Act of 1996 added and, in some cases, amended key complaint provisions that, because of their resolution deadlines, necessitate substantial modification of our current rules and policies for processing formal complaints filed against common carriers pursuant to Section 208 of the Act. The Commission adopted a Notice of Proposed Rulemaking seeking comment on proposed changes to the rules for processing formal complaints filed against common carriers in CC Docket No. 96–238. The changes subject to the Paperwork Reduction Act of 1995 have been approved by OMB. The information has been and is currently being used by the FCC to determine the sufficiency of the complaint and to resolve the merits of the dispute between the parties. If the collection of information is not conducted, the FCC will be unable to comply with its statutory responsibilities.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to

the Records Management Branch, Washington, D.C. 20554.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–7008 Filed 3–19–97; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Notices Required of Government Securities Dealers or Brokers.''

DATES: Comments must be submitted on or before May 20, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanfit, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Notices Required of Government Securities Dealers or Brokers.'' Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic. gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Handft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposed to renew the following currently approved collection of information:

Title: Notice Required of Government Securities Dealers or Brokers.

OMB Number: 3064–0093.

Frequency of Response: Occasional.

Affected Public: FDIC-insured state nonmember banks and associated persons operating as government securities dealers.

Estimated Number of Respondents: G–FIN 4; G–FINW 6; G–FIN–4 50; G–FIN–5 120; Total 180.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 180 hours.

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions that function as government securities brokers and government securities dealers to notify their designated federal regulatory agencies of their broker-dealer activities. The Board of Governors of the Federal Reserve System has responsibility for establishing the G–FIN, a notification of status as government securities broker or dealer, and Form G–FINW, a notification of termination of status as government securities broker or dealer. The Department of the Treasury has responsibility for establishing Form G–FIN–4, a notification by persons associated with financial institutions that are government securities brokers or dealers, and G–FIN–5, a notification of termination of association with financial institutions that are government securities brokers or dealers.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of March, 1997.

Federal Deposit Insurance Corporation.
Jerry L. Langley,
Executive Secretary.
[FR Doc. 97–6960 Filed 3–19–97; 8:45 am]
BILLING CODE 6714–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Suspicious Activity Reports.''

DATES: Comments must be submitted on or before May 20, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Suspicious Activity Reports.'' Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Suspicious Activity Reports (FDIC 6710/06).

Number: 3064–0077.

Frequency of Response: Occasional.

Affected Public: FDIC-insured state nonmember banks.

Estimated Number of Respondents: 6,500 state nonmember banks.

Estimated Time per Response: .6 hours.

Estimated Total Annual Burden: 3,900 hours.

General Description of Collection: A bank subject to the 12 CFR Part 353 regulation is required to report known or suspected criminal activity or money laundering to the Financial Crimes Enforcement Network of the Department of the Treasury using a Suspicious Activity Report.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of March, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6961 Filed 3–19–97; 8:45 am]

BILLING CODE 6714–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Procedures for Monitoring Bank Protection Act Compliance.''

DATES: Comments must be submitted on or before May 20, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Procedures for Monitoring Bank Protection Act Compliance.'' Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Procedures for Monitoring Bank Protection Act Compliance 12 CFR Part 326.

OMB Number: 3064–0095.

Frequency of Response: Annual.

Affected Public: FDIC-insured state nonmember banks.

Estimated Number of Respondents: 5,830.

Estimated Time per Response: ½ hour.

Estimated Total Annual Burden: 2,915 hours.

General Description of Collection: FDIC-insured state nonmember banks subject to 12 CFR Part 326 have a one-time requirement to establish a written security program and develop training materials. The program and training materials must be kept current and the bank's security officer must make an annual report to the board of directors on the program's effectiveness.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of March, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6962 Filed 3–19–97; 8:45 am]

BILLING CODE 6714–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Public Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks'' (12 CFR Part 350).

DATES: Comments must be submitted on or before May 20, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Public Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks'' (12 CFR Part 350). Comments may be hand-delivered to Room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of

Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Public Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks (12 CFR Part 350).

OMB Number: 3064–0090.

Frequency of Response: Annually.

Affected Public: FDIC-insured state nonmember banks.

Estimated Number of Respondents: 6,374 state nonmember banks.

Estimated Time per Response: ½ hour.

Estimated Total Annual Burden: 3,187 hours.

General Description of Collection: A bank subject to the 12 CFR Part 350 regulation is required to post a notice for general public, and in some instances, to notify shareholders by mail, that a disclosure statement is available upon request. A required disclosure statement consists of financial reports for the current year and preceding year and may be copied from the year-end Call Report that the bank must submit to the FDIC.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of March, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6963 Filed 3–19–97; 8:45 am]

BILLING CODE 6714–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Certification of Eligibility Under the Affordable Housing Program.''

DATES: Comments must be submitted on or before May 20, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Certification of Eligibility Under the Affordable Housing Program.'' Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comemnts may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:.

Title: Certification of Eligibility Under the Affordable Housing Program.

OMB Number: 3064–0116.

Frequency of Response: Occasional.

Affected Public: Individuals purchasing affordable housing properties.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 1,000 hours.

General Description of Collection: The Certification of Eligibility for the Affordable Housing Program requests information needed to determine if a potential purchaser of affordable housing property is eligible under the program, including information about income eligibility and owner occupancy and an authorization for the FDIC to verify eligibility information.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of March, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6964 Filed 3–19–97; 8:45 am]

BILLING CODE 6714–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act.''

DATES: Comments must be submitted on or before May 19, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act.'' Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

OMB Number: 3064–0018.

Frequency of Response: Occasional.

Affected Public: Insured depository institutions that desire to have a person who has been convicted of a crime involving dishonesty or breach of trust to participate in the conduct of the affairs of the institution.

Estimated Number of Respondents: 80.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 1,280 hours.

General Description of Collection: Section 19 of the Federal Deposit Insurance Act (12 USC 1829) requires the FDIC's consent prior to participation by a person who has been convicted of a crime involving dishonesty or breach of trust in the affairs of an insured depository institution. To obtain the FDIC's consent to hire a convicted person, an insured depository institution must submit an application on FDIC Form 6710/07 which requests biographical information about the person, information about the conviction(s), and information about the prospective position to be held by the person.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of March, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6994 Filed 3–19–97; 8:45 am]

BILLING CODE 6714–01–M

Statement of Policy on Contracting With Firms That Have Unresolved Audit Issues With FDIC

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of policy.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has adopted a policy statement concerning contracting with firms that have unresolved audit issues with FDIC. The policy statement sets forth the procedures to be followed to provide proper notification to an affected contractor or outside counsel when an audit report is issued, and a management decision has been made on a respective finding, in order to afford the firm an opportunity to respond. When an FDIC audit identifies questioned costs and issues remain outstanding or unresolved as a result of the firm's failure to cooperate with FDIC management in resolving issues associated with identified disallowed costs, by for example: (1) failing to respond timely to an FDIC request to produce documentation to support claimed costs; or (2) otherwise failing to adequately document claimed costs; or (3) by failing to remit the disallowed portion of questioned costs identified in such audit reports, application of the policy may result in a determination to refrain from soliciting new business from that firm.

This policy statement applies to firms providing goods and services to FDIC, including attorneys or law firms providing legal services to FDIC.

EFFECTIVE DATE: This policy statement is effective March 20, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Rubino, Associate Director, Acquisition Services Branch, at (202) 942–3076, Peter A. Ziebert, Counsel, Contracting Law Unit, at (202) 736–0742, or William S. Jones, Counsel, Legal Operations Section, at (202) 736–3055.

SUPPLEMENTARY INFORMATION: The text of the Policy Statement follows:

1. Background

The FDIC Office of the Inspector General (OIG) routinely audits contracts with firms providing services to FDIC. These audits frequently contain an analysis whereby certain contract costs are questioned, as well as a recommendation that FDIC management disallow and attempt to recover these costs. When the OIG transmits the audit report and findings to the appropriate FDIC program office, FDIC management then reviews such findings and recommendation. This evaluation results in the issuance of a final decision that may sustain all of the audit findings, or a portion thereof. When FDIC management determines that certain questioned costs should not be charged to the Corporation, such questioned costs that are sustained are then deemed to be ''disallowed'' costs within the meaning of the Inspector General Act.

Once a management decision has been made to disallow such costs, active resolution efforts are undertaken by FDIC management to recover funds paid without adequate documentation or otherwise inappropriately paid to the firm during the course of the engagement. In those circumstances where the FDIC requests that an audited firm remit disallowed amounts and the contractor fails to do so or fails to actively cooperate with FDIC management in its efforts to resolve the issues associated with identified disallowed costs, it is prudent business for FDIC to selectively refrain from soliciting future services from the firm.

2. General Policy

To provide procedures whereby the FDIC may elect to refrain from soliciting a firm for new business if:

(a) the results of an audit reflect potentially recoverable disallowed costs and audit issues remain outstanding or unresolved within the time period set forth in the notice letter sent by FDIC; and

(b) the firm failed or declined to cooperate with resolution efforts undertaken by FDIC management in response to the audit findings, including the failure to adequately support its contract costs or the failure to remit the disallowed portion of the questioned costs identified in such audit report.

3. Definitions

(a) Disallowed cost means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the government.

(b) Management decision means the evaluation by FDIC management of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning it response to such findings and recommendations, including actions concluded to be necessary.

(c) Questioned cost means a cost that is questioned in an audit by the OIG or similar auditing agency because of:

(i) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(ii) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(iii) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

4. Procedures

Issued audit reports that identify questioned costs relating to contractual engagements are assigned to the Division of Administration, Acquisition Services Branch (ASB) staff, or the Outside Counsel Unit, Legal Division (OCU), for resolution. In implementing this policy statement, the following steps shall be taken:

(a) Management decision. Once a management decision is made on a respective finding, the matter is then assigned to ASB or OCU for resolution. A copy of the relevant audit report shall be transmitted to the firm under a cover letter which:

(i) identifies the ASB or OCU which is responsible for resolving the audit issues;

(ii) identifies the ASB or OCU employee primarily responsible for resolution and to whom all communications from the firm should be sent;

(iii) requests that the firm respond to the findings contained in the report within ten (10) business days of receipt of the letter, or such other time as specified in the letter. Such responses should include supporting documentation where appropriate.

(b) If the firm fails to respond to this request, or fails to remit the disallowed portion of the questioned costs contained in the audit report, or otherwise fails to adequately respond to the issues raised in the report, the following procedures shall apply:

(i) with respect to audits of firms other than outside counsel, the ASB employee identified in section 4(a)(ii) shall send a letter to the firm advising the firm of its failure to cooperate, and which advises the firm that unless it remits the requested repayment or makes other arrangements satisfactory to the Associate Director who is responsible for resolution of this audit (whose name shall be provided to the firm) within ten business days of receipt of this letter, the Director, Division of Administration may, effective as of that date, make a determination that the FDIC refrain from soliciting any future services from this firm until such time as all issues identified in the subject audit report are resolved to the FDIC's satisfaction, and direct that notice to be sent to the firm of this action.

(ii) With respect to audits of outside counsel, the Legal Division employee identified in section 4(a)(ii) shall send a letter to the outside counsel which advises such outside counsel that its failure to cooperate constitutes a conflict of interest with the FDIC, and which advises outside counsel that unless it remits the requested repayment or makes other arrangements satisfactory to the Assistant General Counsel who is responsible for resolution of this audit (whose name shall be provided to the contractor) within ten business days of receipt of this letter, the matter will be referred to the Outside Counsel Conflicts Committee for appropriate action, which may include a determination that the FDIC refrain from soliciting any future services from such outside counsel and/or terminate FDIC's existing engagements, until such time as all issues identified in the subject audit report are resolved to the FDIC's satisfaction.

Dated at Washington, D.C. this 14th day of March, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–6995 Filed 3–19–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 97–6472.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, March 18, 1997, 10:00 a.m., Meeting closed to the public.

THIS MEETING HAS BEEN CANCELLED.

DATE & TIME: Tuesday, March 25, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil action or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Federal Election Commission

Sunshine Act Notice for Meetings of March 25 and 27, 1997

DATE & TIME: Thursday, March 27, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Independent and Coordinated Expenditures by Party Committees—Notice of Proposed Rulemaking (11 CFR § 100.7, § 100.23, § 104.4, § 109.1, § 110.1, § 110.2, § 110.7, and § 110.11)—(If not concluded at the meeting of March 20, 1997.)

Adminstrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–7254 Filed 3–18–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1162–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1162-DR), dated March 2, 1997, and related determinations.

EFFECTIVE DATE: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 2, 1997: The counties of Craighead and Pope for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7033 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1162–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1162–DR), dated March 2, 1997, and related determinations.

EFFECTIVE DATE: March 13, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 2, 1997: The counties of Conway, Independence, Jefferson, Lawrence, and Woodruff for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7034 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1163–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1163-DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include Hazard Mitigation in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997:

The counties of Bath, Bourbon, Boyd, Bracken, Breckinridge, Bullitt, Caldwell, Campbell, Carroll, Carter, Christian, Daviess, Elliott, Fleming, Franklin, Gallatin, Greenup, Hardin, Harrison, Henderson, Henry, Hopkins, Jefferson, Kenton, Lewis, Mason, McLean, Meade, Menifee, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Powell, Scott, Shelby, Spencer, and Trimble for Hazard Mitigation (already designated for Individual Assistance and Categories A & B under the Public Assistance program).

The counties of Boone, Grant, Hancock, and Washington for Hazard Mitigation (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7038 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1163–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1163–DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997: The counties of Anderson, Butler, Crittenden, Fayette, Floyd, Jessamine, Larue, Lawrence, Livingston, Mercer, McCracken, Montgomery, Morgan, Pike, Robertson, Rowan, Union, Webster, and Woodford for Individual Assistance, Hazard Mitigation and Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7039 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1166–DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA–1166–DR), dated March 11, 1997, and related determinations.

EFFECTIVE DATE: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from Typhoon Fern on December 25–26, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. If requested and warranted, Hazard Mitigation may be added at a later date. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sally M. Ziolkowski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster: Yap Proper and Ulithi Atoll of Yap State for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–7041 Filed 3–19–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1164–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio, (FEMA–1164-DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 12, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997: Highland County for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7040 Filed 3–19–97; 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, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 232–011253–003.
Title: Deppe/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement.
Parties:
Lykes Bros. Steamship Co. Inc. (''Lykes'')
Deppe Linie SmbH & Co.
Synopsis: The proposed amendment would delete Lykes as a party to the Agreement and replace it with Lykes Lines Limited. It would also make other non-substantive changes to the Agreement. The parties have requested a shortened review period.

Agreement No.: 232–011494–002.
Title: The TMM/Contship/Lykes Space Charter and Sailing Agreement.
Parties:
Transportacion Maritima Mexicana, S.A de C.V.
Conship Containerlines Limited
Lykes Bros, Steamship Co., Inc (''Lykes Bros.'')
Synopsis: The proposed amendment would delete Lykes Bros. as a party to the Agreement and add Lykes Lines Limited as a member. The parties have requested a shortened review period.

Agreement No.: 224–201020
Title: Jacksonville Port Authority/ Jaxport Refrigerated Services, Inc. Terminal Agreement
Parties:
Jacksonville Port Authority (''Port'')
Jaxport Refrigerated Services Inc. (''Lessee'')
Synopsis: The proposed Agreement permits the Port to lease warehouse space in Building 1 at the Talleyrand Marine Terminal area to Lessee and to charge wharfage fees on lessee's cargo, subject to a minimum annual guarantee.

Agreement No.: 224–201021
Title: DRS/PRPA Berthing & Space Tioga Marine Terminal Agreement (M/V NOBLE GLORY)
Parties:
Philadelphia Regional Port Authority (''PRPA'')
Delaware River Stevedores, Inc. (''DRS'')
Synopsis: The proposed Agreement provides that PRPA will allow DRS certain berthing rights for the M/V NOBLE GLORY, as well as 50,000 square feet of storage space. In exchange for these rights DRS will pay PRPA wharfage, dockage and storage fees. The term of the Agreement is for sixty days.

Dated: March 11, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–7102 Filed 3–19–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the

Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 4096.

Name: American Cargo Forwarding, Inc.

Address: 11020 King Street, Suite 350, Overland Park, KS 66210.

Date Revoked: February 21, 1997.

Reason: Failed to maintain a valid surety bond.

License Number: 3109.

Name: Denise Zappola d/b/a Corporate Relocation Services.

Address: 284 McClean Avenue, Staten Island, NY 10305.

Date Revoked: August 29, 1996.

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–7103 Filed 3–19–97; 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, DC 20573.

Bottom Line Forwarders, Corp., 10302 N.W. South River Dr., Bay #19, Medley, FL 33178, Officers: Waldy Castro, President, Tensie Barry, Corporate Secretary

Inter World Customs Broker, Inc., Marketing Bldg. (Lobby), J.F. Kennedy Ave. Km 2.5, Puerto Nuevo, PR 00922, Officer: Lawrence Colon Castro, President

Dated: March 17, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–6998 Filed 3–19–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have flied 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.

International Service, Inc., 12000 Beacom Road, Sunbury, OH 43074, Officers: Daniel G. Chase, President, Chris Bartholomew, Stockholder

Trico American Air Freight and Forwarding Co. Inc., 13734 Shoreline Court East, Earth City, MO 63045, Officers: Richard L. Goode, President, Lester E. Maull, Secretary

Impel America packing and Appliances Corp., 5461 N.W. 72nd Avenue, Miami, FL 33166, Officers: Hector V. Marulanda, President, Maria L. Marulanda, Secretary

Dated: March 17, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–7104 Filed 3–19–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 April 14, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Financial Bancorp, Hamilton, Ohio; to merge with Southeastern Indiana Bancorp, Vevay, Indiana, and thereby indirectly acquire Vevay Deposit Bank, Vevay, Indiana.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of First Mercantile National Bank, Longwood, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. CH and JD Byrum, LLC, Indianapolis, Indiana; to become a bank holding company by acquiring 52.4 percent of the voting shares of American State Bank, Lawrenceburg, Indiana, and thereby indirectly acquire American State Corporation, Lawrenceburg, Indiana.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Hiawatha Bancshares, Inc., Hager City, Wisconsin; to merge with Glenwood Bancshares, Inc., Glenwood City, Wisconsin, and thereby indirectly acquire First National Bank of Glenwood City, Glenwood City, Wisconsin.

Board of Governors of the Federal Reserve System, March 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–6988 Filed 3-19-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.[1]

TIME AND DATE: 2:30 p.m., Tuesday, March 25, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

[1] The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Proposed minutes of the Committee on Employee Benefits meetings.
3. 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.

Dated: March 18, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–7189 Filed 3–18–97; 11:35 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Universal Newborn Hearing Ad Hoc Group; Teleconference Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meetings.

Name: Teleconference meetings of the Ad Hoc Group for Universal Newborn Hearing Screening (UNHS).

Times and Dates: 2 p.m.–3 p.m., April 1, 1997; 2 p.m.–3 p.m., May 6, 1997; 2 p.m.–3 p.m., June 3, 1997; 2 p.m.–3 p.m., July 1, 1997; 2 p.m.–3 p.m., August 5, 1997; 2 p.m.–3 p.m., September 2, 1997.

Place: National Center for Environmental Health, Division of Birth Defects and Developmental Disabilities (DBDDD), Room 2103A, Building 101, 4770 Buford Highway, NE, Atlanta, Georgia 30341. Telephone 770/488–7400.

Status: Open for participation by anyone with an interest in UNHS. All participants in the monthly conference calls are, by definition, members of the Ad Hoc Group for Universal Newborn Hearing Screening. Persons wishing to participate must E-mail or fax their request 1 week prior to the scheduled teleconference date. The e-mail address is unhs@cdc.gov; the fax number is 770/488–7361. Participants will be notified of the toll-free teleconference phone number and a caller code. Each participant will have the responsibility to call in to connect to the conference call. The conference bridge number is limited to 238 callers.

Purpose: This meeting will provide a forum for persons associated with UNHS programs to report and review relevant activities. Each conference call will be comprised of a series of scheduled presentations. Each presentation will be followed by a brief question and answer period. The agenda for the conference call will be determined by the Division of Birth Defects and Developmental Disabilities in collaboration with the Office of Disability and Health, NCEH, (pending approval); in consultation with the National Institute on Deafness and Communicative Disorders, National Institutes of Health; the Bureau of Maternal and Child Health, Health Resources and Services Administration; Office of Special Education and Rehabilitative Services, Department of Education; and others interested in newborn hearing screening.

Suggestions and feedback are invited by conference call planners. Participants requesting to be on the agenda or wishing to make written comments can send their requests or comments to the E-mail address or fax number noted above.

Matters Discussed: Topics to be discussed during the meetings include progress on State and National activities to implement UNHS; progress on establishing State and National data systems on UNHS; and guidelines for establishing screening, diagnosis, and intervention protocols.

For further information contact: June Holstrum, DBDDD, NCEH, CDC, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341, telephone 770/488–7401, fax 770/488–7361.

Dated: March 14, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–7016 Filed 3–19–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96E–0442]

Determination of Regulatory Review Period for Purposes of Patent Extension; CEREBYX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CEREBYX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CEREBYX® (fosphenytoin sodium). CEREBYX® is indicated for short-term parenteral administration when other means of phenytoin administration are unavailable, inappropriate, or deemed less advantageous. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CEREBYX® (U.S. Patent No. 4,260,769) from Warner-Lambert Co. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 21, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CEREBYX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for

CEREBYX® is 3,748 days. Of this time, 3,218 days occurred during the testing phase of the regulatory review period, while 530 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 4, 1986. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on May 4, 1986.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: February 23, 1995. The applicant claims July 14, 1994, as the date the new drug application (NDA) for CEREBYX® (NDA 20–450) was initially submitted. However, FDA records indicate that NDA 20–450, received by the agency on July 15, 1994, was incomplete. FDA refused this application and notified the applicant of this fact by letter dated September 12, 1994. The completed NDA was then received on February 23, 1995, which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: August 5, 1996. FDA has verified the applicant's claim that NDA 20–450 was approved on August 5, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 20, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 22, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–6976 Filed 3–19–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0440]

Determination of Regulatory Review Period for Purposes of Patent Extension; HYCAMTIN™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for HYCAMTIN™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product HYCAMTIN™ (topotecan hydrochloride). HYCAMTIN™ is indicated for the treatment of patients with metastatic carcinoma of the ovary after failure of initial or subsequent chemotherapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for HYCAMTIN™ (U.S. Patent No. 5,004,758) from SmithKline Beecham Corp. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 13, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of HYCAMTIN™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for HYCAMTIN™ is 2,644 days. Of this time, 2,485 days occurred during the testing phase of the regulatory review period, while 159 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 4, 1989. The applicant claims January 30, 1989, as the date the investigational new drug application (IND) for HYCAMTIN™ (IND 32,693) became effective. However, FDA records indicate that IND 32,693 was received at FDA on February 2, 1989, and became effective 30 days later on March 4, 1989.

2. *The date the application was initially submitted with respect to the human drug product under section*

505(b) of the Federal Food, Drug, and Cosmetic Act: December 22, 1995. The applicant claims December 21, 1995, as the date the new drug application (NDA) for HYCAMTIN™ (NDA 20–671) was initially submitted. However, FDA records indicate that NDA 20–671 was submitted on December 22, 1995.

3. *The date the application was approved*: May 28, 1996. FDA has verified the applicant's claim that NDA 20–671 was approved on May 28, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 572 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 20, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 22, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–6977 Filed 3–19–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA 1728 and HCFA 9049]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Form No.:* HCFA–1728; *Use:* The HCFA 1728 is the form used by Home Health Agencies to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local or Tribal Gov.; *Number of Respondents:* 8,950; *Total Annual Hours:* 1,575,200.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information on Provider Refunds—HCFA 9049, 42 CFR 489.40–41; *Form No.:* HCFA–9049; *Use:* When a Medicare claim is denied and then paid as a result of a reconsideration, there is a possibility that the provider has already been paid by the beneficiary. These questions on provider refunds will be used on intermediary forms to verify that the provider has refunded the beneficiary's money. *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 4,236; *Total Annual Hours:* 1,059.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 13, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–7085 Filed 3–19–97; 8:45 am]

BILLING CODE 4120–03–P

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 61 FR 49785–49787, dated September 23, 1996) is amended to retitle the Office of Health Communication (OHC), National Center for Injury Prevention and Control (NCIPC), to the Office of Communication Resources, and revise the functional statement.

Delete the title and functional statement for the *Office of Health Communication (CE14)* and insert the following:

Office of Communication Resources (EC14). (1) Plans, develops, coordinates, and evaluates NCIPC's, publications, graphics, and technical information activities for intentional injury, unintentional injury, and acute care and rehabilitation; (2) disseminates injury control information to public and professional audiences; (3) in conjunction with the CDC Office of Public Affairs, interacts with the news media to ensure that injury topics are covered accurately and remain high on the public agenda; (4) provides expert consultation on the effective use and design of graphic materials for presentations, publications, and exhibits; (5) designs and produces professional quality graphic materials for use in NCIPC presentations and publications and designs and electronically typesets publications; (6) develops, maintains, and manages a graphics information retrieval system that allows ready access to slides and graphic presentations on injury topics;

(7) provides expert consultation on the development and production of publications; (8) manages the clearance, editing, and production of NCIPC publications; (9) manages NCIPC's technical information resources, including developing and maintaining injury-related databases and a library of information on injury-related topics; (10) coordinates the Center's information sharing activities, including involvement on INTERNET; (11) serves as NCIPC liaison with the CDC Office of Public Affairs, the CDC Office of Health Communication, and other Centers, Institute, and Offices on matters related to graphics, publications, and technical information resources; (12) in carrying out these functions, collaborates with other PHS agencies, Federal and State departments and agencies, and private organizations, as appropriate.

Dated: March 7, 1997.

David Satcher,

Director.

[FR Doc. 97–6999 Filed 3–19–97; 8:45 am]

BILLING CODE 4160–18–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Cancellation of Receipt Date for SAMHSA Conference Grant Applications

AGENCY: Center for Substance Abuse Prevention and Center for Substance Abuse Treatment, SAMHSA.

ACTION: Cancellation of May 10, 1997 application receipt date.

SUMMARY: SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) are canceling the May 10, 1997, receipt date for applications for the following grant programs:

CSAP's Knowledge Dissemination Conference Grants (CFDA No. 93.174)

CSAT's Substance Abuse Treatment Conference Grants (CFDA No. 93.218)

To be placed on a mailing list for an application kit and current programmatic guidelines, potential applicants should contact: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20847–2345, Tele: 1–800–729–6686; TDD: 1–800–487–4889, Web Address: www.health.org

For information regarding future receipt dates or for programmatic assistance, potential applicants should contact the following individuals:

CSAP: Ms. Luisa del Carmen Pollard, Division of Community Education, CSAP, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–8824,

CSAT: Mr. George Kanuck, Office of Evaluation, Statistical Analysis and Synthesis, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–7730

Dated: March 14, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–6958 Filed 3–19–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 102–285, the NCGMP Advisory Committee will meet in room 7000A of the Main Interior Building, 1849 C Street, NW., Washington, DC. The Advisory Committee, composed of scientists from Federal agencies, State agencies, academic institutions, and private companies, will advise the Director on planning and implementation of the geologic mapping program.

Topics to be reviewed and discussed by the Advisory Committee include the five year draft plan for the National Cooperative Geologic Mapping Program; the scientific progress of the Program; progress of the Federal, State, and educational geologic mapping activities toward fulfilling the purposes of the National Geologic Mapping Act of 1992: and other topics.

DATES: April 3, 1997, commencing at 9:00 a.m. and adjourning by 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. John S. Pallister, U.S. Geological Survey, 908 National Center, Reston, Virginia 20192 (703) 648–6960.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program Advisory Committee are open to the public.

Dated: March 14, 1997.

P. Patrick Leahy,

Chief Geologist, U.S. Geological Survey.

[FR Doc. 97–7087 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–31–M

United States Geological Survey

Advisory Committee on Water Information (ACWI)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This first meeting of the ACWI is to discuss broad policy-related topics and to outline plans for future meetings. The proposed agenda will include: (1) The establishment of the National Water quality Monitoring Council and (2) a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum 92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans which may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 9:00 a.m., on May 7, 1997, and will adjourn at 3:30 p.m. An exhibit/poster session will follow until 5:00 p.m.

ADDRESSES: U.S. Geological Survey Auditorium, 12201 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Ethan T. Smith (Executive Secretary), Acting Chief, Office of Water Data Coordination, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–5022; Fax: 703–648–5295.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. A half hour will be set aside for public comments. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Dr. Smith at the above address no later than noon. April 14, 1997. It is requested that 40 copies of a written

statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Dr. Smith for distribution at the ACWI.

Dated: February 28, 1997.

Lewis V. Wade,

Assistant Chief Hydrologist for Water Information, U.S. Geological Survey.

[FR Doc. 97–7078 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AK–962–1410–00; AA–8482–A]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), and Sec. 1427(e) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub L. 96–487, 94 Stat. 2371, 2525, 2526, will be issued to Ayakulik, Inc., for approximately 147 acres. The lands involved are in the vicinity of Ayakulik, Alaska.

U.S. Survey No. 4655, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Kodiak Daily Mirror.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 21, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

ANCSA Team, Land Law Examiner, Branch of 962 Adjudication.

[FR Doc. 97–6997 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–JA–P

[MT–060–1020–00]

Notice Seeking Nominations for Resource Advisory Council

AGENCY: Notice.

ACTION: The Lewistown District BLM Office is soliciting public nominations for one position in Category 3 of its Resource Advisory Council (RAC). Public nominations will be accepted and considered for 30 days beginning on the publication date of this notice.

Category 3 is for persons who: hold state, county or local elected office; are employed by a state agency responsible for management of natural resources, land and water; represent Indian tribes within or adjacent to the area for which the council is organized; are employed as academicians in natural resource management or the natural sciences; or represent the public-at-large.

Individuals may nominate themselves or others. Nominees must reside in the state in which the council has jurisdiction. Nominees will be evaluated based on their education, training and experience of the issues and knowledge of the geographical area of the council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Each nomination package must include a brief background information nomination form, provided upon request from any BLM office in the Lewistown District, and a letter(s) of nomination detailing the nominee's qualifications for serving on the council.

Nominations to this RAC should be sent to: David L. Mari, Lewistown District Manager, P.O. Box 1160, Airport Road, Lewistown, MT 59457. The nomination period will also be announced through press releases issued by the Lewistown District BLM Office.

The Secretary of the Interior makes the appointments to this council. The individual selected will serve a term that expires September 19, 1999.

Members of the Lewistown RAC advice the District Manager concerning resource planning and other issues related to management of lands administered by BLM. As required by the Federal Advisory Committee Act, RAC membership must be balanced and representative of the various interests concerned with the management of public lands.

DATES: All nominations must be received by the Lewistown District Office on or before April 14, 1997.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

Dated: March 5, 1997.

David L. Mari,

District Manager.

[FR Doc. 97–7077 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–84–M

[CA–060–07–1990–00]

Notice of Public Meetings

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the National Park Service, Bureau of Land Management, and U.S. Fish and Wildlife Service have scheduled a series of workshops to update the public on the status of the Northern and Eastern Mojave planning effort and gather comments on the framework of alternatives that will be addressed in the plan. The workshops are scheduled at the following locations:

Monday, April 14, 7–10 p.m., City Council Chambers, 1111 Baily Avenue, Needles, CA

Tuesday, April 15, 7–10 p.m., Cashman Field, 850 N. Las Vegas Blvd., Room 107, Las Vegas, NV

Wednesday, April 16, 7–10 p.m., Visitor Center Auditorium, Furnace Creek, Death Valley National Park

Thursday, April 17, 7–10 p.m., Eastern Sierra Fairgrounds, Sierra Street & Fair Drive, Bishop, CA

Friday, April 18, 7–10 p.m., Boulder Creek RV Park, Highway 395 (5 miles south of Lone Pine), Lone Pine, CA

Saturday, April 19, 1–4 p.m., Dana Park Bldg., 850 South Barstow Road, Barstow, CA

Monday, April 21, 7–10 p.m., Holiday Inn-—Magnolia Room, 303 East Cordova, Pasadena, CA

Tuesday, April 22, 7–10 p.m., Ramada Inn—Lakes Room, 2000 Ostrems Way, San Bernardino, CA

Wednesday, April 23, 7–10 p.m., Baker Community Center, Baker Blvd., Baker, CA

Thursday, April 24, 7–10 p.m., City Council Chambers, 100 California Ave., Ridgecrest, CA

The conceptual planning alternatives will outline a range of three possible alternatives, plus the no-action alternative. The interagency team is seeking input from the public on the array of alternatives and the details that will be addressed in the planning effort.

The 7.7 million acre planning area encompasses Death Valley National Park, the Mojave National Preserve, and BLM-managed public lands in parts of Inyo and San Bernardino counties. The interagency planning effort will guide the protection, public use and

development of the public lands within the planning area, and identify common management objectives, such as for wilderness areas, and reduce confusion for the public who use and recreate in these areas for the three agencies.

FOR FURTHER INFORMATION CONTACT: Contact Dennis Schramm at the Mojave National Preserve, 222 East Main Street, Suite 202, Barstow, CA 92311 or call (619) 255–884 or contact BLM public affairs in Riverside at (909) 697–5215. Information about the Northern and Eastern Mojave planning effort also is available at http://www.ca.blm.gov/mojave/homepage.htm.

Dated: March 14, 1997.

Jo Simpson,

Asst. District Manager, External Affairs.

[FR Doc. 97–7079 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–01–M

[MT–070–96–00]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: An Emergency meeting of the Council has been scheduled for 9:00 AM, on April 9, 1997, to make a decision regarding the wording of the Standards and Guidelines. The meeting will be held in the conference room of the District Office, 106 North Parkmont. The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11:00 AM. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting; or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (PO Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: March 12, 1997.

James R. Owings,

District Manager.

[FR Doc. 97–6978 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–DN–P

[CA–330–1010–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management's Ukiah Resource Advisory Council will hold a business meeting and field tour Thursday and Friday, April 17 and 18, 1997. The April 17 meeting begins at 10 a.m. in the conference room of the El Grande Best Western Motel, 15135 Lakeshore Drive, Clear Lake, CA. Items on the agenda include a discussion on recreation use fees, discussion of the Yahi-Ishi National Conservation Area proposal, an update on the Headwaters land exchange proposal, status report on the California BLM draft Environmental Impact Statement on Standards for Healthy Rangelands and Guidelines for Livestock Grazing, and status reports from the managers of the BLM's Arcata, Clear Lake and Redding Resource Areas.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit could be established.

On Friday, April 18, the council will depart at 8 a.m. for a field tour of the Homestake Mine and other areas in the BLM's Clear Lake Resource Area. The tour is open to members of the public, but they must provide their own transportation.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available 30 days after the meeting at the BLM's Arcata Resource Area Office, 1695 Heindon Rd., Arcata, CA 95521.

FOR MORE INFORMATION: Contact Public Affairs Officer Jeff Fontana, (916) 257–5381.

Lynda J. Roush,

Arcata Resource Area Manager.

[FR Doc. 97–7004 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–40–P

[WY–921–41–5700; WYW132848]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW132848 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW132848 effective September 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–7115 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–22–P

[AK–050–07–1430–01; AA–77972]

Lease of Public Land; Tonsina Lake, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 5 year renewable commercial least to Paul Holland, Alaska River Guides. The lease is intended to resolve an unintentional occupancy trespass involving commercial recreational facilities related to guiding and outfitting activities on public.

DATES: Comments and an application must be received by May 5, 1997.

ADDRESSES: Comments and an application must be submitted to the Glennallen District Management Team, P.O. Box 147, Glennallen, Alaska 99588–0147.

FOR FURTHER INFORMATION CONTACT: David Mushovic (907) 822–3217.

SUPPLEMENTARY INFORMATION: The 2 acre site examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR 2920, is described as within:

Sec. 11, T. 5 S., R. 2 W., Copper River Meridian.

An application will only be accepted from Paul Holland, who owns Alaskan River Guides and all existing improvements. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collected for the use of these lands, and reasonable administrative and

monitoring costs for processing the lease. A final determination will be made after completion of an environmental assessment.

Dated: March 12, 1997.

David Mushovic,

Realty Specialist.

[FR Doc. 97–7000 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–JA–M

[ES–960–1910–00–4442; ES–048576, Group 158, Minnesota]

Notice of Filing of Plat of Survey; Minnesota, Stayed

On Friday, January 31, 1997 there was published in the Federal Register, Volume 62, Number 21, on pages 4788–4789 a notice entitled ''Notice of Filing of Plat of Survey; Minnesota''. In said notice was a plat depicting the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, and the subdivision of sections 6, 7, 8, 9, 16 and 33, Township 145 North, Range 38 West, Fifth Principal Meridian, Minnesota, accepted January 23, 1997.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Dated: March 10, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–7081 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–GJ–M

[OR–958–1430–01; GP7–0116; OR–9041, et al.]

Proposed Continuation of Withdrawals; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice department 95–27732 appearing on page 56611 in the issue of Thursday, November 9, 1995, make the following correction:

On page 56611, paragraph 5 which reads ''OR–9041, Executive Order dated April 17, 1926, Public Water Reserve No. 187'', is hereby corrected to read ''OR–9041, Executive Order dated April 17, 1926, Public Water Reserve No. 107''.

Dated: March 5, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 97–7105 Filed 3–19–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Clean Air Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *LTV Steel Company,* Civil Action No. 97C–623, was been lodged with the United States District Court for the Northern District of Illinois on February 2, 1997.

The Consent Decree resolves claims alleged against defendant, LTV Steel Company (''LTV''), under the Clean Air Act (''Act''), 42 U.S.C. § 7401 *et seq.* in connection with emissions from its coke batteries. The proposed Consent Decree provides for the payment by LTV of a civil penalty of $1,250,000, for its alleged failure to comply with its construction permit issued pursuant to the Prevention of Significant Deterioration (PSD) program and of applicable National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. §§ 63.304(b)(1)(iii) and 63.304(b)(1)(iv). LTV has also agreed to install a system of ''jumper pipes'' which will vent the emissions from one coke battery into the next battery in series, where the emissions will be used as fuel for combustion.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* v. *LTV Steel Company,* D.J. Ref. 90–5–2–1–1945.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 200 West Adams Street, Chicago, Illinois 60606, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–7107 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Trail King Industries, Inc.,* Civil Action No. 94–4238, was lodged on March 4, 1997 with the United States District Court for the District of South Dakota.

The action sought civil penalties and injunctive relief against Trail King Industries under Section 309 (b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. § 1319 (b) and (d). The United States' Complaint alleged various CWA violations associated with Trail King's wastewater discharges containing impermissible levels of zinc and pH from its two plants in Mitchell, South Dakota from at least 1990 to 1994.

Under the proposed consent decree, Trail King Industries will pay $400,000 in civil penalties. Trail King will also perform a set of injunctive relief measures, including, its agreement to fully comply with the applicable effluent limitations of the Clean Water Act in its discharges of wastewaters from its plants; its operation and use of the tank and filter press portions of the physical/chemical system (wastewater treatment system) at its West Plant; its construction of a sampling collection point outside Trail King's West Plant for sampling by the City of Mitchell officials and other authorized persons; and establishment of a written sampling protocol, incorporating all applicable requirements of 40 CFR ¶ 136 and the Wastewater Discharge Permit issued by the City of Mitchell in 1996. In addition, Trail King will conduct an environmental compliance review (audit) of its plants for compliance with the Clean Water Act and the Resource Conservation and Recovery Act (''RCRA'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001 and should refer to *United States* v. *Trail King Industries, Inc.,* DOJ Ref. Nos. 90–5–1–1–3933.

The proposed consent decrees may be examined at the United States Attorney's Office, District of South Dakota, Shriver Square, Suite 600, 230 S. Phillips Avenue, Sioux Falls, South Dakota 57102; U.S. Environmental Protection Agency Region VIII Office,

999 18th Street, Suite 500, Denver, CO 80202–2466; and at the Consent Decree Library, 1120 ''G'' Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and numbers, and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–7108 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on January 29, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.*. (''the Act''), the Advanced Lead-Acid Battery Consortium (''ALABC''), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accumulatorenwerke Hoppecke, Brilon, Germany; Battery Energy South Pacific, Fairfield, Australia; Bolder Technologies, Wheat Ridge, CO; Douglas Battery, Winston-Salem, NC; Electrosource, Inc., Austin, TX; Amer-Sil, Kehlen, Luxembourg; Entek International, Ltd., Killingworth, United Kingdom; Norvik Traction, Mississauga, Canada; Omni-Oxide, LLC, Indianapolis, IN; Brittania Refined Metals, Kent, United Kingdom; Eco-Bat, Paderno Dugnano, Italy; ITRI, Ltd., Middx, England; ZSW, Center for Solar Energy and Hydrogen Research, Ulm, Germany; and CITELEC, Brussels, Belgium have made written commitments to the Consortium. Berzelius Metal GmbH, Brauback, Germany; BMG Metall und Recycling, Arnoldstein, Austria; and Society de Traitments Chimiques Des Metaux, Bazoches Les Gallerandes, France have made verbal commitments to the Consortium. Cookson Entek, Ltd., Killingworth, United Kingdom; O&C Corporation, Indianapolis, IN; and Rheinische Zinkgesellschaft, Duisburg-Wanaim, Germany have withdrawn from the Consortium. Acumuladores Mexicanos, Monterrey, NL Mexico has changed its name to ENERMEX.

No other changes have been made in either the membership or planned activity of the Consortium. Membership in the Consortium remains open and ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522). The last notification was filed with the Department on August 13, 1996. The notice was published in the Federal Register pursuant to Section 6(b) of the Act on August 28, 1996 (61 FR 44347).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–7112 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on January 28, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the ATM Forum (''Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have been added as members of the Forum: Hubbell Premise Wiring Incorporated, Stonington, CT; and Retix, Marina del Rey, CA. The following have withdrawn their membership from the Forum: Mitel Semiconductor AB; Teltrend, Inc.; and TUT Systems, Inc. The following have changed their membership from auditing members to principal members: Cell IT Incorporated (formerly FiberTel); AudioCodes Ltd.; Hekimian Laboratories, Inc.; and Maker Communications Incorporated.

No changes have been made in the planning activities of the Forum. Membership remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, the Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act of June 2, 1993 (58 FR 31415). The last notification was filed on October 30, 1996 and a notice was published in the Federal Register on December 11, 1996 (61 FR 65238).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–7114 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on February 6, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Financial Services Technology Consortium, Inc. (''Consortium''), has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Mitretek Systems, McLean, VA; and the National Institute of Standards and Technology, Gaithersburg, MD were admitted as Advisory Members. The following parties are no longer members: Wells Fargo & Co., San Francisco, CA; Corestates Financial Corp., Philadelphia, PA; Cardinal Bancshares, Inc., Atlanta, GA; Open Market, Inc., Cambridge, MA; Novell, Inc., Orem, UT; and the Bank Administration Institution, Chicago, IL.

Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership. The consortium also plans to file additional notifications disclosing changes in planned activities of the Consortium.

On October 21, 1993, the Financial Services Technology Consortium filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on December 14, 1993 (58 FR 65399). The last notification was filed on October 7, 1996. A notice was published in the

Federal Register on November 5, 1996 (61 FR 56970).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–7109 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium's Bank Internet Payment System Project

Notice is hereby given that, on January 15, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Financial Services Technology Consortium's (''Consortium'') Bank Internet Payment System Project (''Project'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the members of the Project are: Tandem Computers, Cupertino, CA; Concept Five Technologies, Inc., Burlington, MA; Fujitsu Research Institute, Tokyo, JAPAN; Glenview State Bank, Glenview, IL; and Mellon Bank, Pittsburgh, PA.

The Project's area of planned activity is to research and develop a secure, reliable, comprehensive and widely available infrastructure for making payments via the existing banking system, which will support electronic commerce and other on-line business and personal finance transactions.

The Consortium will file additional written notifications disclosing all changes in membership in the Bank Internet Payment Systems Project.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–7111 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Northrop Grumman Corporation—Novel Process Technology

Notice is hereby given that, on January 28, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act), the Northrop Grumman Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Northrop Grumman Corporation, Bethpage, NY; Reynolds Metals Company, Chester, VA; ERG Materials and Aerospace Corporation, Oakland, CA. The nature and objectives of the venture is that the parties will perform a cooperative agreement under which they will conduct joint research to develop and demonstrate a novel process technology that has the potential to significantly improve the performance and reduce the cost of structure components used in the Department of Defense (DoD) systems.

Membership in this venture remains open, and the parties intend to file additional written notifications disclosing all changes in the membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–7110 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on February 21, 1997 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Portland Cement Association filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Giant Cement Holding, Inc., Bath, PA has resigned from PCA; Fuller-Kovako Corporation, Bethlehem, PA has become an associate Member of the Manufacturing Process Committee; Colorado/Wyoming Shippers Association, Denver, CO has been dissolved and is now listed as the Rocky Mountain Concrete Promotion Council; and the Utah Idaho Cement Shippers Association, Salt Lake City, UT has been dissolved and is now listed as the Southeast Cement Shippers Association.

No other changes have been made in either the membership or planned activity of PCA.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015). The last notificaiton was filed with the Department on January 17, 1997. A notice was published in the Federal Register on February 10, 1997 (62 FR 6012).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–7113 Filed 3–19–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its committees will be held on April 9 and 10, 1997. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 9, 1997

10:00–11:30 a.m.—Committee on Compensation and Working Conditions

1. Update on National Compensation Survey (NCS) activities
2. NCS marketing materials
3. NCS Calibration

1:00–2:30 p.m.—Committee on Employment and Unemployment Statistics

1. Welcome and introductions
2. Longitudinal establishment (ES–202) data
3. Current Population Survey (CPS) longitudinal data

3:00–4:30 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Report on recent developments in the Office of Productivity and Technology

2. Development of the new industry productivity database
3. Re-design of the Hours at Work Survey
4. International comparisons of labor force, employment and unemployment; recent results and current issues

Thursday, April 10, 1997

8:30–10:00 a.m.—Committee on Employment Projections

1. Overview of the staffing, organization, and mission of the Office of Employment Projections (OEP)
2. Progress on the 1996–2006 projections
3. Establishment of a long-term plan for the Committee's ''contribution-relationship'' to the OEP Program

10:30–12:30 p.m.—Council Meeting

1. Chairperson's opening remarks
2. Commissioner Abraham's address and discussion
3. Report on the National Longitudinal Surveys
4. Chairperson's closing remarks

1:30–3:00 p.m.—Committee on Price Indexes

1. Update on program developments
   a. Producer Price Indexes
   b. The Consumer Price Index
2. Other business

1:30–3:00 p.m.—Committee on Occupational Safety and Health Statistics

1. Report on the industry summary data from the 1995 Survey of Occupational Injuries and Illnesses
2. Status of the 1996 Survey of Occupational Injuries and Illnesses
3. Impact of the North American Industry Classification Structure (NAICS) on the Survey of Occupational Injuries and Illnesses
   a. Sampling and estimation effects
   b. Discontinuity in series
4. Update on the activities of the ad hoc committee on standardizing workplace injury and illness coding
5. Fiscal Year 1998 budget request for the Occupational Safety and Health Statistics program
6. Recent information releases on workplace hazards

The meetings are open to the public. Persons with disabilities and those wishing to attend these meetings as observers should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5903, for appropriate accommodations.

Signed at Washington, D.C. the 10th day of March 1997.

Katharine G. Abraham,

Commissioner.

[FR Doc. 97–7089 Filed 3–19–97; 8:45 am]

BILLING CODE 4510–24–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on April 9–10, 1997, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9:00 a.m. each day, lasting until approximately 4:00 p.m. the first day and 3:30 p.m. the second day.

Agenda items will include: a brief overview of current activities in the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH); regulatory and legislative updates; a discussion of performance measurement with consultants Scott Geller and Dan Peterson; a discussion of the Government Performance and Results Act (GPRA) in relation to NIOSH; as well as reports from NACOSH workgroups on performance measurement and ergonomics.

Dr. Michael L. Tapper, Section of Infectious Diseases and Hospital Epidemiology, Lenox Hill Hospital, New York City, has accepted appointment to the committee to fill the vacant Public Representative position. He was nominated by the Society for Healthcare Epidemiology of America (SHEA) and selected by the Secretary of Health and Human Services to fill one of their four positions on the committee.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Ms. Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair. Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202–219–8615, extension 106; FAX: 202–219–5986) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500). For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration (OSHA); Room N3641, 200 Constitution Avenue NW, Washington, DC, 20210 (phone: 202–219–8021, extension 107: FAX: 202–219–4383).

Signed at Washington, DC, this 4th day of March, 1997.

Gregory R. Watchman,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 97–7088 Filed 3–19–97; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–1]

Revision of the Cable and Satellite Carrier Compulsory Licenses; Public Meetings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public meetings and request for comments.

SUMMARY: The Copyright Office, at the request of the Chairman of the Senate Judiciary Committee, is examining the copyright licensing of broadcast retransmissions for the purpose of recommending legislative changes to the Congress. The Office is announcing public meetings, and identifying issues for discussion, for the purpose of taking testimony from interested persons. This Notice describes the schedule and structure for the public meetings.

DATES: Public meetings will be held from May 6, 1997, through May 9, 1997, in the CARP Hearing Room, LM 414, James Madison Memorial Building, 101

Independence Avenue, S.E., Washington, D.C. 20540.

TIMES: Each daily session will begin at 10 a.m. Persons wishing to testify should notify the Copyright Office in writing no later than close of business on April 15, 1997. Notices of intent to testify should be addressed to William Roberts, Senior Attorney, and may be sent by mail or by telefacsimile. The Office will notify each person expressing an intention to testify of the expected date and time of his/her testimony.

WRITTEN STATEMENTS AND REPLY COMMENTS: Each person wishing to testify must submit a formal written statement of his/her testimony no later than the close of business on April 18, 1997. Written statements will also be accepted from parties who do not wish to testify. Summaries of the formal written testimony, for purposes of oral testimony, may be submitted on the date of testimony. In addition, interested parties may submit written questions, for possible use by panel members of the Copyright Office during the course of meetings, no later than close of business on April 18, 1997.

After the close of the meetings, interested parties may submit written reply comments to the testimony offered at the meetings, including any proposed legislative amendments, no later than close of business on June 3, 1997.

ADDRESSES: If delivered by hand, fifteen copies of written statements, questions, and reply comments should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20540. If sent by mail, fifteen copies of written statements, questions, and comments should be sent addressed to Nanette Petruzzelli, Acting General Counsel, Copyright GCR, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1997, Senator Orrin Hatch, Chairman of the Committee on the Judiciary, United States Senate, sent a letter to the Register of Copyrights requesting the Copyright Office to conduct a global review of the copyright licensing regimes governing the retransmission of over-the-air broadcast signals. Senator Hatch requested the Office to report its findings to the Committee by May 1, 1997, and to develop policy options and legislative recommendations. The reporting date has now been extended, at the request of the Office, to August 1, 1997.

In making his request, Senator Hatch identified several issues regarding the copyright implications of broadcast retransmissions which warrant consideration. Specifically, these include extension of the compulsory copyright license created by the Satellite Home Viewer Acts of 1988 and 1994, and the disputes surrounding the implementation of that compulsory license and the so-called ''white area'' restriction for the retransmission of television network stations. Additionally, Senator Hatch asked the Office to consider possible harmonization of the cable and satellite carrier compulsory licenses of the Copyright Act, and the extension of those licenses to new technologies such as local retransmission of broadcast signals by satellite, retransmission of broadcast signals over the Internet and by the telephone companies, and new markets for public television.

In discharging its task and making its report, Senator Hatch has encouraged the Copyright Office to conduct open public meetings to hear from interested parties and promote discussion in the hopes of establishing consensus solutions to these issues. Consequently, the Office is publishing this Notice to inform interested parties of the time and structure of such meetings, and how the Office plans to accomplish its task of reporting to the Senate Judiciary Committee.

Public Meetings

Because both the cable and satellite carrier compulsory licenses implicate and affect the existence and profitability of a number of industries, the Copyright Office believes that input from these affected industries is critical to a complete report to the Congress. Consequently, the Office has determined that a process involving both written comments and open meetings is essential to gathering the necessary information. We are, therefore, announcing the following schedule.

The Office will conduct public meetings with interested parties in the CARP Hearing Room at the Copyright Office beginning on May 6, 1997, and running through the end of that week, if necessary. The format for these meetings will resemble the traditional Congressional hearing model in that there will be panels of witnesses that will present testimony to a panel of Copyright Office staff, headed by the Register of Copyrights. The Register and Office staff will ask questions of the various persons who testify, and interested parties may submit written questions to the Office by April 18, 1997, which may be addressed to specific witnesses, or the witnesses as a whole. There are no guarantees that the Office will ask every written question that is submitted.

The public meetings are open to anyone. However, in order to testify, interested persons must inform the Office of their intention to testify no later than the close of business on April 15, 1997. Notification of intention to testify must be in written form, either by letter or notice, and must be in the possession of the Office by the close of business on April 15. Because of time constraints, and the need for the Office to schedule the panels of witnesses as soon as possible, it is recommended that persons wishing to testify deliver their notification by hand or facsimile transmission by the deadline. Notifications received after the April 15 deadline will not be accepted, and such person or persons will not be allowed to testify.

The public meetings will begin at 10 a.m. each morning, and will continue until 5 p.m., unless otherwise directed by the Register of Copyrights. The Office will notify each witness who has filed a timely notice of intention to testify several days in advance of the date he/she is expected to appear and offer testimony. The Office will also notify each witness of the other witnesses who will appear on his/her panel. Because of space limitations in the CARP Hearing Room, witnesses are encouraged to appear only on the date they are scheduled to offer testimony.

Witnesses may bring with them on the day of their testimony a written summary of their oral testimony. Witnesses who bring such written summaries are asked to provide fifteen copies of the written summaries for use by the Office and others in attendance at the meeting.

Transcription services of the public meetings will be provided by the Copyright Office. Those parties interested in obtaining transcripts of the meetings will need to purchase them from the transcription service.

Written Statements

All persons who notify the Copyright Office of their intention to testify must submit a written statement of their testimony by the April 18, 1997, deadline. Because of time limitations, the Office encourages parties submitting written statements to deliver them to the

Office by hand or by overnight express mail on or before the April 18 deadline. Telefacsimile transmissions of written statements will not be accepted.

Parties submitting written statements are encouraged to include any and all information that they consider relevant to the copyright licensing of broadcast retransmissions. Parties may also include any exhibits that they deem relevant. Fifteen copies of each written statement must be submitted by the deadline.

There is no prescribed format for the written statements. Parties are encouraged to organize their testimony in as clear and readable form as possible, and to provide a glossary of technical terms used in the written statement.

Parties who do not wish to appear at the public meetings are nonetheless permitted, and encouraged, to submit written statements by the April 18 deadline.

Reply Comments

After the close of the public meetings, interested parties may submit comments in reply to the written statements and oral testimony. The reply phase is open to all parties, and is not limited to those who testified at the meetings and/or submitted written statements. As with the written statements, reply comments must be in the possession of the Copyright Office by the June 3, 1997, deadline. No facsimile transmissions of reply comments will be accepted.

There is no format for reply comments, beyond the principles of clarity and a glossary of technical terms. Parties are also encouraged to offer any legislative proposals and/or amendments that they have at that time.

Scope of the Proceeding

As Senator Hatch's letter makes clear, the Copyright Office will be conducting a global review of copyright licensing for the retransmission of broadcast signals, and in particular the cable and satellite carrier compulsory licenses. The Office will be confining its report to issues related to the retransmission of over-the-air broadcast signals. The Office will not be considering other matters, such as music licensing for television, the section 114 compulsory license for digital subscription transmission services, operation or administration of the Copyright Arbitration Royalty Panels, or matters of copyright liability for on-line service providers on the Internet.

While the Office's report is confined to the retransmission of broadcast signals, this does not mean that the Office will focus solely on the cable and satellite carrier compulsory licenses as they currently exist. Rather, all matters involving copyright licensing of broadcast retransmissions will be considered, including basic questions such as whether there remains a need for compulsory licenses or whether new compulsory licenses should be added to the Copyright Act. More specifically, are compulsory licenses still justified? Perpetually? Or, can they be phased out? If compulsory licenses all justified, are the present configuration and present provisions fair and equitable? Or, should adjustments be made? If so, what should the changes be? Should the existing licenses be combined into one new license? Should new uses or services be combined in it? Or, should new uses and services be subject to separate and distinct licenses?

In filing their written statements and offering oral testimony, the parties are encouraged to address any and all matters related to copyright licensing of broadcast retransmissions which they believe are relevant and important. In order to identify as many issues as possible from the outset, so as to permit full discussion, the Copyright Office met informally with representatives of the major industries affected by copyright licensing of broadcast retransmissions. Representatives included copyright owners of broadcast programming, cable and satellite carriers, broadcasters, the Public Broadcasting Service, and telephone companies. The purpose of these meetings was not to discuss policy or what the law should look like, but to identify the relevant issues.

The Office welcomes discussion of any matters related to copyright licensing of broadcast retransmissions that interested parties deem important. The Office is, however, raising a number of issues below, identified during the course of its informal meetings, which we believe deserve attention during the course of the public meetings. We encourage interested parties to provide any and all information and opinions regarding these issues in both their written statements and oral testimony.

A. Basic Principles

1. *Need for compulsory licenses.* As noted above, the fundamental principles of copyright licensing of broadcast retransmissions are part of this review. The cable industry has enjoyed a compulsory license for its broadcast retransmission since January 1, 1978, and the satellite industry has had a similar license since 1988. Do the conditions that warranted creation of those licenses continue, or have circumstances changed such that the need and/or configuration of those licenses should be altered? Is there a continuing need for the cable and satellite licenses, or should cable and/or satellite carriers be required to negotiate the licensing of broadcast programming in the free marketplace?

2. *Expansion and revision of compulsory licenses.* In the alternative, should the compulsory licensing scheme of the Copyright Act be expanded? Should new types of broadcast retransmission services, such as open video systems provided by telephone companies and retransmission services via the Internet, have their own separate compulsory licenses? Or, is it better to place these services in the existing compulsory license structure? How could this be achieved?

Furthermore, assuming that a compulsory licensing scheme should remain for broadcast retransmissions, should the cable and satellite licenses be unified into a single compulsory license applicable to all retransmission providers? What are the practical barriers to such a single license? What are the advantages and disadvantages?

If the cable and satellite carrier compulsory licenses remain separate, should the royalty rates paid under both licenses be equalized? Should this be done in the statute, or should the criteria for adjusting royalty rates be made the same for both licenses? Should the standard be the fair market value of the copyrighted works, or are there other or additional criteria that should be used?

3. *Must-carry.* An important element of the structure of the cable compulsory license in 1976, and today, is the must-carry regulation of broadcast signals by the Federal Communications Commission. Must-carry regulation was reimposed by Congress in the 1992 Cable Act after it had been eliminated by the courts in the mid-1980's, and the constitutionality of the new must-carry regime is currently on appeal to the United States Supreme Court. The Copyright Office is aware that the outcome of that case has a direct impact on how broadcasters, and copyright owners, view the copyright licensing of broadcast retransmissions. Recognizing that the current appeal may not be the final word on must-carry (the Supreme Court could, for instance, find the concept of must carry to be constitutional but then find fault with the current must-carry rules), what impact might the Court's decision have on the current compulsory licensing scheme? If the Court upholds must-carry, should must-carry be extended to the satellite carrier compulsory license and the provision of local network

signals, as well as all other broadcast retransmission services seeking compulsory licensing? If the Court strikes down must-carry in whole or in part, as unconstitutional how should that affect a revised compulsory license scheme for broadcast retransmissions?

B. Cable Compulsory License

1. *Cable regulation and rates.* The cable compulsory license, created in 1976, represents a number of compromises and requirements necessitated by the technological and regulatory framework in existence at that time. Since 1976, the cable industry has grown considerably, and the marketplace has changed. The license is based upon a regulatory structure of the Federal Communications Commission that has not been in existence for a number of years. Should the cable compulsory license be reformed to reflect the current marketplace and regulatory framework? Should the royalty payment scheme of the license, based upon each cable system's gross receipts for the retransmission of broadcast signals, be simplified so as to remove reliance upon outdated FCC rules? Is the per subscriber, per signal charge of the satellite carrier license an appropriate solution? If not, why not? Are there other solutions? Also, should the payout of royalties collected under the cable license be broadened to include compensation for network programming as well as nonnetwork programming?

In addition to regulatory changes, the cable industry has experienced considerable marketplace change. The FCC's examination of the state of the cable industry in the last several years demonstrates that the cable industry has become far more concentrated and integrated. Should the cable compulsory license be amended to reflect the significant amount of mergers and acquisitions in the cable industry? If so, in what ways?

2. *Radio retransmissions.* Retransmission of broadcast signals under the cable license includes both television and radio. The FCC is beginning its process of authorizing over-the-air radio services. Does the cable license need to be amended to accommodate retransmission of these services, and should all broadcast retransmission services be allowed to carry radio as well as television broadcast signals?

3. *New retransmission providers.* In recent years, a number of new retransmission providers outside the ambit of traditional cable systems have sought inclusion in the cable compulsory license. These have included satellite carriers, wireless cable operators (which successfully sought statutory inclusion in 1994) and telephone companies providing broadcast retransmissions on video dialtone and open video system platforms. Is it appropriate to include these services, and other newcomers such a broadcast retransmissions via the Internet, within the cable compulsory license? If so, does the license require amendment to accommodate these operators, and in what fashion? Does the passive carrier exemption of 17 U.S.C. 111(a)(3) require amendment to accommodate these services? How can the cable license be amended so that all users of the license are in parity with one another in terms of the signals that they are permitted to provide and the royalty amounts they pay for those signals? Should there be economic and/or regulatory caps on the number of distant broadcast signals that may be carried, or should all signals be paid for at the same rates?

Finally, should the existence of the cable compulsory license continue in perpetuity, or should the license be phased-out after some period of time? Or, in the alternative, should the license be made periodic so that it is a subject to renewal every certain number of years, such as the satellite carrier compulsory license?

C. Satellite Carrier Compulsory License

1. *White area restriction.* One of the major motivating factors for requesting the Copyright Office to consider the compulsory licensing scheme for broadcast retransmissions consists of certain problems that have arisen in the operation of the satellite carrier compulsory license. This is especially so since the license is slated to expire at the end of 1999, and Congress will need to consider whether it should be extended, and if so, under what conditions. Specifically, much of the controversy has centered on the network territorial provisions of the Satellite Home Viewer Act, commonly known as the ''white area'' restriction. The current satellite carrier license does not allow satellite carriers to make use of the license for network signals for subscribers who do not reside in unserved households. An ''unserved household'' is defined as one that cannot receive a signal of grade B intensity, using a conventional rooftop antenna, from the local network affiliate, and has not received the local network affiliate through a subscription to cable services within the previous ninety days.

Is the white area restriction of the satellite license still necessary, or should satellite carriers be permitted to provide network signals to all their subscribers? Should the white area restriction remain in place for satellite carriers who wish to provide a subscriber with a distant network affiliate, but not apply to satellite carriers who provide retransmission of local network affiliates to their subscribers? If so, how should a local network affiliate be defined? Should a satellite carrier be permitted to provide retransmission of a network affiliates to subscribers who reside within the Designated Market Area of the affiliate, or is there a better way to determine local area?

There are a number of other issues surrounding the white area restriction. The purpose of the restriction is to allow network broadcasters to preserve the exclusivity of their programming in their market. Is it now possible, and appropriate, to impose exclusivity protection upon satellite carriers through FCC regulation (syndicated exclusivity and network non-duplication) rather than through the copyright statute? If the white area restriction remains, is the grade B signal intensity still an appropriate measure? Should another standard be adopted, such as picture quality? If picture quality is appropriate, how can that be enforced as a legal standard for determining copyright infringement? How can subscribers who cannot have a conventional rooftop antenna receive network signals from their satellite carrier? Likewise, can persons who reside and travel in mobile homes receive network service? What is the justification for the 90 day waiting period from any subscription to a cable system that provides the signal of a primary network station affiliated with that network, and should that provision be eliminated from the statute?

A possible solution to difficulties surrounding the white area provision is an adjustment in royalty rates designed to compensate local network affiliate broadcasters for the loss of viewership to distant network signals. In essence, subscribers who reside within the service area of a network affiliate, and desire to receive the signal of a distant network affiliate, can pay a surcharge for the privilege of receiving that distant network affiliate. The monies generated by the surcharge would be paid to the network affiliates. Is this a viable option and, if so, how should the surcharge monies be collected and who should administer their payment?

Finally, with respect to satellite subscribers who have their service of network signals disconnected due to the white area restriction, what means of redress can they be afforded to determine that termination of their service was accurate and required? Can the subscriber require that either the satellite carrier terminating service, or the network affiliate challenging service, conduct a test at his/her household to determine if he/she is eligible for network service? Who should pay for such test and how should it be administered? What should be the appropriate standards of the test? If a test is created, should subscribers who currently receive network signals be grandfathered in their receipt of those signals? Should the matter of a subscriber's eligibility to receive network service from a satellite carrier be a matter of private determination between broadcasters and satellite carriers, or should a government agency make the determination?

Another area of recent interest is the enforcement of the white area restriction. If such a restriction continues, how can it be more economically and efficiently enforced? Are there better ways to identify which subscribers may receive network signals under the satellite license, and those who are not eligible? Should the remedies for copyright infringement be amended to provide for additional and/or different remedies for violations of the white area restriction?

2. *Other issues.* Aside from the white area restriction, other areas of the satellite carrier compulsory license warrant consideration. Network signals are currently paid for at a lower royalty rate than superstation signals. Should the disparity be eliminated, so that all signals are paid for at the same rate? Should there be special provision for retransmission or transmission of a national satellite feed of the Public Broadcasting Service, and a separate royalty rate for this signal? What should the rate or rates be?

The satellite carrier license will expire at the end of 1999. Should the license be extended on a permanent basis, or is temporary extension still an appropriate solution? If an extension is temporary, what mechanisms can be put into place to encourage a smooth and efficient transition into a free marketplace system? Is collective administration of copyrighted broadcast programming an appropriate solution, and, if so, who should administer such a system?

The Copyright Office welcomes and encourages response and discussion of these issues, as well as any other related matters interested parties deem relevant and important.

Dated: March 17, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–7091 Filed 3–17–97; 2:51 pm]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–030)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Howard Industries, Inc., of 1840 Progress Avenue, Columbus, Ohio 43207, has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent No. 5,373,110, entitled ''Ion Exchange Polymer and Method of Making,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Lewis Research Center.

DATES: Responses to this notice must be received by May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Lewis Research Center, 21000 Brookpart Road, Cleveland, Ohio 44135, telephone (216) 433–8855.

Dated: March 14, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–7072 Filed 3–19–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: April 9, 1997, 8:45 a.m.–5 p.m.; April 10, 1997, 8:45 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Government Performance and Review Act (GPRA) and Future Plans.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7022 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: April 8–9, 1997; 8:30 a.m.–5 p.m.

Place: Rooms 365 and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Tony Centodocati, SBIR Program Manager, Ritchie Coryell, SBIR Program Manager, Darryl Gorman, SBIR Program Manager, and Joseph Hennessey, SBIR Program Manager, Small Business Innovation Research Program, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF's SBIR Program.

Agenda: To review and evaluate SBIR Phase II proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7020 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meetings

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: April 9, 1997; 8:30 a.m.–5 p.m.

Place: Room 410, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Darryl Gorman, Program Manager, Small Business Technology Transfer, (703) 306–1391, Dr. Joseph Hennessey, Program Manager, Small Business Innovation Research, (703) 306–1391, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF's SBIR and STTR Program.

Agenda: To review and evaluate SBIR and STTR Phase II proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal informaiton concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7023 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Merit Review Panel for the Experimental Program To Stimulate Competitive Research (EPSCoR) Grants: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental Programs to Stimulate Competitive Research (ESPoR), #1198.

Dates: April 7–8, 1997.

Times: 11:30 a.m.–6 p.m., April 7, 1997; 8 a.m.–12 noon, April 8, 1997.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037, (202) 955–6400 FAX: 202–775–8489.

Type of Meeting: Closed.

Contact: Dr. B. Jane Harrington, Program Director, Office of Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, Suite 875, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF EPSCoR Grants program for financial support.

Agenda: To review and evaluate science and technology (S&T) proposals from states participating in the Experimental Program to Stimulate Competitive Research. Proposals request support for 12–24 month non-renewable EPSCoR grants and are submitted in response to NSF solicitation 95–141.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resources Management, Acting Committee Management Officer.

[FR Doc. 97–7024 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Federal Networking Council Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Federal Networking Council Advisory Committee Meeting (1177).

Date and Time: April 14, 1997; 10 a.m. to 5:00 p.m. and April 15, 1997; 8:30 a.m. to 6 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230..

Type of Meeting: Open.

Contact Person: Ms. Suzanne Burgess, Coordinator, Federal Networking Council, DynCorp I&ET, 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203–1614, Telephone: (703) 522–6410, Fax: (703) 522–7161. Internet: sburgess@snap.org.

Purpose of Meeting: The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies an issues raised in the implementation and deployment of the National Research and Education network (NREN) Program.

Agenda: Network Transition and Scalability, Internet Privacy and Security, Intellectual Property Rights (IPR), and Education.

Luncheon: There is no fee to attend this meeting. However, attendee who register in advance may order refreshments and/or a box lunch for which there will be a charge. To obtain a registration form, contact Ms. Burgess by telephone, fax or electronic mail at the number or address above. Forms must be received by March 31, 1997.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7021 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences: Meeting

In accordance with the Federal Advisory Committee Act)(Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in the Geosciences (1756).

Date and Time: April 9–11, 1997, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 730, Arlington, VA 22230, Room 730.

Type of Meeting: Closed.

Contact Person: Dr. Herman B. Zimmerman, Program Director for the Paleoclimate Program, Division of Atmospheric Science, Room 775, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone number is (703) 306–1527.

Purpose of Meeting: To provide and make recommendation concerning the Earth System History (ESH) proposals.

Agenda: to review and evaluate the Earth System History (ESH) proposals.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7025 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking & Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure (#1207).

Date and Time: April 8, 1997; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Connections to the Internet Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7019 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: April 10 & 11, 1997; 9 a.m. to 6 p.m.

Place: Room 365, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Part-Open.

Contact Persons: Dr. Walter Wilczynski, Program Director, Behavioral Neuroscience; Dr. Raymon Glantz, Program Director, Computational Neuroscience; Division of Intergrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone; (703) 306–1416.

Purpose of Meeting:: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 11, 1997; 11:00 a.m. to 12:00 p.m., To discuss research trends and opportunities in Behavioral and Computational Neuroscience. Closed Session: April 10, 1997; 9 a.m. to 6 p.m.; April 11, 1997, 9 a.m. to 11 a.m.; 12 p.m. to 6 p.m. To review and evaluate Behavioral and Computational Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated March 17, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–7026 Filed 3–19–97; 8:45 am]

BILLING CODE 7555–01–M

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: March 27, 1997, 11:30 a.m., Closed Session; March 27, 1997, 3:30 p.m., Closed Session; March 28, 1997, 8:30 a.m., Open Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, March 27, 1997

Closed Session (11:30 a.m.–12:30 p.m.)

—Awards & Agreements

Thursday, March 27, 1997

Closed Session (3:30 p.m.–5:45 p.m.)

—Awards & Agreements
—NSF Long-Range Planning
—Minutes, February 1997 Meeting
—Personnel
—Vannevar Bush Award
—Alan T. Waterman Award

Friday, March 28, 1997

Open Session (8:30 a.m.–12:30 p.m.)

—Minutes, February 1997 Meeting
—Closed Session Agenda Items—May 1997 Meeting
—Chairman's Report
—Director's Report
—Program Approval
—Action Item: Future NSB Operations
—Action Item: Proposed Merit Review Criteria
—Discussion Item: Mechanisms for Setting Priorities in S&E
—Discussion Item: Large Haldron Collider (Guests: Dr. Chris Llewelyn-Smith, CERN and Dr. Martha Krebs, DOE)
—Reports from Committees
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 97–7172 Filed 3–18–97; 9:58 am]

BILLING CODE 7555–01–M

NATIONAL WOMEN'S BUSINESS COUNCIL

Sunshine Act Meeting

AGENCY: National Women's Business Council.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–403 as amended, the National Women's Business Council announces forthcoming Council Meetings and joint meeting of the NWBC and Interagency Committee on Women's Business Enterprise. These meetings will cover action items to be taken by the National Women's Business Council in Fiscal Year 1997 including but not limited to increasing procurement opportunities and access to capital for women business owners.

DATES: April 8, 1997 from 10:00 am to 5:00 pm.

ADDRESSES: U.S. Department of Treasury, Secretary's Conference Room, Room #3327, Washington, DC 20515.

STATUS: Open to the public.

CONTACT: For further information contact Amy Millman, Executive Director or Gilda Presley, Administrative Officer, National Women's Business Council, 409 Third Street, S.W., Suite 5850, Washington, DC 20024, (202) 205–3850.

Gilda Presley,

Administrative Officer, National Women's Business Council.

[FR Doc. 97–7143 Filed 3–17–97; 4:24 pm]

BILLING CODE 6820–AB–M

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

New Lands Grazing Permits; Close of Application

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Notice.

SUMMARY: This notice establishes the date when the application period for New Lands Grazing Permits will close. This action is necessary to comply with 25 CFR 700.709.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation, at (520) 779–2727.

SUPPLEMENTARY INFORMATION: On June 9, 1992, the Office of Navajo and Hopi Indian Relocation (ONHIR) published in the Federal Register (Vol. 57, No. 111, at p. 24363) a final rule regarding New Lands Grazing privileges. The rule, 25 CFR 700.709(d) provided that the ONHIR will determine when the application period for New Lands Grazing Permits will close and that a notice of that date would be published.

The ONHIR has determined that pursuant to 25 CFR 700.709, persons on the list of permittees eligible to receive grazing permits must file an application for a New Lands Grazing Permit by June 2, 1997, or they will lose their priority status for receiving permits.

The ONHIR also intends to notify each of the approximately 65 persons eligible to receive a New Lands Grazing Permit by writing to them personally.

Dated: March 11, 1997.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. 97–6967 Filed 3–19–97; 8:45 am]

BILLING CODE 7560–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities''.

2. Current OMB approval number: 3150–0011.

3. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

4. Who is required or asked to report: Licensees and applicants for nuclear power plants and non-power reactors (research and test facilities).

5. The number of annual respondents: 154.

6. The number of hours needed annually to complete the requirement or request: 5.5M (approximately 2.8M reporting hours and 2.6M recordkeeping hours); an average of 35.6K per respondent.

7. Abstract: 10 CFR Part 50 of the NRC's regulations, ''Domestic Licensing of Production and Utilization Facilities,'' specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may make determinations necessary to promote the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR Part 50 are mandatory for the affected licensees and applicants.

Submit, by May 19, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of March 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–7059 Filed 3–19–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and 50–457]

Commonwealth Edison Company; Byron Station, Units 1 and 2; Braidwood Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the technical specifications (TS) to take credit for soluble boron in the spent fuel pool in maintaining an acceptable margin of subcriticality. The proposed change would remain in effect until December 31, 1997, at which time the licensee is expected to implement long-term corrective actions.

The Need for the Proposed Action

The proposed action is required in order for the licensee to be in compliance with its TS. Heretofore, the compliance with the requirement to maintain criticality (k_{eff}) in the spent fuel pool to less than 0.95 with

unborated water was accomplished through the use of Boraflex, a neutron absorber. However, recent tests have indicated that the Boraflex is showing degradation induced by gamma radiation. Maintaining boron concentration of 2000 parts per million in the spent fuel pool is more than sufficient to ensure that the k_{eff} is maintained below 0.95.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the licensee's proposal to take credit for soluble boron in the spent fuel pool water to maintain k_{eff} less than or equal to 0.95 is acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 11, 1997, the staff consulted with Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 5, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 13th day of March 1997.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–7060 Filed 3–19–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 3–5, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Thursday, January 23, 1997 (62 FR 3539).

Thursday, April 3, 1997

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–9:45 A.M.: Proposed Regulatory Approach Associated with Steam Generator Integrity (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed regulatory approach for dealing with steam generator integrity issues.

Representatives of the nuclear industry will participate, as appropriate.

10:00 A.M.–11:30 A.M.: Consequences of Reactor Water Cleanup System Line Break Outside Containment (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the study performed by the staff on the consequences of reactor water cleanup system line break outside containment.

Representatives of the nuclear industry will participate, as appropriate.

11:30 A.M.–11:45 A.M.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee regarding the items discussed during the March 28, 1997 subcommittee meeting.

11:45 A.M.–12:00 Noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO responses are expected to be provided to the ACRS prior to the meeting.

1:00 P.M.–2:30 P.M.: Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 Requirements (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed regulatory guidance for assessing the adequacy of the licensees process for implementing the requirements of 10 CFR 50.59, ''Changes, Tests and Experiments.''

Representatives of the nuclear industry will participate, as appropriate.

2:45 P.M.–6:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed reports considered during previous meetings on issues such as shutdown operations risk and plant-specific safety goals.

Friday, April 4, 1997

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M–10:00 A.M.: Boraflex Degradation in Spent Fuel Pool Storage Racks (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the resolution of issues associated with the degradation of Boraflex used in spent fuel pool storage racks and licensee responses to Generic Letter 96–04, ''Boraflex Degradation in Spent Fuel Storage Racks.''

Representatives of the nuclear industry will participate, as appropriate.

10:15 A.M.–11:45 A.M.: Use of Potassium Iodide After a Severe Accident (Open)—The Committee will hear presentations by and hold discussions with the representatives of the NRC staff regarding the NRC policy on the use of potassium iodide after a severe accident and other related issues.

1:15 P.M.–1:45 P.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning

and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:45 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, as well as proposed reports considered during previous meetings on issues such as shutdown operations risk and plant-specific safety goals.

Saturday, April 5, 1997

8:30 A.M.–9:00 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and organizational and personnel matters relating to the ACRS.

[Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:00 A.M.–12:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, as well as proposed reports considered during previous meetings on issues such as shutdown operations risk and plant-specific safety goals.

12:00 P.M.–1:00 P.M.: Strategic Planning (Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 1997.

1:00 P.M.–1:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permits.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: March 17, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–7058 Filed 3–19–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22564; 811–5959]

ACM Managed Multi-Market Trust, Inc.; Notice of Application

March 14, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ACM Managed Multi-Market Trust, Inc.

RELEVANT ACT SECTION: 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 26, 1996 and was amended on February 6, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 8, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572 (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 a closed-end management investment company that is organized as a corporation under the laws of Maryland, Applicant registered under the Act and filed a registration statement on Form N–2 on November 17, 1989. Applicant's registration statement was declared effective on January 19, 1990, and applicant commenced a public offering of its shares shortly thereafter.

2. On December 7, 1994, applicant's board of directors considered and approved a sale of substantially all of the assets and liabilities of applicant to the Alliance Multi-Market Strategy Trust, Inc. (the ''Acquiring Fund''). The board of directors 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] In determining that applicant should enter into the reorganization, the directors considered, among other things, the investment objectives, policies, and restrictions of applicant and the Acquiring Fund.

3. On January 20, 1995, a proxy statement was filed with the SEC and applicant mailed proxy materials to its shareholders approximately a month later. On April 21, 1995, applicant's shareholders approved the reorganization.

[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.

4. On May 5, 1995, applicant transferred its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. Applicant's net assets on such date amounted to $76,655,258.68, or $7.68 per shares. The shares of the Acquiring Fund received by applicant were distributed to applicant's shareholders based on the relative net assert values per share of the two funds. No brokerage fees were paid in connection with the reorganization.

5. Expenses of approximately $144,000 incurred in connection with the reorganization were paid by applicant. The expenses consisted of legal fees of approximately $77,500, printing costs of approximately $43,000, taxes of approximately $10,000, and accounting costs of approximately $13,500. Applicant states that legal and printing costs similar to those actually incurred would have been borne by applicant had the reorganization not occurred as applicant had a policy that, under prevailing market conditions, likely would have required applicant to seek shareholder consent to convert applicant into an open-end fund.

6. Applicant states that subsequent to the filing of the Form N–8F, it will file articles of dissolution with the State of Maryland to terminate applicant's legal existence.

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.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7050 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22567; File No. 812–10454]

Citicorp Life Insurance Company, et al.

March 14, 1997.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order pursuant to the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Citicorp Life Insurance Company (''Citicorp Life''), First Citicorp Life Insurance Company (''First Citicorp Life,'' together with Citicorp Life, the ''Companies''), Citicorp Life Variable Annuity Separate Account (''Citicorp Life Account'') and First Citicorp Life Variable Annuity Separate Account (''First Citicorp Life Account,'' together with the Citicorp Life Account, the ''Accounts'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 26(b).

SUMMARY OF THE APPLICATION: Applicants seek an order to permit the substitution of shares of certain portfolios of the Fidelity Variable Insurance Products Fund (''Fidelity VIP'') and the AIM Variable Insurance Funds, Inc. for shares of portfolios of the Landmark VIP Funds currently held by the Accounts to support individual flexible premium deferred variable annuity contracts (collectively, the ''Contracts'') issued by the Companies.

FILING DATES: The application was filed on December 5, 1996, and amended on March 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 1997, 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 requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Richard M. Zuckerman, Esq., Citicorp Life Insurance Company, 800 Silver Lake Boulevard, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Citicorp Life is a stock life insurance company organized under the laws of the State of Arizona in 1971. Citicorp Life is a wholly owned subsidiary of Citibank Delaware which is a wholly owned subsidiary of Citicorp Holdings, Inc. In turn, Citicorp Holdings, Inc. is a wholly owned subsidiary of Citicorp. Citicorp Life is the depositor and sponsor of the Citicorp Life Account.

2. First Citicorp Life is a stock life insurance company organized under the laws of the State of New York in 1978. First Citicorp Life is a wholly owned subsidiary of Citicorp Life. First Citicorp Life is the depositor and sponsor of the First Citicorp Life Accounts.

3. The board of directors of Citicorp Life established the Citicorp Life Account on July 6, 1994. The Citicorp Life Account is registered under the 1940 Act as a unit investment trust (File No. 811–8628). Initially, the Citicorp Life Account invested exclusively in shares of the following portfolios: (1) The U.S. Government, Equity, Balanced and International Equity Funds of the Landmark VIP Funds; (2) the Growth Portfolio of the Variable Insurance Products Fund; (3) the AIM V.I. Capital Appreciation Fund of AIM Variable Insurance Funds, Inc.; and (4) the World Government and Money Market Series of the MFS Variable Insurance Trust.

4. The board of directors of First Citicorp Life established the First Citicorp Life Account on July 6, 1994. The First Citicorp Life Account is registered under the 1940 Act as a unit investment trust (File No. 811–8732). Since inception, the First Citicorp Life Account invested in the same investment portfolios as those initially available under the Citicorp Life Account.

5. The Landmark VIP Funds was organized as a Massachusetts business trust on August 22, 1991. It is registered under the 1940 Act as an open-end management investment company (File No. 811–6401). The Landmark VIP Funds is a series investment company that is currently comprised of four investment portfolios: the Landmark VIP U.S. Government Fund, the Landmark VIP Balanced Fund, the Landmark VIP Equity Fund and the Landmark VIP International Equity Fund (collectively, the ''Removed Funds''). Citibank, N.A., a wholly-owned subsidiary of Citicorp, is the investment adviser to the Landmark VIP Funds.

6. The Landmark VIP U.S. Government Fund seeks to earn current income and preserve capital by

investing primarily in U.S. government securities and repurchase agreements involving U.S. government securities. The Landmark VIP Balance Fund seeks to earn high current income by investing in a broad range of securities, to preserve capital, and to provide growth potential with reduced risk. The Landmark VIP Equity Fund seeks long-term capital growth; dividend income, if any, is incidental to this investment objective. The fund seeks to achieve its objective by investing primarily in common stocks of domestic issuers, with emphasis on established companies. The Landmark VIP International Equity Fund seeks long-term capital growth; dividend income, if any, is incidental to this investment objective. The fund seeks to achieve its objective by investing primarily in common stocks of non-U.S. issuers, including issuers in developing countries, with an emphasis on established companies.

7. Citibank, N.A. currently reimburses the expenses of each Landmark VIP Fund to maintain the following expense ratios: U.S. Government Fund, 0.60%; Equity Fund, 0.75%; Balanced Fund, 0.70%; and International Equity Fund, 1.20%. The expense reimbursement arrangements, however, are voluntary and may be discontinued by Citibank N.A. at any time.

8. Applicants state that the Removed Funds as individual investment options have not generated substantial Contract owner interest since their inception. Each Removed Fund is relatively small when compared with many other similar investment portfolios of open-end management investment companies available as investment vehicles for variable annuity products. As a result, the annual expense ratios of these funds, absent any expense reimbursement, have been higher than the ratios of most similar but larger portfolios. Furthermore, the performance of the Removed Funds since their inception, although not poor, has been unremarkable given overall performance during that period. The following charts provide size, expense and performance information for the Landmark VIP Funds.

Landmark VIP funds	Net assets at year-end (in millions) [1]	Expense ratio [2] (percent)
U.S. Government Fund:		
1995	$1.292	9.07
1996	1,400	7.55
Equity Fund:		
1995	1.894	7.83
1996	2.675	4.88
Balanced Fund:		
1995	1.827	7.32
1996	2.488	4.76
International Equity Fund:		
1995	4.515	4.84
1996	5.057	4.83

[1] Net assets for 1996 are as of September 30, 1996.

[2] Expense ratios for 1996 are for the nine-month period ended September 30, 1996 and have been annualized.

Landmark VIP funds	Standard total return [1]		
	Inception of funds through 9/30/96 (percent)	1996 (percent)	1995 (percent)
U.S. Government Fund	4.17	−1.72	10.51
Equity Fund	18.50	12.08	20.47
Balanced Fund	12.12	6.36	15.53
International Equity Fund	4.96	3.30	5.47

[1] Total returns for 1995 are for the period from March 10, 1995 through December 31, 1995 and have been annualized. Total returns for 1996 are for the nine-month period ended September 30, 1996 and have not been annualized.

Total returns for the period from inception through September 30, 1996 for the Landmark VIP Funds have been annualized.

9. Fidelity VIP was organized as a Massachusetts business trust on November 13, 1981, and is registered under the 1940 Act as an open-end management investment company (File No. 811–3329). Fidelity VIP is a series investment company that is currently comprised of five investment portfolios: Money Market Portfolio, High Income Portfolio, Equity-Income Portfolio, Growth Portfolio and Overseas Portfolio. Fidelity Management & Research Company is the investment adviser of Fidelity VIP. The Fidelity VIP Growth Portfolio seeks capital appreciation by investing primarily in common stocks but may also invest in other types of securities, including bonds and preferred stocks. The Fidelity VIP Equity-Income Portfolio seeks reasonable income by investing, under normal circumstances, at least 65% of its assets in income producing equity securities. The fund may also invest in debt securities convertible into common stock.

10. AIM Variable Insurance Funds, Inc. was organized as a Maryland corporation on January 22, 1993 and is registered under the 1940 Act as an open-end management investment company (File No. 811–07451). AIM Variable Insurance Funds, Inc. is a series investment company that is currently composed of nine investment portfolios: AIM V.I. Capital Appreciation Fund, AIM V.I. Diversified Income Fund, AIM V.I. Global Utilities Fund, AIM V.I. Government Securities Fund, AIM V.I. Growth Fund, AIM V.I. Growth and Income Fund, AIM V.I. International Equity Fund, AIM V.I. Money Market Fund and AIM V.I. Value Fund. AIM Advisors, Inc. is the investment adviser of AIM Variable Insurance Funds, Inc.

11. The AIM V.I. Government Securities Fund seeks a high level of current income consistent with reasonable concern for safety of principal by investing in debt securities issued, guaranteed or otherwise backed by the United States government. The AIM V.I. International Equity Fund seeks long-term growth of capital by investing in a diversified portfolio of international equity securities the issuers of which are considered by AIM Advisors, Inc. to have strong earnings momentum.

12. The following charts provide size, expense and performance information for the AIM V.I. Government Securities Fund, the Fidelity VIP Growth Portfolio, the Fidelity VIP Equity-Income Portfolio and the AIM V.I. International Equity Fund (collectively, the ''Substitute Funds'').

Substitute funds	Net assets at year-end (in millions) [1]	Expense ratio (percent) [2]
AIM V.I Government Securities Fund:		
1995	$19.50	1.19

Substitute funds	Net assets at year-end (in millions) [1]	Expense ratio (percent) [2]
1996	22.90	0.90
Fidelity VIP Growth Portfolio:		
1995	4,158.80	0.70
1996	5,777.40	0.67
Fidelity VIP Equity-Income Portfolio:		
1995	4,869.80	0.61
1996	6,352	0.55
AIM V.I. International Equity Fund:		
1995	82.30	1.15
1996	143.30	0.97

[1] Net assets for 1996 are as of September 30, 1996.

[2] Expense ratios for 1996 are for the nine-month period ended September 30, 1996 and have been annualized. The expense ratios for 1996 are unaudited.

Substitute funds	Standard total return		
	Inception of fund through 9/30/96[1] (percent)	1996[2] (percent)	1995[3] (percent)
AIM V.I. Government Securities Fund	4.18	–0.20	15.56
Fidelity VIP Growth Portfolio	14.98	5.93	35.36
Fidelity VIP Equity-Income Portfolio	13.05	3.12	35.09
AIM V.I. International Equity Fund	13.80	13.25	17.24

[1] Total returns for the period from inception through September 30, 1996 for the Substitute Funds have been annualized.
[2] Total returns for 1996 are for the nine-month period ended September 30, 1996 and have not been annualized.
[3] Total returns for 1995 are for the twelve-month period ended December 31, 1995.

13. Each Substitute Fund is substantially larger than its counterparts among the Removed Funds and also has lower expense ratios and has either outperformed or performed comparably relaitve to the corresponding Removed Fund.

14. The management fees of each Substitute Fund are comparable to those of each Removed Fund. Each Removed Fund pays a monthly management fee based on its average daily net assets at the following annual rates: U.S. Government Fund, 0.40%; Equity Fund, 0.50%; Balanced Fund, 0.40%; and International Equity Fund, 1.00%. By contrast, each Substitute Fund pays a monthly management fee based on its average daily net assets at the following annual rates as of December 31, 1995, as follows: AIM V.I. Government Securities Fund, 0.50%; Fidelity VIP Growth Portfolio, 0.61%; Fidelity VIP Equity-Income Portfolio, 0.51%; and AIM V.I. Internaitonal Equity Fund, 0.75%.[1]

15. Citicorp Life and First Citicorp Life have both determined that the small size and high expense ratio of the Removed Funds compared to the Substitute Funds cause the Removed Funds to be good candidates for consolidaiton with the Substitute Fudss.

16. Applicants propose that Citicorp Life and First Citicorp Life substitute: (1) shares of the AIM V.I. Government Securities Fund for shares of the Landmark VIP U.S. Government Fund: (2) shares of the Fidelity VIP Growth Portfolio for shares of the Landmark VIP Equity Fund; (3) shares of the Fidelity VIP Equity-Income Portfolio for shares of the Landmark VIP Balanced Fund; and (4) shares of the AIM V.I. International Equity Fund for shares of the Landmark VIP International Equity Fund held by corresponding subaccounts of the Accounts (the ''Proposed Substitution''). Applicants propose to have Citicorp Life and First Citicorp Life redeem shares of each Removed Fund in cash and purchase with the proceeds shares of the Substitute Fund identified above.

17. The Proposed Substitution will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the Proposed Substitution nor will their rights or Citicorp Life's or First Citicorp Life's obligations under the Contracts be altered in any way. All expenses incurred in connection with the Proposed Substitution, including legal, accounting and other fees and expenses, will be paid by Citicorp Life or First Citicorp Life. In addition, the Proposed Substitution will not result in the impositions of any tax liability on Contract owners. The Proposed Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Proposed Substitution than before the Proposed Substitution. The Proposed Substitution will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract Year. Citicorp Life and First Citicorp Life will not exercise any right either may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the Proposed Substitution.

18. By supplements to the prospectuses for the Contracts and the Accounts dated December 5, 1996, all owners and prospective owners of the Contracts were notified of Citicorp Life's and First Citicorp Life's intention to take the necessary actions, including seeking the order requested by the Applicants.

19. In addition to the prospectus supplements distributed to owners and prospective owners of Contracts, within 5 days after the Proposed Substitution, any owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all cash value

[1] Fidelity VIP also pays a group fee rate based on the average net assets of all mutual funds advised by Fidelity Management & Research Company. The management fee rate presented for the Fidelity VIP Growth Portfolio and Fidelity VIP Equity-Income Portfolio includes the group fee rate.

under a Contract invested in any one of the affected subaccounts to another subaccount(s) until 30 days after the substitution without that transfer counting as one of a limited number of transfers permitted in a Contract year free of charge.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states:

It shall be unlawful or any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the Proposed Substitution appears to involve a substitution of securities within the meaning of Section 26(b) of the 1940 Act and request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act approving the Proposed Substitution.

3. The Contracts all provide to Citicorp Life or First Citicorp Life the right, subject to Commission approval, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of the relevant Account. Applicants assert that the prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

4. The Proposed Substitution would effectively consolidate the assets of each Substitute Fund with those of the corresponding Removed Fund resulting, in all cases, in a fund with lower future expense ratios than the past expense ratios of the Removed Fund.

Each of the Substitute Funds is substantially larger than the Removed Fund that is would replace. Each Substitute Fund has also had more favorable expense ratios over the last two years than the Removed Fund it would replace. Moreover, as of January 31, 1997, the Removed Funds were no longer available or new investment, and most likely will experience the net redemption of their shares. Applicants assert that, therefore, it is highly likely that in the near future each Removed Fund's asset base will decrease and, accordingly, each Removed Fund's expense ratio will increase.

5. Each Substitute Fund has performed favorably over the past two years and since its inception in comparison to the Removed Fund that it would replace. Applicants therefore anticipate that, after the Proposed Substitution, the Substitute Funds will provide Contract owners with more favorable or comparable overall investment results than would be the case if the Proposed Substitution do not take place.

6. Each of the Substitute Funds is a suitable and appropriate investment vehicle for Contract owners. Each of the Substitute Funds has substantially identical investment objectives to the Removed Fund that it would replace.

7. Applicants generally submit that the Proposed Substitution meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past.

Conclusion

Applicants submit that, for the reasons summarized above, the Proposed Substitution are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7044 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22565; 811–8156]

The Global Privatization Fund, Inc.; Notice of Application

March 14, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Global Privatization Fund, Inc.

RELEVANT ACT SECTION: 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 26, 1996 and was amended on February 6, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 8, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572 (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 a closed-end management investment company that is organized as a corporation under the laws of Maryland. Applicant registered under the Act and filed a registration statement on Form N–2 on November 16, 1993. Applicant's registration statement was declared effective on February 18, 1994, and applicant commenced a public offering of its shares shortly thereafter.

2. On June 27, 1995, applicant's board of directors considered and approved a sale of substantially all of the assets and liabilities of applicant to the Alliance Worldwide Privatization Fund, Inc. (the ''Acquiring Fund''), a registered open-end investment company. The board of directors 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] In determining that applicant should enter into the reorganization, the directors considered, among other things, the investment objectives and policies of applicant and the Acquiring Fund.

[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.

3. On July 31, 1995, a proxy statement was filed with the SEC and applicant mailed proxy materials to its shareholders approximately a month later. On October 10, 1995, applicant's shareholders approved the reorganization.

4. On October 27, 1995, applicant transferred its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. Applicant's net asset on October 27, 1995, equaled $1,057,273,286, or $14.06 per share. The shares of the Acquiring Fund received by applicant were distributed to applicant's shareholders based on the relative net asset values per share of the two funds. No brokerage fees were paid in connection with the reorganization.

5. Expenses of approximately $500,000 incurred in connection with the reorganization were paid by applicant. The expenses consisted of legal fees of approximately $331,000, printing costs of approximately $150,000, taxes of approximately $7,000, accounting costs of approximately $5,000, and miscellaneous costs of approximately $7,000. Applicant states that legal and printing costs similar to those actually incurred would have been borne by applicant had the reorganization not occurred as applicant had a policy that, under prevailing market conditions, likely would have required applicant to make a tender offer for some or all of its shares.

6. Applicant states that subsequent to the filing of the Form N–8F, it will file articles of dissolution with the State of Maryland to terminate applicant's legal existence.

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.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7049 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Hungarian Teleconstruct Corp., Common Stock, $.001 Par Value) File No. 1–12000

March 14, 1997.

Hungarian Teleconstruct Corp. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reason alleged in the application for withdrawing the Security from listing and registration include the following:

The Company has been listed on the NASDAQ SmallCap Market since July 29, 1993. The Company cannot justify the expense of being listed on two exchanges, NASDAQ and the BSE, and thereby wishes to withdraw from the BSE.

Any interested person may, on or before April 4, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7052 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Natural Alternatives International, Inc., Common Stock, $.01 Par Value) File No. 1–11548

March 14, 1997.

Natural Alternatives International, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors (the ''Board'') unanimously approved a resolution on September 20, 1996 to withdraw the Security from listing on the Amex and, instead, to list such Security on the National Association of Securities Dealers Automated Quotation National Market System (''Nasdaq/NMS''). The decision of the Board on this matter followed a lengthy study of the matter, and was based upon the belief that the listing of the Security on the Nasdaq/NMS will be more beneficial to its stockholders than the present listing on the Amex because the services and accessibility of the Nasdaq stock market to the Corporation's present shareholders and future investors is a more effective and efficient marketplace for such shareholders and future investors.

Any interested person may, on or before April 4, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7053 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22561; 812–10282]

The Park Avenue Portfolio, et al.; Notice of Application

March 13, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Park Avenue Portfolio (the ''Portfolio''), on behalf of itself and its six existing series, The Guardian Asset Allocation Fund (the ''Asset Allocation Fund''), The Guardian Park Avenue Fund (the Park Avenue Fund''), the Guardian Investment Quality Bond Fund (the ''Bond Fund''), The Guardian Baillie Gifford International Fund (the ''International Fund''), the Guardian Tax-Exempt Fund (the ''Tax-Exempt Fund'') and The Guardian Cash Management Fund (the ''Cash Fund''), and any series of the Portfolio hereafter established, and Guardian Baillie Gifford Limited (''GBG'') and Guardian Investor Services Corporation (''GISC''), each on behalf of itself and each open-end management investment company or series thereof organized in the future (any such fund or series, together with any series of the Portfolio hereafter established, collectively, ''Future Funds'') which is a member of the same ''group of investment companies'' as that term is defined in rule 11a–3 under the Act, as the Portfolio, or as other investment companies for which GISC or GBG serve as investment advisers.

RELEVANT ACT SECTIONS: Order requested under section 12(d)(1)(J) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: The order would permit the Asset Allocation Fund, a series of the Portfolio, to purchase shares of affiliated open-end investment companies in excess of the percentage limitations of section 12(d)(1).

FILING DATES: The application was filed on July 26, 1996 and amended on December 26, 1996 and February 20, 1997.

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 April 7, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 201 Park Avenue South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Mercer E. Bullard, 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.

Applicants' Representations

1. The Portfolio, organized as a Massachusetts business trust, is an open-end management investment company registered under the Act. Its shares are registered under the 1933 Act. The Portfolio consists of six series. The five series other than Asset Allocation Fund, together with any Future Funds, will be the Underlying Funds (the ''Underlying Funds''), although the Asset Allocation Fund does not currently intend to invest in the International Fund or the Tax-Exempt Fund. The Asset Allocation Fund, the Park Avenue Fund, the International Fund and the Cash Fund offer two classes of shares, Class A and Class B. The Bond Fund and the Tax-Exempt Fund offer Class A shares only. Class A shares are sold subject to a front end sales charge (except for shares of the Cash Fund, which are sold at net asset value), which may be waived or reduced in certain circumstances. Class B shares do not have a front end sales charge but may be subject to a contingent deferred sales charge when such shares are redeemed within six years after purchase. Class B shares are subject to a distribution plan adopted by the Portfolio pursuant to rule 12b–1 under the Act.[1]

2. Since its inception in 1993, the Asset Allocation Fund has attempted to provide investors with the opportunity to invest in both the equity an fixed-income markets through a single fund. The Asset Allocation Fund seeks long-term total investment return consistent with moderate investment risk. In furtherance of its objective, the Asset Allocation Fund uses theoretical models to allocate its assets in a combination of: (i) U.S. equity securities and convertible securities; (ii) fixed-income securities, including investment grade corporate debt securities, U.S. government securities and mortage-backed securities, and (iii) money market instruments. The Asset Allocation Fund may use financial futures contracts and options on securities and securities indices to facilitate the reallocation of the Fund's assets among the various sectors. Each portion of the Asset Allocation Fund's investments is separately and actively managed, and consists of the same types of securities as those acquired for the Park Avenue Fund, the Bond Fund and the Cash Fund. The equity and the money market portions of the Asset Allocation Funds portfolio are currently managed by the same portfolio managers who oversee the Park Avenue Fund and the Cash Fund, respectively.

3. GISC, a New York corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), and serves as investment adviser to all of the Portfolio's Funds except the International Fund. GISC is wholly owned by the Guardian Insurance & Annuity Company, Inc. (''GIAC''), which in turn is wholly owned by The Guardian Life Insurance Company of America, a mutual life insurance company organized in the State of New York. The International Fund is managed by GBG, a registered investment adviser under the Advisers Act organized as a joint venture between Baillie Gifford Overseas Limited (''BG Overseas'') and GIAC. GBG has appointed BG Overseas to act as sub-investment adviser to the International Fund. BG overseas is a registered investment adviser under the Advisers Act. For its services as investment adviser, each Fund currently pays GISC (other than the International Fund, which pays its fee to GBG) an advisory fee.

4. Pursuant to an administrative services agreement between GISC and the Portfolio, GISC provides information and administrative services for each Fund. For these services, each Fund pays GISC a fee at the annual rate of 0.25% of the average daily net assets of that Fund's assets, except that the Park Avenue Fund pays the fee at the annual rate of 0.25% of average daily net assets for which a ''dealer of record'' has been designated. Under the proposed arrangements, the administrative service fee will be paid at the Underlying Fund level to the extent that the Asset allocation Fund's assets are invested in Underlying Funds, and at the Asset Allocation Fund level for the portion of assets, if any, invested in individual securities. The aggregate amount of the administrative services fees will not change, since the Asset Allocation Fund's shareholders will bear only their *pro rata* portion of the Underlying Funds' fees as well as the fee assessed

[1] The Portfolio previously adopted a distribution plan under rule 12b–1 with respect to Class A shares. As of May 1, 1996, this plan was made dormant and no fees are currently, nor are they anticipated to be, authorized to be paid by the Class A shares pursuant to such plan.

on any portion of the Asset Allocation Fund's assets invested in individual securities.

5. Applicants request relief from the limitations of section 12(d)(1) to the extent necessary to permit the Asset Allocation Fund, and any Future Fund that will be part of the same ''group of investment companies'' (as that term is defined in rule 11a–3 under the Act) as the Portfolio, or as other investment companies for which GISC or GBG serve as investment advisers, to purchase, and the Underlying Funds to sell, shares of the Underlying Funds in excess of the limits of section 12(d)(1).

6. Applicants anticipate that the Asset Allocation Fund will purchase shares of the Park Avenue Fund and the Bond Fund, as well as individual securities, including but not limited to money market instruments and certain futures and options currently used in reallocating the Asset Allocation Fund's investments. The Asset Allocation Fund may invest from time to time in the Cash Fund in lieu of individual money market instruments. The Asset Allocation Fund will invest in other investment companies only to the extent contemplated by the requested relief.

7. At the time the Asset Allocation Fund commences to act as a fund of funds, and thereafter to adjust the allocation of its assets among the Underlying Funds in instances where futures and options transactions will not effectively facilitate shifts in allocation, the Asset Allocation Fund may transfer securities held in its portfolio, as well as cash, to an Underlying Fund in return for shares of the Underlying Fund. In addition, the Underlying Funds may from time to time pay the Asset Allocation Fund its *pro rata* share of the Underlying Fund's portfolio securities, as well as cash. These in-kind payments will be made only in circumstances where the in-kind transfers will consist of securities that are appropriate for the receiving entity. Any in-kind transfers between the Asset Allocation Fund and an Underlying Fund, either as payment by the Asset Allocation Fund for purchases of shares of an Underlying Fund, or as payment by an Underlying Fund of redemption proceeds to the Asset Allocation Fund, would be made in compliance with the provisions of rule 17a–7 under the Act, except in two respects. First, the requirements of rule 17a–7(a) that payment for the securities transferred be made in cash will not be met where an Underlying Fund pays the Asset Allocation Fund in its own shares, rather than in cash, for the securities transferred by the Asset Allocation Fund. Second, due to the fluctuating asset levels of the Asset Allocation Fund and the Underlying Funds, an affiliate or second tier affiliate of a Fund that provided the original seed capital for such Fund may, from time to time, hold more than 5% of the Fund's outstanding voting shares, and, as a result, it is possible that an in-kind transaction would not meet the requirement of rule 17a–7 that exempt transactions must be effected between persons affiliated ''solely by reason of having a common investment adviser * * *, common directors, and/or common officers.''

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) provides that the SEC may exempt any person, security, or transaction from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants submit that the requested exemption is consistent with the public interest and the protection of investors.

3. Applicants believe that section 12(d)(1) of the Act is intended to prevent unregulated pyramiding of investment companies and the abuses which are perceived to arise from such pyramiding, including layering of advisory fees and duplicative sales charges, the threat of large scale redemptions, and the complexity of the investment vehicle.

4. Applicants believe that no ''layering'' of advisory fees will result from the proposed structure. While GISC will reserve the right to charge an asset allocation fee of up to .15% annually, it intends to voluntarily waive the entire amount of this fee during any period in which the Asset Allocation Fund is operated as a fund of funds. If any or all of this fee is charged in the future, it will be imposed only if GISC determines that the fee will be justified by the incremental benefits, not otherwise available, of the ongoing profession asset allocation service that GISC provides for investors choosing to invest in the Asset Allocation Fund rather than in specific Underlying Funds. Further, the trustees of the Portfolio, including a majority of the trustees who are not ''interested persons'' of the Portfolio, as defined in section 1(a)(19) of the Act (the ''Independent Trustees''), must, in approving the advisory arrangements of the Asset Allocation Fund, find that any allocation or advisory fee is based on services in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract.

5. Applicants assert that investors in the Asset Allocation Fund will not incur duplicative sales charges or distribution expenses because the Asset Allocation Fund will invest exclusively in Class A shares of the Underlying Funds, with a waiver of any applicable front end sales load. Applicants further contend that since Class A shares do not bear any rule 12b–1 fees, there will be no duplication of rule 12b–1 fees applicable for Class B shares of the Asset Allocation Fund. Applicants note that, in any event, the aggregate sales charges and distribution expenses borne by investors in the Asset Allocation Fund will comply in all respects with rule 2830 of the NASD's Conduct Rules.

6. Applicants also assert that the Asset Allocation Fund's shareholders will bear a reduced amount of portfolio transaction costs under a fund of funds structure. By investing in the Underlying Funds, applicants believe that shareholders will be able to take advantage of reduced brokerage and other transaction costs associated with investment in individual securities, except to the extent that the Asset Allocation Fund continues to invest in small lots of individual securities. Although shareholders will be subject to their proportionate share of the transaction costs at the Underlying Fund level, applicants assert that such costs will reflect the generally lower costs associated with trading larger blocks of securities and are expected to reduce such costs for shareholders of the Asset Allocation Fund.

7. Applicants believe that a concern underlying section 12(d)(1) is that, if one fund is permitted to own a sizeable percentage of the shares of another fund, the management of the underlying fund must be continually aware that a possible large redemption carries with it a loss of advisory fees. Applicants believe that concern over this potential abuse is not relevant to the proposed

arrangements. Applicants assert that there is little risk that GISC will exercise inappropriate control over the Underlying Funds. Applicants note that the Asset Allocation Fund only will acquire shares of Underlying Funds that are members of the same group of investment companies. Applicants also believe that, because GISC or GBG is investment adviser to the Underlying Funds as well as to the Asset Allocation Fund, a redemption from one Underlying Fund will simply lead to the investment of the proceeds in another Underlying Fund.

8. Applicants believe that another concern underlying section 12(d)(1) is the impact that the threat of large scale redemptions might have on the orderly management of an underlying fund. Applicants believe that, for example, to address the threat of large scale redemptions, the underlying fund might be required to maintain excessive cash balances, and if it did not, it might have to sell off a substantial portion of its assets, thereby saddling the fund's remaining shareholders with capital gains and a greater *pro rata* portion of fixed costs. Applicants believe that the Asset Allocation Fund will be structured in a manner to minimize and essentially eliminate these types of problems. Applicants contend that, because investors will rely on GISC to periodically readjust the mix of equity and debt exposure, the Asset Allocation Fund is not likely to be used as a short-term trading vehicle. Applicants state that, to attempt to minimize the impact on shifts among the Underlying Funds, the Asset Allocation Fund will continue to be permitted to engage in futures contracts and options on securities and securities indices to facilitate an orderly adjustment in allocation of the Funds' assets. Applicants believe that this policy allows the Asset Allocation Fund to respond to changes in market conditions, and would serve to minimize any effects of a shift in its allocation among the Underlying Funds.

9. Applicants state that, to address the concern that the popularity of funds of funds could lead to the creation of more complex vehicles that would not serve any meaningful purpose, and as a condition to the requested relief, no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A).

10. Applicants state that the Asset Allocation Fund will provide true diversification benefits since the Underlying Funds will pursue different investment strategies. Moreover, the Asset Allocation Fund will provide greater diversification in the actual number and type of securities in its portfolio by investing in the Park Avenue Fund and the Bond Fund than it would have provided under its current structure.

11. Section 17(a) generally makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Applicants state that, because the Asset Allocation Fund and the Underlying Funds are each advised by GISC or GBG, the Asset Allocation Fund and the Underlying Funds could be deemed to be affiliates of one another. Applicants believe that purchases by the Asset Allocation Fund of the shares to the Underlying Funds and the sale by the Underlying Funds of their shares of the Asset Allocation Fund could be deemed to be principal transactions between affiliated persons under section 17(a).

12. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit purchases and redemptions by the Asset Allocation Fund of shares of the Underlying Funds and the sales by the Underlying Funds of their shares to the Asset Allocation Fund.

13. Applicants believe that the proposed arrangements meet all of the qualifications necessary for exemption under sections 6(c) and 17(b). The consideration to be paid and received for the sale and redemption of shares of Underlying Funds will be based on the net asset value of Class A shares of such Funds. Applicants state that the proposed transactions will be consistent with the policies of each of the Asset Allocation Fund and the Underlying Funds as set forth in their combined prospectus and statement of additional information contained in the Portfolio's registration statement.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Asset Allocation Fund and each Underlying Fund will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

2. No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Before approving any advisory contract under section 15 of the Act, the Board of Trustees of the Portfolio, including a majority of Trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocation Fund.

4. Any sales charges or services fees charged with respect to securities of the Asset Allocation Fund, when aggregated with any sales charge or service fees paid by the Asset Allocation Fund with respect to securities of the Underlying Funds, shall not exceed the limits set forth in rule 2830 of the NASD's Conduct Rules.

5. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the Commission's Division of Investment Management: monthly average total assets for the Asset Allocation Fund and each of the Underlying funds; monthly purchases and redemptions (other than by exchange) for the Asset Allocation Fund and each Underlying Fund; monthly exchanges into and out of the Asset Allocation Fund and each Underlying Fund; month-end allocations of the Asset Allocation Fund's assets among the Underlying Funds; annual expense ratios for the Asset Allocation Fund and each Underlying Fund; and a description of any vote taken by the shareholders of any Underlying Fund, including a statement of the percentage of votes cast for and against the proposal by the Asset Allocation Fund and by the other shareholders of the Underlying Fund. Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Asset Allocation Fund (unless the Chief Financial Analyst shall notify the Asset Allocation Fund, the Portfolio or GISC in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–6969 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22562; 811–8072]

Provident Institutional Funds, Inc.; Notice of Application

March 13, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Provident Institutional Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 23, 1996 and amended on March 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 7, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Bellevue Park Corporate Center, 400 Bellevue Parkway, Wilmington, Delaware 19809.

FOR FURTHER INFORMATION CONTACT: Shirley A. Bodden, Paralegal Specialist, at (202) 942–0575, or Mercer E. Bullard, 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 at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company organized as a Maryland corporation. Applicant is the successor by merger to Piper Trust Funds, Inc. On October 8, 1993, applicant registered under the Act by filing a notification of registration on Form N–8A. On the same date, applicant filed a registration statement under the Act and under the Securities Act of 1933. The registration statement became effective on February 9, 1994, and applicant commenced a public offering of each of its two classes of shares—the Short Duration Fund and the Intermediate Duration Fund (''Funds'')—on the same date.

2. On February 2, 1996, applicant's board of directors authorized that, upon the redemption of all of the outstanding shares of each Fund, appropriate officers are to take all actions necessary to effect the deregistration of the Applicant and its shares under the Act and the Securities Act of 1933. Applicant states that the Funds were liquidated because the sole shareholder of each Fund had expressed a desire to redeem its investment, because neither the Short Duration Fund nor the Intermediate Duration Fund had been able to increase its assets to a significant amount.

3. On June 21, 1996, each Fund's sole shareholder gave notice that each wished to redeem its shares. On that date, the Short Duration Fund and the Intermediate Duration Fund had assets equal to $77,786,018 and $18,978,542 with net asset values per share of $9.72 and $9.49, respectively. On June 24, 1996, all of the assets of the Funds were distributed in kind at net asset value to each Fund's sole shareholder.

4. In connection with the liquidation, applicant has incurred certain expenses such as professional fees, fees to the administrator, transfer agent and custodian, filing fees and expenses associated with the winding up of applicant's affairs. The expenses incurred by the Short Duration Fund and the Intermediate Duration Fund were approximately $84,987 and $24,026, respectively. These expenses were borne by the Funds. No brokerage commissions were paid in connection with the liquidation. The unamortized organizational expenses of each Fund were borne by its investment adviser, PNC Institutional Management Corporation.

5. Applicant has no assets, securityholders, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. 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. Applicant intends to file the necessary documentation with the State of Maryland to effect its dissolution as a Maryland corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–6970 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26686]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 14, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 7, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southern California Water Company (70–9013)

Southern California Water Company (''SCWC''), 630 East Foothill Boulevard, San Dimas, California 91773, an electric utility company, has filed an application seeking an exemptive order under section 3(a)(1) of the Act. SCWC seeks the requested exemption, from all

provisions of the Act except section 9(a)(2), for a holding company (''Newco'') that will result from a planned reorganization of SCWC's operations.[1]

SCWC is engaged in the business of providing water service to approximately 241,000 consumers in 75 California communities, and providing electric service to approximately 20,500 consumers (most of whom are residential customers) in one California community.[2] The California Public Utilities Commission (''CPUC'') regulates both the water and the electric distribution business of SCWC.[3] SCWC states that it has one subsidiary, California Cities Water Company, that engages in unregulated businesses and generated a nominal amount of revenues in 1996.

SCWC provides its electric service through its Bear Valley Electric District (''Bear Valley''), which owns no generating capacity and purchases its energy supply from various suppliers. Bulk power is delivered to Bear Valley's distribution system through two transmission lines owned by Southern California Edison Company.

SCWC states that it plans to reorganize into a holding company structure to facilitate its expansion into a variety of unregulated businesses related to its current activities as a regulated water utility while protecting the interests of its ratepayers. After the planned reorganization, Newco will be a holding company with at least two subsidiaries: one subsidiary will engage in the water and electric distribution businesses that are regulated by the CPUC (''Regulated Subsidiary''), and one or more other subsidiaries will engage in unregulated businesses, including businesses related to the regulated water business.

SCWC states that Newco and the Regulated Subsidiary will be incorporated in California, and that the Regulated Subsidiary will be incorporated in California, and that the Regulated Subsidiary's operations will be confined to California. Newco may also form one or more other subsidiaries to acquire and operate other regulated water utility businesses outside of California.

The Regulated Subsidiary will be a ''public utility company'' under section 2(a)(5) of the Act, and Newco will be a holding company as defined in section 2(a)(7)(A) of the Act, and as such, subject to regulation under the Act unless in exemption is obtained.

SCWC states that, upon consummation of the contemplated reorganization, Newco will qualify for an exemption under section 3(a)(1) of the Act because Newco and every public utility subsidiary of Newco from which Newco derives, directly or indirectly, any material part of its income, will be predominantly intrastate in character and carry on their business substantially in a single State in which Newco and every such subsidiary company will be organized.

SCWC also asserts that the granting of such an exemption will not be detrimental to the public interest or the interest of investors or consumers. In this regard, SCWC notes, among other things, that the proposed reorganization requires the express approval of the CPUC and that, following the reorganization requires the express approval of the CPUC and that, following the reorganization, the Regulated Subsidiary and its dealings with Newco and other Newco subsidiaries will be subject to comprehensive regulatory oversight by the CPUC (see note 3, above). SCWC also states that Newco's corporate structure will protect ratepayers by segregating Newco's state-regulated utility operations from its other business activities thereby insulating the Regulated Subsidiary from the risks of the non-regulated businesses and enhancing the CPUC's ability to ensure that there is no cross-subsidization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7045 Filed 3–19–97; 8:45 am]

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[1] Newco has not yet been incorporated. SCWC states that it will inform the Commission of Newco's corporate name in its rule 24 certificate.

[2] In 1996, SCWC derived more than 92 percent of its revenues (about $139.9 million) from water sales and less than 8 percent (about $11.5 million) from electric sales. Approximately 7 percent of SCWC's assets are devoted to its electric business.

[3] Applicant notes that the scope of CPUC's regulation is comprehensive including jurisdiction over rates, accounting practices, purchases and dispositions of utility property, extensions of service, acquisitions of other utility and nonutility companies, interaffiliate transactions, securities issuances and corporate reorganizations (including formation of utility holding companies), and access to the books and records of the affiliates of utilities as well as the books and records of the utilities themselves for purposes of monitoring interaffiliate transactions.

[Release No. 34–38397; File No. SR–CHX–97–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating To Amending the Exchange's SRO Fee To Provide for an Exemption for Certain Inactive Members

March 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 18, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section (q) of its Membership Dues and Fees Schedule to provide for an exemption from the Exchange's SRO fee for certain members. Below is the text of the proposed rule change. Proposed new language is italicized.

Chicago Stock Exchange, Incorporated Membership Dues and Fees.

(q) Self-Regulatory Organization Fee,[1] $100 per member and member organization per month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] This fee shall not be applicable to inactive organizations. An inactive organization is one which has no securities transaction revenue, as determined by annual FOCUS reports, as long as the organization continues to have no such revenue each month.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an exemption from the Exchange's SRO fee for certain members. The Exchange's SRO fee applies to members and members organizations and helps recoup costs incurred by the Exchange in performing its self-regulatory function. The Exchange proposes to exempt inactive organizations [2] from this fee because the Exchange does not incur any significant costs for regulating these firms.

An inactive organization is defined as an organization that has no securities transaction revenue, as initially determined by its most recent annual FOCUS report, so long as the organization continues to have no such revenue each month.[3] For inactive organizations which do not file FOCUS reports with the Exchange, such as when the CHX is not the Designated Examining Authority for the firm, each organization must still make such filings with the Exchange to support its contention that it is an inactive organization. If appropriate documentation is not received from the organization, the Exchange will impose the SRO fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [4] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [5] and subparagraph (e)(2) of Rule 19b–4 [6] thereunder, in that the proposal establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–05 and should be submitted by April 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7055 Filed 3–19–97; 8:45 am]

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[2] The Commission notes that the phrase ''inactive organizations'' includes both inactive members and inactive member organizations that meet the definition of ''inactive organization'' as noted in footnote number 1. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and Heather Seidel, Attorney, Market Regulation, Commission, on March 7, 1997.

[3] This definition of ''inactive organization'' is the same as the definition for the ''inactive organization'' exemption from the Exchange's examination fee, section (p) under the CHX Membership Dues and Fee Schedule. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and Heather Seidel, Attorney, Market Regulation, Commission, on March 7, 1997.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(2).

[Release No. 34–38402; File No. SR–NASD–97–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

March 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 7, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s (''Nasdaq'') periodic reclassification of Nasdaq National Market (''NNM'') securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System (''SOES''). Specifically, under the proposal, 692 NNM securities will be reclassified into a different SOES tier size effective April 1, 1997. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1)(1988).

[1] 17 CFR 240.19b–4 (1991).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of December 31, 1996, pursuant to the following established criteria: [3]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 692 NNM securities will be reclassified effective April 1, 1997. These 692 NNM securities are set out in the NASD's Notice To Members 97–17.[4]

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[5] Section 15A(b)(6) [6] requires, among other things, that the rules of the NASD governing the operation of Nasdaq be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reassignment of NNM securities within SOES tier size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately on March 7, 1997, pursuant to Section 19(b)(3)(A)(i) of the Act [7] and subparagraph (e) of Rule 19b–4 [8] thereunder, because the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administrative and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.[9]

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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–19 and should be submitted by April 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7048 Filed 3–19–97; 8:45 am]

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[3] The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[4] NASD To Members 97–17 (March 1997).

[5] 15 U.S.C. 78*o*(b)(6).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(e).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–38399; File No. SR–NASD–97–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Amendments to the Corporate Financing Rule, The Nasdaq Stock Market Rules, and Over-the-Counter Bulletin Board Rules to Effect Compliance With SEC Regulation M

March 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule and on March 10, 1997, the Association filed Amendment

No. 1. The proposed rule change and Amendment No. 1 are described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the Corporate Financing Rule in Rule 2710, the Nasdaq Rules, and the Over-the-Counter Bulletin Board Rules of the Association to effect compliance with the Commission's Regulation M. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2700. SECURITIES DISTRIBUTIONS

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1) through (10) No change.

(11) Request for Underwriting Activity Report

Nowithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject *security* or reference security that is subject to SEC Rule 101 shall submit a request to the Corporate Financing Department for an Underwriting Activity Report with respect to the subject and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related Rules of the Association. The request shall be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under SEC Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriter of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumed responsibility for compliance with this subparagraph. For purposes of [this] subparagraphs *(b) (11) and (12),* SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: ''distribution,'' ''distribution participant,'' ''reference security,'' ''restricted period,'' and ''subject security.''

(12) Submission of Pricing Information

A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (b)(11) of securities that are listed on a national securities exchange or are considered ''activity-traded'' under SEC Rule 101 shall provide written notice to the Market Regulation Department of NASD Regulation, Inc., no later than the close of business the day the offering terminates, that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated, which notice may be submitted on the Underwriting Activity Report.

(c) No change.

4600. NASDAQ MARKET MAKER REQUIREMENTS

4614. Stabilizing Bids

(a) No change.

(b) Eligibility

Only one market maker in a[n issue] *security* may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids—No change.

(d) Submission of Request to Association

(1) A market maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq Market Operations for the entry [in the] *on* Nasdaq [quotation display] of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the [end of] *close of business* the day [on which] the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq Market Operations that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq Market Operations that shall include:

(A) and (B)—No change.

(C) the date and time that an identifier should be included on [the] Nasdaq [quotation display]; and

(D) No change.

4619. Withdrawal of Quotations and Passive Market Making

(a)–(c) No change.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject *security* or reference security under SEC Rule 101 and any member that is a distribution participant or [that is] an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq Market Operations *and the Market Regulation Department of NASD Regulation, Inc.* no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (d)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant *(or an affiliated purchaser of a distribution participant)* that its quotations be identified as those of a passive market maker, and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each market maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq Market Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant *(or affiliated purchaser of a distribution participant)* notifies Nasdaq Market Operations as required by subparagraph (d)(2), below.

(2) A market maker that has been identified to Nasdaq Market Operations as a distribution participant *(or an affiliated purchaser of a distribution participant)* shall promptly notify Nasdaq Market Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having

its quotations withdrawn or identified as the quotations of a passive market maker [, or in order to have its excused withdrawal status rescinded].

(3) No change.

(4) No change.

(5) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (d)(1) of this rule shall submit a request to Nasdaq Market Operations and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request required by this subparagraph may be submitted on the Underwriting Activity Report.

4623. Penalty Bids and Syndicate Covering Transactions

(a) No change.

(b) No change.

(c) Notwithstanding paragraph (a), a market maker may request that its quotation be identified as a penalty bid on Nasdaq display by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identifier should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the [end of the day on which] *close of business the day* the penalty bid identifier is entered on Nasdaq.

(d) No change.

6500. OTC BULLETIN BOARD SERVICE

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries

(A)–(C) No change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject *security* or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) No change.

(ii) withdraw all quotations in the OTCBB-eligible security to comply with the applicable restricted period under SEC Rule 101 and not enter a stabilizing bid pursuant to SEC Rule 104 in the OTCBB; [and]

(iii) provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur and the amount of the syndicate short position[.] *; and*

(iv) provide written notice to the Market Regulation Department of NASD Regulation, Inc. by the close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

(E) The written notice required by subparagraphs (b)(1)(D)(i), [and] (iii) *, and (iv)* of this rule may be submitted on the Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, Inc. by including the information required by those subparagraphs.

(F) For purposes of subparagraph *(b)(1)*(D), SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: ''affiliated purchaser,'' ''distribution,'' ''distribution participant,'' ''penalty bid,'' ''reference security,'' ''restricted period,'' ''stabilizing,'' ''subject security,'' and ''syndicate covering transaction.''

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

1. Purpose

The SEC has approved, effective March 4, 1997, amendments to the NASD rules regarding Corporate Financing, The Nasdaq Stock Market, Inc. (''Nasdaq''), and the OTC Bulletin Board (''OTCBB'') that are designed to assist members in complying with SEC Regulation M that became effective on that date.[1] In general, the amendments to NASD rules establish a new requirement for members to obtain an Underwriting Activity Report from the Corporate Financing Department of NASD Regulation, Inc. (''NASD Regulation'') with respect to a proposed distribution subject to SEC Rule 101; modify current Nasdaq requirements with respect to the entry of a stabilizing or penalty bid and requests for excused withdrawal of quotations or designation of quotations as those of a passive market maker; and establish new requirements for notification with respect to penalty bids and syndicate covering transactions for Nasdaq and OTCBB securities.

The NASD is proposing to amend the rules approved by the SEC on March 4, 1997 to require that members provide notification to the Association of the date and time of the pricing of an offering, the offering price, and the time the offering terminated with respect to offerings of Nasdaq and OTCBB securities, exchange-listed securities, and securities considered ''actively-traded'' under SEC Rule 101 of Regulation M. In addition, the NASD is proposing to amend Rule 4619 of the Nasdaq rules to clarify the applicability of the provision to affiliated purchasers of a distribution participant. Other amendments are proposed to Rules 4614, 4623, 4619 and 6540 to make nonsubstantive corrections to the language of the rules.

The Nasdaq Rules. The NASD is proposing to amend subparagraph (d)(1) of Rule 4619 to require that the notice to be submitted by a member to request excused withdrawal or passive market making status on the part of distribution participants and affiliated purchasers should be directed to both Nasdaq Market Operations and the Market Regulation Department of NASD Regulation. Where the required notice is submitted electronically to the Association, it will automatically be received at both these locations. Hard copy submissions of the notice will be required to be faxed to both Departments.

Subparagraphs (d)(1) (A) and (B) of Rule 4619 are proposed to be amended to clarify that an affiliated purchaser of a distribution participant, as compared to an affiliated purchaser of the issuer, is permitted to engage in passive market

[1] Securities Exchange Act Release No. 38360 (March 4, 1997).

making. Where a market maker is an affiliated purchaser of the issuer only, the market maker will not be permitted to engage in passive market making under SEC Rule 103, as SEC Rule 102 does not include an exception for passive market making activity. However, a market maker that is affiliated with a distribution participant, *i.e.*, a member that is a distribution participant is affiliated with another non-participating market maker, can rely on the exception from SEC Rule 101 for passive market making.

The NASD is also proposing to adopt new subparagraph (d)(5) of Rule 4619 to require that the managing underwriter submit a request to Nasdaq Market Operations and the Market Regulation Department of NASD Regulation to terminate the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers. It is anticipated that the request will be by telephone to the staff of the Market Regulation Department and the provision requires that it be confirmed in writing by close of business on the day the offering is terminated. The request must include the date and time of the pricing of the offering, the offering price, and the time the offering terminated. The member may use an Underwriting Activity Report to submit its request.

Paragraph (c) of Rule 4623, relating to penalty bids and syndicate covering transactions, is proposed to be amended to make its language consistent with other provisions in requiring that the member's request for an identifier for a penalty bid be received no later than the close of business the day the penalty bid identifier is entered on Nasdaq.

OTCBB Rules. Moreover, the NASD is proposing similar requirements with respect to OTCBB securities. Proposed amended Rule 6540 will require that a member provide written notice to the Market Regulation Department of NASD Regulation by close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

Corporate Financing Rule. Similar to requirements proposed with respect to Nasdaq and OTCBB securities, the NASD is also proposing to amend Rule 2710(b) to add new subparagraph (12) to require that a member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (b)(11) of Rule 2710 of securities that are listed on a national securities exchange or are considered ''actively-traded'' under SEC Rule 101 adopted under SEC Regulation M, shall provide written notice to the Market Regulation Department of NASD Regulation by close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the distribution terminated. Actively-traded securities, *i.e.*, securities with an Average Daily Trading Volume (''ADTV'') of at least $1 million and a public float value of at least $150 million, are no longer subject to any restricted period under SEC Rule 101. Thus, in the normal course, the NASD is unlikely to receive any further information with respect to when the offering is priced and is terminated as the market makers participating in the offering need not submit a request for excused withdrawal or identification of quotations as those of a passive market maker under NASD Rule 4619. Information on the pricing of offerings of actively-traded securities is necessary, however, for the NASD to carry out its regulatory obligations to ensure compliance with the SEC's antifraud and antimanipulation rules and regulations and with the NASD's Free-Riding and Withholding Interpretation in IM–2110–1 and the directed commissions provision of Rule 2740. Similarly, such pricing information is necessary with respect to a distribution of securities listed on a national securities exchange in order to permit the NASD to carry out its regulatory obligations with respect to such offerings.

The provision applies to distributions of securities that are subject to new subparagraph (b)(11) that requires that a member acting as a manager (or in a similar capacity) of a distribution of securities subject to SEC Rule 101 submit a request to the Corporate Financing Department for an Underwriting Activity Report. If no member is acting as managing underwriter, each member that is a distribution participant or an affiliated purchaser is required to submit the request unless another member has assumed responsibility for compliance with the requirement. Proposed subparagraph (b)(12) provides that a member may use the Underwriting Activity Report to submit the required information on pricing to Market Regulation Department of NASD Regulation. In referencing the Underwriting Activity Report, the NASD includes under that umbrella different notification forms that may be used by members to submit information required by its rules to comply with SEC Regulation M. The Regulation M Trading Notification Form can be used by a member to submit the pricing information required by subparagraph (b)(12) to Rule 2710, subparagraph (d)(5) of Rule 4619 of the Nasdaq rules, and subparagraph (b)(1)(D)(iv) of Rule 6540 of the OTCBB rules to Nasdaq Market Operations.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act[2] in that the proposed rule change will enforce and facilitate compliance by NASD members with the Securities Exchange Act Rules, in addition to compliance with the rules of the Association. In addition, the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change to require that members submit pricing information with respect to distributions of securities not subject to a restricted period under SEC Rule 101, exchange-listed securities, and OTCBB securities will prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulations does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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. 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

[2] 15 U.S.C. 78*o*–3.

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD' proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. The Commission believes that the NASD's proposal is consistent with Section 15A(b)(6) of the Act in that the amendments to Nasdaq and OTCBB Rules, in addition to the establishment of a requirement to provide pricing information with respect to offerings of exchange-listed and ''actively-traded'' securities under SEC Rule 101, provide a regulatory framework that will assist members in complying with the obligations under Regulation M. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[3] that the proposed rule change be and hereby is approved. The proposed rule change is effective March 14, 1997, with the exception of the provisions of Rule 4623 and Rule 5460 that implement the notification requirements adopted under Regulation M Rule 104 with respect to penalty bids and syndicate covering transactions that will become effective on the date that the notification requirements under SEC Rule 104 become effective.

[3] 17 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7054 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38372; File No. SR–NYSE–97–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Allocation Policy and Procedures

March 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 21, 1997, as amended on March 3, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 by the self-regulatory organization.[2] 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 Exchange, pursuant to Rule 19b–4 of the Act, submits a proposed rule change amending the NYSE's Allocation Policy and Procedures. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed].

Allocation Policy and Procedures

* * * * *

Listing company input

[Listing on the New York Stock Exchange is a significant development for a company, and the assignment of a specialist to make a market in the company's shares via the allocation process is an important step. The listing company may wish to communicate its views for consideration by the Allocation Committee in selecting the best possible specialist for the company's stock.

The Allocation Committee will consider a letter from the listing company requesting specific units and/or specifying particular expertise in one or more aspects of the specialist's role. While specialist performance continues to be the most significant criterion, the committee will use its professional judgment in giving appropriate weight to all relevant factors, including company letters, to determine the selection of a specialist unit.

From time to time a listing company may choose to interview specialist units. The Exchange takes a neutral position on this practice and as such will neither arrange interviews nor recommend units to be interviewed.]

Listing on the New York Stock Exchange is a significant development for a company, and the assignment of a specialist through the allocation process is an important step. The Exchange's Allocation Policy is intended to provide listing companies with a choice of alternatives as to how their specialist unit may be selected. The listing company may choose to have its specialist unit selected by the Allocation Committee, in accordance with the criteria specified in the Allocation Policy, and the exercise of the Committee's expert professional judgment. Alternatively, the listing company may choose to become more directly involved in the selection process. In that case, the company may request that the Allocation Committee select specialist units that would be appropriate to trade the company's stock, with the company then making the final selection from among the group of units as chosen by the Allocation Committee. Such a group shall consist of three, four, or five units, selected by the Committee as demonstrably deemed to be the most qualified to receive such allocation from among the units that apply, based upon the criteria set forth in this policy. These procedures shall apply to the allocation of a newly-listing company, as well as the reallocation of an already listed company.

Specialist Unit Selected by Allocation Committee. If the listing company so chooses, the Allocation Committee shall select the specialist unit to be allocated the company's stock based on the Committee's expert assessment of the type of specialist unit that would be most appropriate for the company, and the Committee's professional evaluation of performance data and other relevant

[4] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1):

[2] On March 3, 1997, the NYSE filed Amendment No. 1 to its proposal. *See* letter from James E. Buck, Senior vice President and Secretary, NYSE, to Ivette López Assistant director, Division of Market Regulation, SEC, dated February 28, 1997. In Amendment No. 1, the NYSE withdrew certain proposed amendments to the following sections of the NYSE's Allocation Policy and Procedures: I. Purpose; III. Allocation Panel, composition; IV. Allocation Criteria; and V. Policy Notes. *Id.* The Exchange has filed a separate proposal under Section 19(b)(2) of the Act to amend the above-referenced items. *See* File No. SR–NYSE–97–06.

information as specified in the Allocation Policy. The listing company may submit a letter to the Allocation Committee describing the characteristics (e.g., trading philosophy, policies on maintaining communications with its listed companies, etc.) it believes would be appropriate for the unit that would be selected to trade its stock. The listing company may not, however, identify any particular specialist unit in its letter, or specify characteristics so unique as to be applicable only to a readily identifiable specialist unit.

Specialist Unit Selected by Listing Company. If the listing company so chooses, it may request that the Allocation Committee select specialist units that would be appropriate to trade the company's stock, with the company then making the final selection. If the listing company chooses this alternative, the company may either make no communication to the Allocation Committee, or it may submit a letter (as noted in the preceding paragraph) to the Committee describing the characteristics the company believes would be appropriate for the units to be selected by the Committee. The listing company may not, however, identify any particular specialist unit in its letter, or specify characteristics so unique as to be applicable only to a readily identifiable specialist unit.

Meetings Between Listing Company and Specialist Units. Within two business days after the selection of a group of specialist units as described above (unless the exchange has determined to permit a longer time period in a particular case), the listing company shall meet, either in person or by teleconference, with representatives of each of the specialist units. Meetings to be held in person shall normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. No more than three representatives of each specialist unit may participate in the meeting, each of whom must be employees of the specialist unit, and one of whom must be the individual who is proposed to trade the company's stock.

Listing Company's Selection of Specialist Unit. Within one business day following its meeting with representatives of the specialist units (or such longer time period as the Exchange may permit in a particular case), the listing company shall select its specialist unit in writing, signed by a senior official of the rank of Corporate Secretary or higher duly authorized to so act on behalf of the company. The Allocation Committee shall then confirm the allocation of the stock to that unit, at which time the stock shall be deemed to have been so allocated.

Allocation Applications. In their applications for the allocation of a listing company's stock, specialist units must describe all pertinent factors as to why they believe they should be allocated the stock. At a minimum, such factors should include a description of the unit's capital base; identity and experience of the individual proposed to trade the stock, with a description of other securities traded by that individual; and a discussion of why that individual is appropriate to trade the listing company's stock. If the listing company has submitted a letter to the Allocation Committee as permitted herein, a copy of such letter shall be made available to all specialist units. In their applications to be allocated the stock of such company, specialist units shall be expected to indicate how they meet the characteristics described in the company's letter. If, within six months of the date a newly-listed company begins trading on the Exchange (or a company which has been reallocated begins trading with its new unit), the specialist unit determines that the individual specialist who trades the company's stock should be an individual other than the one named in the allocation application, the specialist unit shall so inform the Allocation Committee, in writing, and disclose its reasons therefor. These letters shall be maintained in the permanent records of the Committee.

In addition, specialist units must describe in their applications to be allocated the stock of a listing company any contracts they, or any individual acting on their behalf, have had with any employee of that company, or any individual acting on behalf of that company with regard to its prospective listing on the Exchange, within six months prior to the date that allocation applications are solicited with respect to that company.

* * * * *

Blanket applications

[A]*All* specialist units [may also] *shall be deemed to have* filed with the Exchange a blanket application pursuant to which the applicant agrees to accept the allocation of any security. Any security allocated to a specialist unit on the basis of its blanket application shall not be reflected in the records of the Exchange as a ''security gained'' not shall it prejudice that unit's eligibility for future allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of the Exchange's Allocation Policy and Procedures is: (1) to ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for onging enhancement of performance by specialist units; (3) to provide the best possible match between a specialist unit and a security; and (4) to contribute to the strength of the specialist system.

In September 1987, the Quality of Markets Committee (''QOMC'') appointed the first Allocation Review Committee (''ARC'') to undertake a comprehensive review of the Exchange's then-existing allocation procedures which had been in effect since 1976. ARC's recommendations were filed with the SEC in 1988 and approved in 1990.[3] In April 1991, the QOMC determined that the Allocation Policy and Procedures should be re-examined and appointed a new committee, ARC II, to do so. The Committee's recommendations were subsequently filed with the Commission, and approved in 1993 as a one-year pilot.[4] In August 1994, the Exchange filed for and subsequently received permanent approval of that pilot.[5] In accordance with the Exchange's commitment to preserve the integrity of the existing allocation system while refining the allocation policy as necessary, ARC III

[3] Securities Exchange Act Release No. 27803 (Mar. 14, 1990), 55 FR 10740 (Mar. 22, 1990) (order approving File No. SR–NYSE–88–32).

[4] Securities Exchange Act Release No. 33121 (Oct. 29, 1993), 58 FR 59085 (Nov. 5, 1993) (order approving File No. SR–NYSE–92–15).

[5] Securities Exchange Act Release No. 34906 (Oct. 27, 1994), 59 FR 55142 (Nov. 3, 1994) (order approving File No. SR–NYSE–94–30).

convened in November 1993. The Committee's recommendations were filed with the Commission, and approved in September 1994.[6] In December 1995, the QOMC appointed ARC IV to continue to review the allocation process. The Committee's recommendations are embodied in this proposed rule change.

The principle changes to the Exchange's Allocation Policy and Procedures are described below.

Listing Company Input

Currently, listed companies do not have the option of selecting their specialist units. Instead, the Exchange's Allocation Committee selects the specialist unit to be assigned to a listed company.

Under the proposal, listing companies will have two options, either: (1) to have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a ''generic letter'' which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, based partly on the generic letter from the company describing desired specialist unit characteristics. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets (''green sheets'').

The Exchange is not proposing any change to the criteria by which the Allocation Committee makes its allocation decisions. Such decisions would continue to be made pursuant to the criteria specified in the policy, which include review and consideration of the results of the Specialist Performance Evaluation Questionnaire, objective measures of specialist performance, and the professional judgment of the members of the Allocation Committee. If a listing company selects the second option discussed above, the Allocation Committee would be required to select only those units demonstrably deemed to be the most qualified to receive such allocation from among the units that apply, based upon the criteria set forth in the policy.

Meetings With Specialist Units

Currently, the Allocation Committee selects a specialist unit, with a letter from the listing company to be assessed in accordance with the Committee's professional judgment; the letter may name specific units. A listing company may choose to interview specialist units; the Exchange takes a neutral position on this practice and will neither arrange interviews nor recommend units to be interviewed.

Under the proposal, companies selecting option two would meet with units chosen by the Allocation Committee (in person at the Exchange or by teleconference) within two business days (or such longer time period as permitted by the Exchange in a particular case) of the Allocation Committee meeting, and would select one unit within one business day thereafter. The number of company representatives attending would not be limited, but at least one must be a senior official for the company of the rank of Corporate Secretary or higher. Specialist units are limited to three attendees, all of whom must be employees of the unit and at least one of whom must be the specialist designated to trade the stock.

Specialist Unit Applications/Company Contracts

Currently, company letters are not distributed to specialist units. If a unit is requested in a company letter, the unit must submit a statement describing any meetings or discussions held with the company, including any representations or commitments made. There is no requirement that units advise the Committee of a change of specialists.

Under the proposal, if a generic letter is distributed, specialist units must indicate how they meet the characteristics described. Specialist units must disclose all contacts by them or any individual acting on their behalf pertaining to a listing on the Exchange with any employee of the listing company, or any individual acting on the company's behalf, within six months prior to distribution of the ''green sheets.'' If a specialist unit wishes to change specialists within six months of the date a company begins trading, the unit must inform the Allocation Committee in writing and disclose its reasons therefor. These letters shall be maintained in the permanent records of the Committee.

''Blanket'' Applications

Currently, specialist units may choose to file blanket applications (and all have done so), at their discretion. There will be no change to the policy that any security allocated to a unit on the basis of its blanket application shall not prejudice that unit's eligibility for future allocations.

Under the proposal, all specialist units shall be deemed to have filed with the Exchange a blanket application pursuant to which the applicant agrees to accept the allocation of any security.

Pilot Basis

The Exchange intends to implement the amendments to the Allocation Policy discussed herein as a pilot to run for seven months from the date of effectiveness. The Exchange shall submit to the Commission a report discussing its experiences with the pilot program prior to the seven-month expiration date, in conjunction with any request for modification, or permanent approval, of the policy.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed amendments are consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (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 30 days from March 3, 1997, the date on which

[6] Securities Exchange Act Release No. 34626 (Sept. 1, 1994), 59 FR 46457 (Sept. 8, 1994) (order approving File No. SR–NYSE–94–18).

it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; [7] and (4) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[8]

The Commission finds good cause for accelerating the operative date of the proposed rule change from the thirtieth day following the date of the amended filing on March 3, 1997 consistent with investor protection and the public interest.[9] By accelerating the operative date of the proposed rule change to March 7, 1997, the NYSE will be able to provide issuers, whose stock will be listed on the Exchange, with the ability to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee. This will prevent newly listed companies from delaying their listing on the Exchange until such time as they may avail themselves of the alternative approaches described herein. Moreover, the Commission notes that the proposal is only being implemented on a pilot basis for a period of seven months ending on October 7, 1997. Based on the above, the Commission believes that accelerating the operative date for implementation of the proposal to March 7, 1997 is consistent with the protection of investors and the public interest.

In furtherance of the public interest and investor protection, the Commission expects the NYSE to provide the Commission with a report describing its experience with the pilot program. This report should include, for the period in which the pilot is in operation, the following information: the total number of allocations; the total number of allocations in which the issuer chose its own specialist unit from a list of three to five; the total number of allocations in which the Allocation Committee chose the specialist unit; the number of units provided to the issuer by the Allocation Committee in those cases where the issuer selects for each such allocation; and, for each allocation, the number of specialist units applying for the allocations in both issuer-selected and Allocation Committee-selected allocations. The Exchange also should include in the report information that would permit the Commission to evaluate whether the number of units applying for allocations increased or decreased when compared to the period prior to the adoption of the pilot. The Exchange also should include in the report any other information that may be useful to the Commission in evaluating the program. The report should be submitted to the Commission at least two months prior to the expiration of the pilot (by August 7, 1997) along with any request to modify, extend, or permanently approve the pilot.

At any time within 60 days of the filing of the amended proposed rule change,[10] 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–97–04 and should be submitted by May 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–6968 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[7] The Commission notes that any substantive amendment to a proposed rule change filed under Rule 19b–4(e)(6) causes the 30 day delayed implementation period to be restarted from the date of the filing of the amendment. *See* Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692 (Dec. 28, 1994).

[8] 17 CFR 240.19b–4(e)(6).

[9] *See supra* note 7.

[10] The 60 day abrogation period commences from March 3, 1997, the date of the submission of Amendment No. 1.

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–38403; File No. SR–PSE–97–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Relating to Changing the Corporate Name From Pacific Exchange to Pacific Exchange, Inc.

March 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on March 10, 1997, the Pacific Exchange (''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Exchange is proposing to amend its Article I, Section 1 of the Constitution and the first Section of the Certificate of Incorporation to reflect a change in the corporate name from Pacific Exchange to Pacific Exchange, Inc.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

The purpose of the proposed rule change is to effect a change in the corporate name of the Exchange from

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

Pacific Exchange to Pacific Exchange, Inc. This proposed modification to the corporate name will correct the Exchange's Constitution and Certificate of Incorporation so that they properly reflect the legal name of the Exchange. The Exchange recently filed an amendment to these provisions reflecting the name change, inadvertently omitting the corporate indicator. Therefore, the only difference, as a result of this filing, is the addition of a corporate indicator ''Inc.'' to comply with state corporate law requirements.

Basis

Pursuant to Rule 19b–4(e)(3), [3] this proposed rule change is concerned solely with the administration of the Exchange. The proposed rule change is consistent with Section 6(b) of the Act, [4] in general, and Section 6(b)(5), [5] in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

Written comments on the proposed rule change were neither solicited nor 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) of the Act [6] and subparagraph (e) of Rule 19b–4 thereunder,[7] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed 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.

[3] 17 CFR 240.19b–4(e)(3).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3).

[7] 17 CFR 240.19b–4(e).

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 the Exchange. All submissions should refer to File No. SR–PSE–97–08 and should be submitted by April 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7046 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38405; File No. SR–SCCP–97–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Over-the-Counter Trade Corrections

March 14, 1997.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on February 26, 1997, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 SCCP. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides SCCP participants an additional method of forwarding over-the-counter (''OTC'') trade corrections to SCCP.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP 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 provide to SCCP's participants that have access to Philadep's Philanet system an additional method of forwarding OTC corrections to SCCP. OTC trade submissions for trades that are not looked in are submitted separately by the buyer and seller. The submissions are matched by National Stock Clearing Corporation (''NSCC'') as the central processor for OTC transactions. The primary matching criteria used by NSCC are buyer, seller, number of shares, cusip number, settlement date, and the dollar amount of the trade. When the buy and sell submissions match based on the matching criteria the trade is considered ''compared.'' When the buy and sell submissions do not match or either the buyer or seller does not submit any data, an ''uncompared'' trade results. Both buyer and seller are notified of the uncompared trade and are then able to use a series of trade correcting entries to make necessary changes to the original buy and sell entries or to enter a buy or sell transaction that was inadvertently not entered.

Currently, OTC corrections are forwarded to SCCP by one of two methods. First, the submitting participant may forward its OTC corrections via facsmilie. The corrections are then entered into the system by data entry personnel at SCCP. The corrections are then appended to

[2] The Commission has modified the text of the summaries prepared by SCCP.

the participants OTC trade file and transmitted to NSCC. Second, the submitting participant may forward OTC corrections to SCCP via electronic transmission. The corrections are then appended to the participants OTC trade file and transmitted electronically to NSCC. SCCP now proposes to afford its participants the ability to forward OTC corrections to SCCP through the participant's Philanet terminal. Philanet access provides participants with the ability to enter and modify OTC corrections through an on-line application.

SCCP believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This modification will not impose a burden on competition not contemplated under the Act.

(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 with respect to 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)[4] of the Act and pursuant to Rule 19b–4(e)(4)[5] promulgated thereunder because the proposal effects a change in an existing service that (1) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. 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.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(e)(4).

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 also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–97–01 and should be submitted by April 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7047 Filed 3–19–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2523]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restrictions on the ground that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended on March 15, 1996.

Although armed hostilities have ended, conditions in Iraq remain unsettled and hazardous. Regional conflicts continue in northern Iraq between Kurdish ethnic groups and Iraqi security forces. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions. Basic modern medical care and medicines may not be available to our citizens in case of emergency. U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country ''where there is imminent danger to the public health or physical safety of United States travelers''.

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991 who continue to reside there, or the American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the Federal Register and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: March 17, 1997.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 97–7276 Filed 3–18–97; 3:46 pm]

BILLING CODE 4710–10–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Yamhill County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to all concerned that an environmental impact statement will be prepared for a proposed transportation improvement project in the Newberg-Dundee area in Yamhill County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Engineer, Federal Highway Administration, 530 Center Street NE., Suite 100, Salem, Oregon, 97301, Telephone: (503) 399–5749, Fax: (503) 399–5838, or Dick Upton, Economic Partnerships Unit, Oregon Department of Transportation, 2950 State Street, Room 120, Salem, Oregon, 97310, Telephone: (503) 986–5816, Fax: (503) 986–5813.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a set of multi-modal solutions to transportation problems identified on the Pacific Highway West (Highway 99W) through Newberg and Dundee area, in Yamhill County, Oregon. The proposed alternatives will be solutions to the increasing travel demands in and through the Newberg-Dundee area which exceeds the capacity of the existing transportation system. Specifically, weekday as well as weekend travel demands exceed available capacity, the highway's physical features constrain traffic, and few transit options are available within the corridor. Several user groups compete for limited capacity, including commuters, freight, local trips, and tourist/recreation trips between the Portland Metropolitan Area and the Oregon Coast. Traffic congestion is expected to worsen in the future on Highway 99W as Yamhill County's population and tourist activity increase. Continued traffic congestion will inconvenience travelers; divert trips to alternative routes through the communities; impede freight movement; alter commuting patterns; reduce the ability of some local businesses to attract and serve customers; and adversely affect pedestrian, bicycle, and vehicular access and safety.

As a first step in the environmental review process, a corridor-level alternatives analysis will be conducted. Alternatives currently being studied are multimodal, and it is expected that the preferred alternative will be a combination of a number of modes with other measures to address the transportation problem. Alternatives being considered in the NEPA process include the base conditions (no action alternative), transportation system management, capacity improvements to Highway 99W (including widening the existing route), a bypass north of Highway 99W from east of Newberg to south of Dundee, a bypass south of Highway 99W from east of Newberg to the Highway 99W/Highway 18 intersection, a bypass from the Highway 99W/Highway 18 intersection to Interstate 5, commuter train service between McMinnville and the Portland Metropolitan Area on improved trackage, and light rail transit service between McMinnville and the Portland Metropolitan Area on new trackage. All alternatives will include planned projects and those likely to occur by 2020. All except the base condition alternative will include transportation system management, demand management and land use elements. All of the highway alternatives will also include express bus elements. Bypass alternatives will include consideration of tolls as a funding source.

These multi-modal alternatives will be screened by considering their relative ability to meet travel needs, human health and safety, environmental quality, community economics, socio/cultural quality, project cost and implementability objectives. The alternatives that best meet these objectives will be refined and screened again. The preferred multi-modal alternative(s) resulting from this process and the base conditions alternative will be examined in detail in an EIS. Preparation of the DEIS is expected to begin early in 1998.

Newsletters describing alternatives analysis activities and soliciting comments will be sent to appropriate Federal, State, local agencies, private organizations and individuals who have expressed or are known to have an interest in this improvement project. A Project Oversight Steering Team (POST), comprised of elected officials and transportation agency representatives, will direct project work and make recommendations to the Oregon Transportation Commission and affected local jurisdictions. A Project Advisory Committee, comprised of representatives of a broad range of stakeholder interests, will make recommendations to the POST. An Agency Advisory Committee, comprised of representatives of Federal and State resource agencies, will meet periodically to provide information on key decision points. Several public workshops will be held in the project area during the process to solicit information on issues that should be addressed, evaluation criteria that should be used, and alternatives that should be evaluated as well as to present results of the alternatives evaluation and to solicit opinions on the preferred alternative. Public notice will be given of the times and locations of the meetings. These outreach activities, taken together, will function as part of the scoping process for the project. A formal scoping meeting is expected to be scheduled for the summer of 1997.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on: March 12, 1997.

Elton Chang,

Environmental Engineer, Federal Highway Administration, Salem, Oregon.

[FR Doc. 97–7080 Filed 3–19–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–22, 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before May 19, 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: 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

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: March 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–7092 Filed 3–19–97; 8:45 am]

BILLING CODE 4830–01–U

[PS–5–91]

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 final regulation, PS–5–91 (TD 8437), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (§ 1.613A–3(e))

DATES: Written comments should be received on or before May 19, 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: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–1251.

Regulation Project Number: PS–5–91.

Abstract: This regulation concerns oil and gas property held by partnerships. Because the depletion allowance with respect to production from domestic oil and gas properties is computed by the partners and not by the partnership, section 1.613A–3(e)(6)(i) of the regulation requires each partner to separately keep records of the partner's share of the adjusted basis in each oil and gas property of the partnership.

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: 1,500,000.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 49,950.

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: March 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–7093 Filed 3–19–97; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Thursday
March 20, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 11

Electronic Records; Electronic Signatures; Final Rule

Electronic Submissions; Establishment of Public Docket; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 11

[Docket No. 92N–0251]

RIN 0910–AA29

Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations that provide criteria for acceptance by FDA, under certain circumstances, of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records and handwritten signatures executed on paper. These regulations, which apply to all FDA program areas, are intended to permit the widest possible use of electronic technology, compatible with FDA's responsibility to promote and protect public health. The use of electronic records as well as their submission to FDA is voluntary. Elsewhere in this issue of the Federal Register, FDA is publishing a document providing information concerning submissions that the agency is prepared to accept electronically .

DATES: Effective August 20, 1997. Submit written comments on the information collection provisions of this final rule by May 19, 1997.

ADDRESSES: Submit written comments on the information collection provisions of this final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

The final rule is also available electronically via Internet: http://www.fda.gov.

FOR FURTHER INFORMATION CONTACT:

Paul J. Motise, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1089. E-mail address via Internet: Motise@CDER.FDA.GOV, or

Tom M. Chin, Division of Compliance Policy (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0410. E-mail address via Internet: TChin@FDAEM.SSW.DHHS.GOV

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, members of the pharmaceutical industry met with the agency to determine how they could accommodate paperless record systems under the current good manufacturing practice (CGMP) regulations in parts 210 and 211 (21 CFR parts 210 and 211). FDA created a Task Force on Electronic Identification/Signatures to develop a uniform approach by which the agency could accept electronic signatures and records in all program areas. In a February 24, 1992, report, a task force subgroup, the Electronic Identification/Signature Working Group, recommended publication of an advance notice of proposed rulemaking (ANPRM) to obtain public comment on the issues involved.

In the Federal Register of July 21, 1992 (57 FR 32185), FDA published the ANPRM, which stated that the agency was considering the use of electronic identification/signatures, and requested comments on a number of related topics and concerns. FDA received 53 comments on the ANPRM. In the Federal Register of August 31, 1994 (59 FR 45160), the agency published a proposed rule that incorporated many of the comments to the ANPRM, and requested that comments on the proposed regulation be submitted by November 29, 1994. A complete discussion of the options considered by FDA and other background information on the agency's policy on electronic records and electronic signatures can be found in the ANPRM and the proposed rule.

FDA received 49 comments on the proposed rule. The commenters represented a broad spectrum of interested parties: Human and veterinary pharmaceutical companies as well as biological products, medical device, and food interest groups, including 11 trade associations, 25 manufacturers, and 1 Federal agency.

II. Highlights of the Final Rule

The final rule provides criteria under which FDA will consider electronic records to be equivalent to paper records, and electronic signatures equivalent to traditional handwritten signatures. Part 11 (21 CFR part 11) applies to any paper records required by statute or agency regulations and supersedes any existing paper record requirements by providing that electronic records may be used in lieu of paper records. Electronic signatures which meet the requirements of the rule will be considered to be equivalent to full handwritten signatures, initials, and other general signings required by agency regulations.

Section 11.2 provides that records may be maintained in electronic form and electronic signatures may be used in lieu of traditional signatures. Records and signatures submitted to the agency may be presented in an electronic form provided the requirements of part 11 are met and the records have been identified in a public docket as the type of submission the agency accepts in an electronic form. Unless records are identified in this docket as appropriate for electronic submission, only paper records will be regarded as official submissions.

Section 11.3 defines terms used in part 11, including the terms: Biometrics, closed system, open system, digital signature, electronic record, electronic signature, and handwritten signature.

Section 11.10 describes controls for closed systems, systems to which access is controlled by persons responsible for the content of electronic records on that system. These controls include measures designed to ensure the integrity of system operations and information stored in the system. Such measures include: (1) Validation; (2) the ability to generate accurate and complete copies of records; (3) archival protection of records; (4) use of computer-generated, time-stamped audit trails; (5) use of appropriate controls over systems documentation; and (6) a determination that persons who develop, maintain, or use electronic records and signature systems have the education, training, and experience to perform their assigned tasks.

Section 11.10 also addresses the security of closed systems and requires that: (1) System access be limited to authorized individuals; (2) operational system checks be used to enforce permitted sequencing of steps and events as appropriate; (3) authority checks be used to ensure that only authorized individuals can use the system, electronically sign a record, access the operation or computer system input or output device, alter a record, or perform operations; (4) device (e.g., terminal) checks be used to determine the validity of the source of data input or operation instruction; and (5) written policies be established and adhered to holding individuals accountable and responsible for actions initiated under their electronic signatures, so as to deter record and signature falsification.

Section 11.30 sets forth controls for open systems, including the controls required for closed systems in § 11.10 and additional measures such as document encryption and use of appropriate digital signature standards

to ensure record authenticity, integrity, and confidentiality.

Section 11.50 requires signature manifestations to contain information associated with the signing of electronic records. This information must include the printed name of the signer, the date and time when the signature was executed, and the meaning (such as review, approval, responsibility, and authorship) associated with the signature. In addition, this information is subject to the same controls as for electronic records and must be included in any human readable forms of the electronic record (such as electronic display or printout).

Under § 11.70, electronic signatures and handwritten signatures executed to electronic records must be linked to their respective records so that signatures cannot be excised, copied, or otherwise transferred to falsify an electronic record by ordinary means.

Under the general requirements for electronic signatures, at § 11.100, each electronic signature must be unique to one individual and must not be reused by, or reassigned to, anyone else. Before an organization establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, the organization shall verify the identity of the individual.

Section 11.200 provides that electronic signatures not based on biometrics must employ at least two distinct identification components such as an identification code and password. In addition, when an individual executes a series of signings during a single period of controlled system access, the first signing must be executed using all electronic signature components and the subsequent signings must be executed using at least one component designed to be used only by that individual. When an individual executes one or more signings not performed during a single period of controlled system access, each signing must be executed using all of the electronic signature components.

Electronic signatures not based on biometrics are also required to be used only by their genuine owners and administered and executed to ensure that attempted use of an individual's electronic signature by anyone else requires the collaboration of two or more individuals. This would make it more difficult for anyone to forge an electronic signature. Electronic signatures based upon biometrics must be designed to ensure that such signatures cannot be used by anyone other than the genuine owners.

Under § 11.300, electronic signatures based upon use of identification codes in combination with passwords must employ controls to ensure security and integrity. The controls must include the following provisions: (1) The uniqueness of each combined identification code and password must be maintained in such a way that no two individuals have the same combination of identification code and password; (2) persons using identification codes and/or passwords must ensure that they are periodically recalled or revised; (3) loss management procedures must be followed to deauthorize lost, stolen, missing, or otherwise potentially compromised tokens, cards, and other devices that bear or generate identification codes or password information; (4) transaction safeguards must be used to prevent unauthorized use of passwords and/or identification codes, and to detect and report any attempt to misuse such codes; (5) devices that bear or generate identification codes or password information, such as tokens or cards, must be tested initially and periodically to ensure that they function properly and have not been altered in an unauthorized manner.

III. Comments on the Proposed Rule

A. General Comments

1. Many comments expressed general support for the proposed rule. Noting that the proposal's regulatory approach incorporated several suggestions submitted by industry in comments on the ANPRM, a number of comments stated that the proposal is a good example of agency and industry cooperation in resolving technical issues.

Several comments also noted that both industry and the agency can realize significant benefits by using electronic records and electronic signatures, such as increasing the speed of information exchange, cost savings from the reduced need for storage space, reduced errors, data integration/trending, product improvement, manufacturing process streamlining, improved process control, reduced vulnerability of electronic signatures to fraud and abuse, and job creation in industries involved in electronic record and electronic signature technologies.

One comment noted that, when part 11 controls are satisfied, electronic signatures and electronic records have advantages over paper systems, advantages that include: (1) Having automated databases that enable more advanced searches of information, thus obviating the need for manual searches of paper records; (2) permitting information to be viewed from multiple perspectives; (3) permitting determination of trends, patterns, and behaviors; and (4) avoiding initial and subsequent document misfiling that may result from human error.

There were several comments on the general scope and effect of proposed part 11. These comments noted that the final regulations will be viewed as a standard by other Government agencies, and may strongly influence the direction of electronic record and electronic signature technologies. One comment said that FDA's position on electronic signatures/electronic records is one of the most pressing issues for the pharmaceutical industry and has a significant impact on the industry's future competitiveness. Another comment said that the rule constitutes an important milestone along the Nation's information superhighway.

FDA believes that the extensive industry input and collaboration that went into formulating the final rule is representative of a productive partnership that will facilitate the use of advanced technologies. The agency acknowledges the potential benefits to be gained by electronic record/electronic signature systems. The agency expects that the magnitude of these benefits should significantly outweigh the costs of making these systems, through compliance with part 11, reliable, trustworthy, and compatible with FDA's responsibility to promote and protect public health. The agency is aware of the potential impact of the rule, especially regarding the need to accommodate and encourage new technologies while maintaining the agency's ability to carry out its mandate to protect public health. The agency is also aware that other Federal agencies share the same concerns and are addressing the same issues as FDA; the agency has held informal discussions with other Federal agencies and participated in several interagency groups on electronic records/electronic signatures and information technology issues. FDA looks forward to exchanging information and experience with other agencies for mutual benefit and to promote a consistent Federal policy on electronic records and signatures. The agency also notes that benefits, such as the ones listed by the comments, will help to offset any system modification costs that persons may incur to achieve compliance with part 11.

B. Regulations Versus Guidelines

2. Several comments addressed whether the agency's policy on electronic signatures and electronic records should be issued as a regulation

or recommended in a guideline. Most comments supported a regulation, citing the need for a practical and workable approach for criteria to ensure that records can be stored in electronic form and are reliable, trustworthy, secure, accurate, confidential, and authentic. One comment specifically supported a single regulation covering all FDA-regulated products to ensure consistent requirements across all product lines. Two comments asserted that the agency should only issue guidelines or ''make the regulations voluntary.'' One of these comments said that by issuing regulations, the agency is shifting from creating tools to enhance communication (technological quality) to creating tools for enforcement (compliance quality).

The agency remains convinced, as expressed in the preamble to the proposed rule (59 FR 45160 at 45165), that a policy statement, inspection guide, or other guidance would be an inappropriate means for enunciating a comprehensive policy on electronic signatures and records. FDA has concluded that regulations are necessary to establish uniform, enforceable, baseline standards for accepting electronic signatures and records. The agency believes, however, that supplemental guidance documents would be useful to address controls in greater detail than would be appropriate for regulations. Accordingly, the agency anticipates issuing supplemental guidance as needed and will afford all interested parties the opportunity to comment on the guidance documents.

The need for regulations is underscored by several opinions expressed in the comments. For example, one comment asserted that it should be acceptable for supervisors to remove the signatures of their subordinates from signed records and replace them with their own signatures. Although the agency does not object to the use of a supervisor's signature to endorse or confirm a subordinate's actions, removal of an original signature is an action the agency views as falsification. Several comments also argued that an electronic signature should consist of only a password, that passwords need not be unique, that it is acceptable for people to use passwords associated with their personal lives (like the names of their children or their pets), and that passwords need only be changed every 2 years. FDA believes that such procedures would greatly increase the possibility that a password could be compromised and the chance that any resulting impersonation and/or falsification would continue for a long time. Therefore, an enforceable regulation describing the acceptable characteristics of an electronic signature appears necessary.

C. Flexibility and Specificity

3. Several comments addressed the flexibility and specificity of the proposed rule. The comments contended that agency acceptance of electronic records systems should not be based on any particular technology, but rather on the adequacy of the system controls under which they are created and managed. Some comments claimed that the proposed rule was overly prescriptive and that it should not specify the mechanisms to be used, but rather only require owners/users to design appropriate safeguards and validate them to reasonably ensure electronic signature integrity and authenticity. One comment commended the agency for giving industry the freedom to choose from a variety of electronic signature technologies, while another urged that the final rule be more specific in detailing software requirements for electronic records and electronic notebooks in research and testing laboratories.

The agency believes that the provisions of the final rule afford firms considerable flexibility while providing a baseline level of confidence that records maintained in accordance with the rule will be of high integrity. For example, the regulation permits a wide variety of existing and emerging electronic signature technologies, from use of identification codes in conjunction with manually entered passwords to more sophisticated biometric systems that may necessitate additional hardware and software. While requiring electronic signatures to be linked to their respective electronic records, the final rule affords flexibility in achieving that link through use of any appropriate means, including use of digital signatures and secure relational database references. The final rule accepts a wide variety of electronic record technologies, including those based on optical storage devices. In addition, as discussed in comment 40 of this document, the final rule does not establish numerical standards for levels of security or validation, thus offering firms flexibility in determining what levels are appropriate for their situations. Furthermore, while requiring operational checks, authority checks, and periodic testing of identifying devices, persons have the flexibility of conducting those controls by any suitable method. When the final rule calls for a certain control, such as periodic testing of identification tokens, persons have the option of determining the frequency.

D. Controls for Electronic Systems Compared with Paper Systems

4. Two comments stated that any controls that do not apply to paper-based document systems and handwritten signatures should not apply to electronic record and signature systems unless those controls are needed to address an identified unique risk associated with electronic record systems. One comment expressed concern that FDA was establishing a much higher standard for electronic signatures than necessary.

In attempting to establish minimum criteria to make electronic signatures and electronic records trustworthy and reliable and compatible with FDA's responsibility to promote and protect public health (e.g., by hastening the availability of new safe and effective medical products and ensuring the safety of foods), the agency has attempted to draw analogies to handwritten signatures and paper records wherever possible. In doing so, FDA has found that the analogy does not always hold because of the differences between paper and electronic systems. The agency believes some of those differences necessitate controls that will be unique to electronic technology and that must be addressed on their own merits and not evaluated on the basis of their equivalence to controls governing paper documents.

The agency found that some of the comments served to illustrate the differences between paper and electronic record technologies and the need to address controls that may not generally be found in paper record systems. For example, several comments pointed out that electronic records built upon information databases, unlike paper records, are actually transient views or representations of information that is dispersed in various parts of the database. (The agency notes that the databases themselves may be geographically dispersed but linked by networks.) The same software that generates representations of database information on a screen can also misrepresent that information, depending upon how the software is written (e.g., how a query is prepared). In addition, database elements can easily be changed at any time to misrepresent information, without evidence that a change was made, and in a manner that destroys the original information. Finally, more people have potential access to electronic record

systems than may have access to paper records.

Therefore, controls are needed to ensure that representations of database information have been generated in a manner that does not distort data or hide noncompliant or otherwise bad information, and that database elements themselves have not been altered so as to distort truth or falsify a record. Such controls include: (1) Using time-stamped audit trails of information written to the database, where such audit trails are executed objectively and automatically rather than by the person entering the information, and (2) limiting access to the database search software. Absent effective controls, it is very easy to falsify electronic records to render them indistinguishable from original, true records.

The traditional paper record, in comparison, is generally a durable unitized representation that is fixed in time and space. Information is recorded directly in a manner that does not require an intermediate means of interpretation. When an incorrect entry is made, the customary method of correcting FDA-related records is to cross out the original entry in a manner that does not obscure the prior data. Although paper records may be falsified, it is relatively difficult (in comparison to falsification of electronic records) to do so in a nondetectable manner. In the case of paper records that have been falsified, a body of evidence exists that can help prove that the records had been changed; comparable methods to detect falsification of electronic records have yet to be fully developed.

In addition, there are significant technological differences between traditional handwritten signatures (recorded on paper) and electronic signatures that also require controls unique to electronic technologies. For example, the traditional handwritten signature cannot be readily compromised by being ''loaned'' or ''lost,'' whereas an electronic signature based on a password in combination with an identification code can be compromised by being ''loaned'' or ''lost.'' By contrast, if one person attempts to write the handwritten signature of another person, the falsification would be difficult to execute and a long-standing body of investigational techniques would be available to detect the falsification. On the other hand, many electronic signatures are relatively easy to falsify and methods of falsification almost impossible to detect.

Accordingly, although the agency has attempted to keep controls for electronic record and electronic signatures analogous to traditional paper systems, it finds it necessary to establish certain controls specifically for electronic systems.

E. FDA Certification of Electronic Signature Systems

5. One comment requested FDA certification of what it described as a low-cost, biometric-based electronic signature system, one which uses dynamic signature verification with a parameter code recorded on magnetic stripe cards.

The agency does not anticipate the need to certify individual electronic signature products. Use of any electronic signature system that complies with the provisions of part 11 would form the basis for agency acceptance of the system regardless of what particular technology or brand is used. This approach is consistent with FDA's policy in a variety of program areas. The agency, for example, does not certify manufacturing equipment used to make drugs, medical devices, or food.

F. Biometric Electronic Signatures

6. One comment addressed the agency's statement in the proposed rule (59 FR 45160 at 45168) that the owner of a biometric/behavioral link could not lose or give it away. The comment stated that it was possible for an owner to ''lend'' the link for a file to be opened, as a collaborative fraudulent gesture, or to unwittingly assist a fraudulent colleague in an ''emergency,'' a situation, the comment said, that was not unknown in the computer industry.

The agency acknowledges that such fraudulent activity is possible and that people determined to falsify records may find a means to do so despite whatever technology or preventive measures are in place. The controls in part 11 are intended to deter such actions, make it difficult to execute falsification by mishap or casual misdeed, and to help detect such alterations when they occur (see § 11.10 (introductory paragraph and especially §§ 11.10(j) and 11.200(b)).

G. Personnel Integrity

7. A few comments addressed the role of individual honesty and trust in ensuring that electronic records are reliable, trustworthy, and authentic. One comment noted that firms must rely in large measure upon the integrity of their employees. Another said that subpart C of part 11, Electronic Signatures, appears to have been written with the belief that pharmaceutical manufacturers have an incentive to falsify electronic signatures. One comment expressed concern about possible signature falsification when an employee leaves a company to work elsewhere and the employee uses the electronic signature illegally.

The agency agrees that the integrity of any electronic signature/electronic record system depends heavily upon the honesty of employees and that most persons are not motivated to falsify records. However, the agency's experience with various types of records and signature falsification demonstrates that some people do falsify information under certain circumstances. Among those circumstances are situations in which falsifications can be executed with ease and have little likelihood of detection. Part 11 is intended to minimize the opportunities for readily executing falsifications and to maximize the chances of detecting falsifications.

Concerning signature falsification by former employees, the agency would expect that upon the departure of an employee, the assigned electronic signature would be ''retired'' to prevent the former employee from falsely using the signature.

H. Security of Industry Electronic Records Submitted to FDA

8. Several comments expressed concern about the security and confidentiality of electronic records submitted to FDA. One suggested that submissions be limited to such read-only formats as CD–ROM with raw data for statistical manipulation provided separately on floppy diskette. One comment suggested that in light of the proposed rule, the agency should review its own internal security procedures. Another addressed electronic records that may be disclosed under the Freedom of Information Act and expressed concern regarding agency deletion of trade secrets. One comment anticipated FDA's use of open systems to access industry records (such as medical device production and control records) and suggested that such access should be restricted to closed systems.

The agency is well aware of its legal obligation to maintain the confidentiality of trade secret information in its possession, and is committed to meet that obligation regardless of the form (paper or electronic) a record takes. The procedures used to ensure confidentiality are consistent with the provisions of part 11. FDA is also examining other controls, such as use of digital signatures, to ensure submission integrity. To permit legitimate changes to be made, the agency does not believe that it is necessary to restrict submissions to those maintained in

read-only formats in all cases; each agency receiving unit retains the flexibility to determine whatever format is most suitable. Those intending to submit material are expected to consult with the appropriate agency receiving unit to determine the acceptable formats.

Although FDA access to electronic records on open systems maintained by firms is not anticipated in the near future, the agency believes it would be inappropriate to rule out such a procedure. Such access can be a valuable inspection tool and can enhance efficiencies by reducing the time investigators may need to be on site. The agency believes it is important to develop appropriate procedures and security measures in cooperation with industry to ensure that such access does not jeopardize data confidentiality or integrity.

I. Effective Date/Grandfathering

9. Several comments addressed the proposed effective date of the final rule, 90 days after publication in the Federal Register, and suggested potential exemptions (grandfathering) for systems now in use. Two comments requested an expedited effective date for the final rule. One comment requested an effective date at least 18 months after publication of the final rule to permit firms to modify and validate their systems. One comment expressed concern about how the rule, in general, will affect current systems, and suggested that the agency permit firms to continue to use existing electronic record systems that otherwise conform to good manufacturing or laboratory practices until these firms make major modifications to those systems or until 5 years have elapsed, whichever comes first. Several other comments requested grandfathering for specific sections of the proposed rule.

The agency has carefully considered the comments and suggestions regarding the final rule's effective date and has concluded that the effective date should be 5 months after date of publication in the Federal Register. The agency wishes to accommodate firms that are prepared now to comply with part 11 or will be prepared soon, so as to encourage and foster new technologies in a manner that ensures that electronic record and electronic signature systems are reliable, trustworthy, and compatible with FDA's responsibility to promote and protect public health. The agency believes that firms that have consulted with FDA before adopting new electronic record and electronic signature technologies (especially technologies that may impact on the ability of the agency to conduct its work effectively) will need to make few, if any, changes to systems used to maintain records required by FDA.

The agency believes that the provisions of part 11 represent minimal standards and that a general exemption for existing systems that do not meet these provisions would be inappropriate and not in the public interest because such systems are likely to generate electronic records and electronic signatures that are unreliable, untrustworthy, and not compatible with FDA's responsibility to promote and protect public health. Such an exemption might, for example, mean that a firm could: (1) Deny FDA inspectional access to electronic record systems, (2) permit unauthorized access to those systems, (3) permit individuals to share identification codes and passwords, (4) permit systems to go unvalidated, and (5) permit records to be falsified in many ways and in a manner that goes undetected.

The agency emphasizes that these regulations do not require, but rather permit, the use of electronic records and signatures. Firms not confident that their electronic systems meet the minimal requirements of these regulations are free to continue to use traditional signatures and paper documents to meet recordkeeping requirements.

J. Comments by Electronic Mail (e-mail) and Electronic Distribution of FDA Documents

10. One comment specifically noted that the agency has accepted comments by e-mail and that this provides an additional avenue for public participation in the rulemaking process. Another comment encouraged FDA to expand the use of electronic media to provide information by such open systems as bulletin boards.

The agency intends to explore further the possibility of continuing to accept public comments by e-mail and other electronic means. For this current experiment, the agency received only one comment by e-mail. The comment that addressed this issue was, itself, transmitted in a letter. The agency recognizes the benefits of distributing information electronically, has expanded that activity, and intends to continue that expansion. Although only one e-mail comment was received, the agency does not attribute that low number to a lack of ability to send e-mail because the agency received e-mail from 198 persons who requested the text of the proposed rule, including requests from people outside the United States.

K. Submissions by Facsimile (Fax)

11. One comment said that part 11 should include a provision for FDA acceptance of submissions by fax, such as import form FDA 2877. The comment noted that the U.S. Customs Service accepts fax signatures on its documents, and claimed that FDA's insistence on hard copies of form FDA 2877 is an impediment to imports.

The agency advises that part 11 permits the unit that handles import form FDA 2877 to accept that record in electronic form when it is prepared logistically to do so. As noted in the discussion on § 11.1(b) in comment 21 of this document, the agency recognizes that faxes can be in paper or electronic form, based on the capabilities of the sender and recipient.

L. Blood Bank Issues

12. Two comments addressed blood bank issues in the context of electronic records and electronic signatures and said the agency should clarify that part 11 would permit electronic crossmatching by a central blood center for individual hospitals. One comment stated that remote blood center and transfusion facilities should be permitted to rely on electronically communicated information, such as authorization for labeling/issuing units of blood, and that the electronic signature of the supervisor in the central testing facility releasing the product for labeling and issuance should be sufficient because the proposed rule guards against security and integrity problems.

One comment questioned whether, under part 11, electronic signatures would meet the signature requirements for the release of units of blood, and if there would be instances where a full signature would be required instead of a technician's identification. Another comment asserted that it is important to clarify how the term ''batch'' will be interpreted under part 11, and suggested that the term used in relation to blood products refers to a series of units of blood having undergone common manufacturing processes and recorded on the same computerized document. The comment contrasted this to FDA's current view that each unit of blood be considered a batch.

The agency advises that part 11 permits release records now in paper form to be in electronic form and traditional handwritten signatures to be electronic signatures. Under part 11, the name of the technician must appear in the record display or printout to clearly identify the technician. The appearance of the technician's identification code

alone would not be sufficient. The agency also advises that the definition of a ''batch'' for blood or other products is not affected by part 11, which addresses the trustworthiness and reliability of electronic records and electronic signatures, regardless of how a batch, which is the subject of those records and signatures, is defined.

M. Regulatory Flexibility Analysis

13. One comment said that, because part 11 will significantly impact a substantial number of small businesses, even though the impact would be beneficial, FDA is required to perform a regulatory flexibility analysis and should publish such an analysis in the Federal Register before a final rule is issued.

The comment states that the legislative history of the Regulatory Flexibility Act is clear that, ''significant economic impact,'' as it appears at 5 U.S.C. 605(b) is neutral with respect to whether such impact is beneficial or adverse.

Contrary to the comment's assertion, the legislative history is not dispositive of this matter. It is well established that the task of statutory construction must begin with the actual language of the statute. (See *Bailey* v. *United States*, 116 S. Ct. 595, 597 (1996).) A statutory term must not be construed in isolation; a provision that may seem ambiguous in isolation is often clarified by the remainder of the statute. (See *Dept. Of Revenue of Oregon* v. *ACF Industries*, 114 S. Ct. 843, 850 (1994).) Moreover, it is a fundamental canon of statutory construction that identical terms within the same statute must bear the same meaning. (See *Reno* v. *Koray*, 115 S. Ct. 2021, 2026 (1995).)

In addition to appearing in 5 U.S.C. 605(b), the term ''significant economic impact'' appears elsewhere in the statute. The legislation is premised upon the congressional finding that alternative regulatory approaches may be available which ''minimize the significant economic impact'' of rules (5 U.S.C. 601 note). In addition, an initial regulatory flexibility analysis must describe significant regulatory alternatives that ''minimize any significant economic impact'' (5 U.S.C. 603(c)). Similarly, a final regulatory flexibility analysis must include a description of the steps the agency has taken to ''minimize any significant economic impact'' (5 U.S.C. 604(a)(5)). The term appeared as one of the elements of a final regulatory flexibility analysis, as originally enacted in 1980. (See Pub. L. No. 96–354, 3(a), 94 Stat. 1164, 1167 (1980) (formerly codified at 5 U.S.C. 604(a)(3)).) In addition, when Congress amended the elements of a final regulatory flexibility analysis in 1996, it re-enacted the term, as set forth above. (See Pub. L. 104–121, 241(b), 110 Stat. 857, 865 (1996) (codified at 5 U.S.C.604(a)(5)).)

Unless the purpose of the statute was intended to increase the economic burden of regulations by minimizing positive or beneficial effects, ''significant economic impact'' cannot include such effects. Because it is beyond dispute that the purpose of the statute is not increasing economic burdens, the plain meaning of ''significant economic impact'' is clear and necessarily excludes beneficial or positive effects of regulations. Even where there are some limited contrary indications in the statute's legislative history, it is inappropriate to resort to legislative history to cloud a statutory text that is clear on its face. (See *Ratzlaff* v. *United States*, 114 S. Ct. 655, 662 (1994).) Therefore, the agency concludes that a final regulatory flexibility analysis is not required for this regulation or any regulation for which there is no significant adverse economic impact on small entities. Notwithstanding these conclusions, FDA has nonetheless considered the impact of the rule on small entities. (See section XVI. of this document.)

N. Terminology

14. One comment addressed the agency's use of the word ''ensure'' throughout the rule and argued that the agency should use the word ''assure'' rather than ''ensure'' because ''ensure'' means ''to guarantee or make certain'' whereas ''assure'' means ''to make confident.'' The comment added that ''assure'' is also more consistent with terminology in other regulations.

The agency wishes to emphasize that it does not intend the word ''ensure'' to represent a guarantee. The agency prefers to use the word ''ensure'' because it means to make certain.

O. General Comments Regarding the Prescription Drug Marketing Act of 1987 (PDMA)

15. Three comments addressed the use of handwritten signatures that are recorded electronically (SRE's) under part 11 and PDMA. One firm described its delivery information acquisition device and noted its use of time stamps to record when signatures are executed. The comments requested clarification that SRE's would be acceptable under the PDMA regulations. One comment assumed that subpart C of part 11 (Electronic Signatures) would not apply to SRE's, noting that it was not practical under PDMA (given the large number of physicians who may be eligible to receive drug product samples) to use such alternatives as identification codes combined with passwords.

The agency advises that part 11 applies to handwritten signatures recorded electronically and that such signatures and their corresponding electronic records will be acceptable for purposes of meeting PDMA's requirements when the provisions of part 11 are met. Although subpart C of part 11 does not apply to handwritten signatures recorded electronically, the agency advises that controls related to electronic records (subpart B), and the general provisions of subpart A, do apply to electronic records in the context of PDMA. The agency emphasizes, however, that part 11 does not restrict PDMA signings to SRE's, and that organizations retain the option of using electronic signatures in conformance with part 11. Furthermore, the agency believes that the number of people in a given population or organization should not be viewed as an insurmountable obstacle to use of electronic signatures. The agency is aware, for example, of efforts by the American Society of Testing and Materials to develop standards for electronic medical records in which digital signatures could theoretically be used on a large scale.

P. Comments on the Unique Nature of Passwords

16. Several comments noted, both generally and with regard to §§ 11.100(a), 11.200(a), and 11.300, that the password in an electronic signature that is composed of a combination of password and identification code is not, and need not be, unique. Two comments added that passwords may be known to system security administrators who assist people who forget passwords and requested that the rule acknowledge that passwords need not be unique. One comment said that the rule should describe how uniqueness is to be determined.

The agency acknowledges that when an electronic signature consists of a combined identification code and password, the password need not be unique. It is possible that two persons in the same organization may have the same password. However, the agency believes that where good password practices are implemented, such coincidence would be highly unlikely. As discussed in section XIII. of this document in the context of comments on proposed § 11.300, records are less trustworthy and reliable if it is relatively easy for someone to deduce or execute, by chance, a person's electronic

signature where the identification code of the signature is not confidential and the password is easily guessed.

The agency does not believe that revising proposed § 11.100(a) is necessary because what must remain unique is the electronic signature, which, in the case addressed by the comments, consists not of the password alone, but rather the password in combination with an identification code. If the combination is unique, then the electronic signature is unique.

The agency does not believe that it is necessary to describe in the regulations the various ways of determining uniqueness or achieving compliance with the requirement. Organizations thereby maintain implementation flexibility.

The agency believes that most system administrators or security managers would not need to know passwords to help people who have forgotten their own. This is because most administrators or managers have global computer account privileges to resolve such problems.

IV. Scope (§ 11.1)

17. One comment suggested adding a new paragraph to proposed § 11.1 that would exempt computer record maintenance software installed before the effective date of the final rule, and that would exempt electronic records maintained before that date. The comment argued that such exemptions were needed for economic and constitutional reasons because making changes to existing systems would be costly and because the imposition of additional requirements after the fact could be regarded as an ex post facto rule. The comment said firms have been using electronic systems that have demonstrated reliability and security for many years before the agency's publication of the ANPRM, and that the absence of FDA's objections in inspectional form FDA 483 was evidence of the agency's acceptance of the system.

As discussed in section III.I. of this document, the agency is opposed to ''grandfathering'' existing systems because such exemptions may perpetuate environments that provide opportunities for record falsification and impair FDA's ability to protect and promote public health. However, the agency wishes to avoid any confusion regarding the application of the provisions of part 11 to systems and electronic records in place before the rule's effective date. Important distinctions need to be made relative to an electronic record's creation, modification, and maintenance because various portions of part 11 address matters relating to these actions. Those provisions apply depending upon when a given electronic record is created, modified, or maintained.

Electronic records created before the effective date of this rule are not covered by part 11 provisions that relate to aspects of the record's creation, such as the signing of the electronic record. Those records would not, therefore, need to be altered retroactively. Regarding records that were first created before the effective date, part 11 provisions relating to modification of records, such as audit trails for record changes and the requirement that original entries not be obscured, would apply only to those modifications made on or after the rule's effective date, not to modifications made earlier. Likewise, maintenance provisions of part 11, such as measures to ensure that electronic records can be retrieved throughout their retention periods, apply to electronic records that are being maintained on or after the rule's effective date. The hardware and software, as well as operational procedures used on or after the rule's effective date, to create, modify, or maintain electronic records must comply with the provisions of part 11.

The agency does not agree with any suggestion that FDA endorsement or acceptance of an electronic record system can be inferred from the absence of objections in an inspection report. Before this rulemaking, FDA did not have established criteria by which it could determine the reliability and trustworthiness of electronic records and electronic signatures and could not sanction electronic alternatives when regulations called for signatures. A primary reason for issuing part 11 is to develop and codify such criteria. FDA will assess the acceptability of electronic records and electronic signatures created prior to the effective date of part 11 on a case-by-case basis.

18. One comment suggested that proposed § 11.1 exempt production of medical devices and in vitro diagnostic products on the grounds that the subject was already adequately addressed in the medical device CGMP regulations currently in effect in § 820.195 (21 CFR 820.195), and that additional regulations would be confusing and would limit compliance.

The agency believes that part 11 complements, and is supportive of, the medical device CGMP regulations and the new medical device quality system regulation, as well as other regulations, and that compliance with one does not confound compliance with others. Before publication of the ANPRM, the agency determined that existing regulations, including the medical device CGMP regulations, did not adequately address electronic records and electronic signatures. That determination was reinforced in the comments to the ANPRM, which focused on the need to identify what makes electronic records reliable, trustworthy, and compatible with FDA's responsibility to promote and protect public health. For example, the provision cited by the comment, § 820.195, states ''When automated data processing is used for manufacturing or quality assurance purposes, adequate checks shall be designed and implemented to prevent inaccurate data output, input, and programming errors.'' This section does not address the many issues addressed by part 11, such as electronic signatures, record falsification, or FDA access to electronic records. The relationship between the quality system regulation and part 11 is discussed at various points in the preamble to the quality system regulation.

19. One comment asserted that for purposes of PDMA, the scope of proposed part 11 should be limited to require only those controls for assessing signatures in paper-based systems because physicians' handwritten signatures are executed to electronic records. The comment further asserted that, because drug manufacturers' representatives carry computers into physicians' offices (where the physicians then sign sample requests and receipts), only closed system controls should be needed.

The agency believes that, for purposes of PDMA, controls needed for electronic records bearing handwritten signatures are no different from controls needed for the same kinds of records and signatures used elsewhere, and that proposed § 11.1 need not make any such distinction.

In addition, the agency disagrees with the implication that all PDMA electronic records are, in fact, handled within closed systems. The classification of a system as open or closed in a particular situation depends on what is done in that situation. For example, the agency agrees that a closed system exists where a drug producer's representative (the person responsible for the content of the electronic record) has control over access to the electronic record system by virtue of possessing the portable computer and controlling who may use the computer to sign electronic records. However, should the firm's representative transfer copies of those records to a public online service that stores them for the drug firm's

subsequent retrieval, the agency considers such transfer and storage to be within an open system because access to the system holding the records is controlled by the online service, which is not responsible for the record's content. Activities in the first example would be subject to closed system controls and activities in the second example would be subject to open system controls.

20. One comment urged that proposed § 11.1 contain a clear statement of what precedence certain provisions of part 11 have over other regulations.

The agency believes that such statements are found in § 11.1(c):

Where electronic signatures and their associated records meet the requirements of this part, the agency will consider the electronic signatures to be equivalent to full handwritten signatures, initials, and other general signings as required under agency regulations unless specifically excepted by regulations * * *.

and § 11.1(d) (''Electronic records that meet the requirements of this part may be used in lieu of paper records, in accordance with § 11.2, unless paper records are specifically required.''). These provisions clearly address the precedence of part 11 and the equivalence of electronic records and electronic signatures.

To further clarify the scope of the rule, FDA has revised § 11.1 to apply to electronic records submitted to the agency under requirements of the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act (the PHS Act). This clarifies the point that submissions required by these statutes, but not specifically mentioned in the Code of Federal Regulations (CFR), are subject to part 11.

21. Proposed § 11.1(b) stated that the regulations would apply to records in electronic form that are created, modified, maintained, or transmitted, under any records requirements set forth in Chapter I of Title 21. One comment suggested that the word ''transmitted'' be deleted from proposed § 11.1(b) because the wording would inappropriately apply to paper documents that are transmitted by fax. The comment noted that if the records are in machine readable form before or after transmission, they would still be covered by the revised wording.

The agency does not intend part 11 to apply to paper records even if such records are transmitted or received by fax. The agency notes that the records transmitted by fax may be in electronic form at the sender, the recipient, or both. Part 11 would apply whenever the record is in electronic form. To remedy the problem noted by the comment, the agency has added a sentence to § 11.1(b) stating that part 11 does not apply to paper records that are, or have been, transmitted by electronic means.

22. One comment asked whether paper records created by computer would be subject to proposed part 11. The comment cited, as an example, the situation in which a computer system collects toxicology data that are printed out and maintained as ''raw data.''

Part 11 is intended to apply to systems that create and maintain electronic records under FDA's requirements in Chapter I of Title 21, even though some of those electronic records may be printed on paper at certain times. The key to determining part 11 applicability, under § 11.1(b), is the nature of the system used to create, modify, and maintain records, as well as the nature of the records themselves.

Part 11 is not intended to apply to computer systems that are merely incidental to the creation of paper records that are subsequently maintained in traditional paper-based systems. In such cases, the computer systems would function essentially like manual typewriters or pens and any signatures would be traditional handwritten signatures. Record storage and retrieval would be of the traditional ''file cabinet'' variety. More importantly, overall reliability, trustworthiness, and FDA's ability to access the records would derive primarily from well-established and generally accepted procedures and controls for paper records. For example, if a person were to use word processing software to generate a paper submission to FDA, part 11 would not apply to the computer system used to generate the submission, even though, technically speaking, an electronic record was initially created and then printed on paper.

When records intended to meet regulatory requirements are in electronic form, part 11 would apply to all the relevant aspects of managing those records (including their creation, signing, modification, storage, access, and retrieval). Thus, the software and hardware used to create records that are retained in electronic form for purposes of meeting the regulations would be subject to part 11.

Regarding the comment about ''raw data,'' the agency notes that specific requirements in existing regulations may affect the particular records at issue, regardless of the form such records take. For example, ''raw data,'' in the context of the good laboratory practices regulations (21 CFR part 58), include computer printouts from automated instruments as well as the same data recorded on magnetic media. In addition, regulations that cover data acquisition systems generally include requirements intended to ensure the trustworthiness and reliability of the collected data.

23. Several comments on proposed § 11.1(b) suggested that the phrase ''or archived and retrieved'' be added to paragraph (b) to reflect more accurately a record's lifecycle.

The agency intended that record archiving and retrieval would be part of record maintenance, and therefore already covered by § 11.1(b). However, for added clarity, the agency has revised § 11.1(b) to add ''archived and retrieved.''

24. One comment suggested that, in describing what electronic records are within the scope of part 11, proposed § 11.1(b) should be revised by substituting ''processed'' for ''modified'' and ''communicated'' for ''transmitted'' because ''communicated'' reflects the fact that the information was dispatched and also received. The comment also suggested substituting ''retained'' for ''maintained,'' or adding the word ''retained,'' because ''maintain'' does not necessarily convey the retention requirement.

The agency disagrees. The word ''modified'' better describes the agency's intent regarding changes to a record; the word ''processed'' does not necessarily infer a change to a record. FDA believes ''transmitted'' is preferable to ''communicated'' because ''communicated'' might infer that controls to ensure integrity and authenticity hinge on whether the intended recipient actually received the record. Also, as discussed in comment 22 of this document, the agency intends for the term ''maintain'' to include records retention.

25. Two comments suggested that proposed § 11.1(b) explicitly state that part 11 supersedes all references to handwritten signatures in 21 CFR parts 211 through 226 that pertain to a drug, and in 21 CFR parts 600 through 680 that pertain to biological products for human use. The comments stated that the revision should clarify coverage and permit blood centers and transfusion services to take full advantage of electronic systems that provide process controls.

The agency does not agree that the revision is necessary because, under § 11.1(b) and (c), part 11 permits electronic records or submissions under all FDA regulations in Chapter I of Title 21 unless specifically excepted by future regulations.

26. Several comments expressed concern that the proposed rule had inappropriately been expanded in scope

from the ANPRM to address electronic records as well as electronic signatures. One comment argued that the scope of part 11 should be restricted only to those records that are currently required to be signed, witnessed, or initialed, and that the agency should not require electronic records to contain electronic signatures where the corresponding paper records are not required to be signed.

The agency disagrees with the assertion that part 11 should address only electronic signatures and not electronic records for several reasons. First, based on comments on the ANPRM, the agency is convinced that the reliability and trustworthiness of electronic signatures depend in large measure on the reliability and trustworthiness of the underlying electronic records. Second, the agency has concluded that electronic records, like paper records, need to be trustworthy, reliable, and compatible with FDA's responsibility to promote and protect public health regardless of whether they are signed. In addition, records falsification is an issue with respect to both signed and unsigned records. Therefore, the agency concludes that although the ANPRM focused primarily on electronic signatures, expansion of the subject to electronic records in the proposed rule was fully justified.

The agency stresses that part 11 does not require that any given electronic record be signed at all. The requirement that any record bear a signature is contained in the regulation that mandates the basic record itself. Where records are signed, however, by virtue of meeting a signature requirement or otherwise, part 11 addresses controls and procedures intended to help ensure the reliability and trustworthiness of those signatures.

27. Three comments asked if there were any regulations, including CGMP regulations, that might be excepted from part 11 and requested that the agency identify such regulations.

FDA, at this time, has not identified any current regulations that are specifically excepted from part 11. However, the agency believes it is prudent to provide for such exceptions should they become necessary in the future. It is possible that, as the agency's experience with part 11 increases, certain records may need to be limited to paper if there are problems with the electronic versions of such records.

28. One comment requested clarification of the meaning of the term ''general signings'' in proposed § 11.1(c), and said that the distinction between ''full handwritten'' signatures and ''initials'' is unnecessary because handwritten includes initials in all common definitions of handwritten signature. The comment also suggested changing the term ''equivalent'' to ''at least equivalent'' because electronic signatures are not precise equivalents of handwritten signatures and computer-based signatures have the potential of being more secure.

The agency advises that current regulations that require records to be signed express those requirements in different ways depending upon the agency's intent and expectations. Some regulations expressly state that records must be signed using ''full handwritten'' signatures, whereas other regulations state that records must be ''signed or initialed;'' still other regulations implicitly call for some kind of signing by virtue of requiring record approvals or endorsements. This last broad category is addressed by the term ''general signings'' in § 11.1(c).

Where the language is explicit in the regulations, the means of meeting the requirement are correspondingly precise. Therefore, where a regulation states that a signature must be recorded as ''full handwritten,'' the use of initials is not an acceptable substitute. Furthermore, under part 11, for an electronic signature to be acceptable in place of any of these signings, the agency only needs to consider them as equivalent; electronic signatures need not be superior to those other signings to be acceptable.

29. Several comments requested clarification of which FDA records are required to be in paper form, and urged the agency to allow and promote the use of electronic records in all cases. One comment suggested that proposed § 11.1(d) be revised to read, in part, ''* * * unless the use of electronic records is specifically prohibited.''

The agency intends to permit the use of electronic records required to be maintained but not submitted to the agency (as noted in § 11.2(a)) provided that the requirements of part 11 are met and paper records are not specifically required. The agency also wishes to encourage electronic submissions, but is limited by logistic and resource constraints. The agency is unaware of ''maintenance records'' that are currently explicitly required to be in paper form (explicit mention of paper is generally unnecessary because, at the time most regulations were prepared, only paper-based technologies were in use) but is providing for that possibility in the future. For purposes of part 11, the agency will not consider that a regulation requires ''maintenance'' records to be in paper form where the regulation is silent on the form the record must take. FDA believes that the comments' suggested wording does not offer sufficient advantages to adopt the change.

However, to enable FDA to accept as many electronic submissions as possible, the agency is amending § 11.1(b) to include those submissions that the act and the PHS Act specifically require, even though such submissions may not be identified in agency regulations. An example of such records is premarket submissions for Class I and Class II medical devices, required by section 510(k) of the act (21 U.S.C. 360(k)).

30. Several comments addressed various aspects of the proposed requirement under § 11.1(e) regarding FDA inspection of electronic record systems. Several comments objected to the proposal as being too broad and going beyond the agency's legal inspectional authority. One comment stated that access inferred by such inspection may include proprietary financial and sales data to which FDA is not entitled. Another comment suggested adding the word ''authorized'' before ''inspection.'' Some comments suggested revising proposed § 11.1(e) to limit FDA inspection only to the electronic records and electronic signatures themselves, thus excluding inspection of hardware and software used to manage those records and signatures. Other comments interpreted proposed § 11.1(e) as requiring them to keep supplanted or retired hardware and software to enable FDA inspection of those outdated systems.

The agency advises that FDA inspections under part 11 are subject to the same legal limitations as FDA inspections under other regulations. The agency does not believe it is necessary to restate that limitation by use of the suggested wording. However, within those limitations, it may be necessary to inspect hardware and software used to generate and maintain electronic records to determine if the provisions of part 11 are being met. Inspection of resulting records alone would be insufficient. For example, the agency may need to observe the use and maintenance of tokens or devices that contain or generate identification information. Likewise, to assess the adequacy of systems validation, it is generally necessary to inspect hardware that is being used to determine, among other things, if it matches the system documentation description of such hardware. The agency has concluded that hardware and software used to generate and maintain electronic records and signatures are ''pertinent

equipment'' within the meaning of section 704 of the act (21 U.S.C. 374).

The agency does not expect persons to maintain obsolete and supplanted computer systems for the sole purpose of enabling FDA inspection. However, the agency does expect firms to maintain and have available for inspection documentation relevant to those systems, in terms of compliance with part 11, for as long as the electronic records are required by other relevant regulations. Persons should also be mindful of the need to keep appropriate computer systems that are capable of reading electronic records for as long as those records must be retained. In some instances, this may mean retention of otherwise outdated and supplanted systems, especially where the old records cannot be converted to a form readable by the newer systems. In most cases, however, FDA believes that where electronic records are accurately and completely transcribed from one system to another, it would not be necessary to maintain older systems.

31. One comment requested that proposed part 11 be revised to give examples of electronic records subject to FDA inspection, including pharmaceutical and medical device production records, in order to reduce the need for questions.

The agency does not believe that it is necessary to include examples of records it might inspect because the addition of such examples might raise questions about the agency's intent to inspect other records that were not identified.

32. One comment said that the regulation should state that certain security related information, such as private keys attendant to cryptographic implementation, is not intended to be subject to inspection, although procedures related to keeping such keys confidential can be subject to inspection.

The agency would not routinely seek to inspect especially sensitive information, such as passwords or private keys, attendant to security systems. However, the agency reserves the right to conduct such inspections, consistent with statutory limitations, to enforce the provisions of the act and related statutes. It may be necessary, for example, in investigating cases of suspected fraud, to access and determine passwords and private keys, in the same manner as the agency may obtain specimens of handwritten signatures (''exemplars''). Should there be any reservations about such inspections, persons may, of course, change their passwords and private keys after FDA inspection.

33. One comment asked how persons were expected to meet the proposed requirement, under § 11.1(e), that computer systems be readily available for inspection when such systems include geographically dispersed networks. Another comment said FDA investigators should not be permitted to access industry computer systems as part of inspections because investigators would be untrained users.

The agency intends to inspect those parts of electronic record or signature systems that have a bearing on the trustworthiness and reliability of electronic records and electronic signatures under part 11. For geographically dispersed systems, inspection at a given location would extend to operations, procedures, and controls at that location, along with interaction of that local system with the wider network. The agency would inspect other locations of the network in a separate but coordinated manner, much the same way the agency currently conducts inspections of firms that have multiple facilities in different parts of the country and outside of the United States.

FDA does not believe it is reasonable to rule out computer system access as part of an inspection of electronic record or signature systems. Historically, FDA investigators observe the actions of establishment employees, and (with the cooperation of establishment management) sometimes request that those employees perform some of their assigned tasks to determine the degree of compliance with established requirements. However, there may be times when FDA investigators need to access a system directly. The agency is aware that such access will generally require the cooperation of and, to some degree, instruction by the firms being inspected. As new, complex technologies emerge, FDA will need to develop and implement new inspectional methods in the context of those technologies.

V. Implementation (§ 11.2)

34. Proposed § 11.2(a) stated that for ''records required by chapter I of this title to be maintained, but not submitted to the agency, persons may use electronic records/signatures in lieu of paper records/conventional signatures, in whole or in part, * * *.''

Two comments requested clarification of the term ''conventional signatures.'' One comment suggested that the term ''traditional signatures'' be used instead. Another suggested rewording in order to clarify the slash in the phrase ''records/signatures.''

The agency advises that the term ''conventional signature'' means handwritten signature. The agency agrees that the term ''traditional signature'' is preferable, and has revised § 11.2(a) and (b) accordingly. The agency has also clarified proposed § 11.2(a) by replacing the slash with the word ''or.''

35. One comment asked if the term ''persons'' in proposed § 11.2(b) would include devices because computer systems frequently apply digital time stamps on records automatically, without direct human intervention.

The agency advises that the term ''persons'' excludes devices. The agency does not consider the application of a time stamp to be the application of a signature.

36. Proposed § 11.2(b)(2) provides conditions under which electronic records or signatures could be submitted to the agency in lieu of paper. One condition is that a document, or part of a document, must be identified in a public docket as being the type of submission the agency will accept in electronic form. Two comments addressed the nature of the submissions to the public docket. One comment asked that the agency provide specifics, such as the mechanism for updating the docket and the frequency of such updates. One comment suggested making the docket available to the public by electronic means. Another comment suggested that acceptance procedures be uniform among agency units and that electronic mail be used to hold consultations with the agency. One comment encouraged the agency units receiving the submissions to work closely with regulated industry to ensure that no segment of industry is unduly burdened and that agency guidance is widely accepted.

The agency intends to develop efficient electronic records acceptance procedures that afford receiving units sufficient flexibility to deal with submissions according to their capabilities. Although agencywide uniformity is a laudable objective, to attain such flexibility it may be necessary to accommodate some differences among receiving units. The agency considers of primary importance, however, that all part 11 submissions be trustworthy, reliable, and in keeping with FDA regulatory activity. The agency expects to work closely with industry to help ensure that the mechanics and logistics of accepting electronic submissions do not pose any undue burdens. However, the agency expects persons to consult with the

intended receiving units on the technical aspects of the submission, such as media, method of transmission, file format, archiving needs, and technical protocols. Such consultations will ensure that submissions are compatible with the receiving units' capabilities. The agency has revised proposed § 11.2(b)(2) to clarify this expectation.

Regarding the public docket, the agency is not at this time establishing a fixed schedule for updating what types of documents are acceptable for submission because the agency expects the docket to change and grow at a rate that cannot be predicted. The agency may, however, establish a schedule for updating the docket in the future. The agency agrees that making the docket available electronically is advisable and will explore this option. Elsewhere in this issue of the Federal Register, FDA is providing further information on this docket.

VI. Definitions (§ 11.3)

37. One comment questioned the incorporation in proposed § 11.3(a) of definitions under section 201 of the act (21 U.S.C. 321), noting that other FDA regulations (such as 21 CFR parts 807 and 820) lack such incorporation, and suggested that it be deleted.

The agency has retained the incorporation by reference to definitions under section 201 of the act because those definitions are applicable to part 11.

38. One comment suggested adding the following definition for the term ''digital signature:'' ''data appended to, or a cryptographic transformation of, a data unit that allows a recipient of the data unit to prove the source and integrity of the data unit and protect against forgery, e.g., by the recipient.''

The agency agrees that the term digital signature should be defined and has added new § 11.3(b)(5) to provide a definition for digital signature that is consistent with the Federal Information Processing Standard 186, issued May 19, 1995, and effective December 1, 1995, by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST). Generally, a digital signature is ''an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified.'' FDA advises that the set of rules and parameters is established in each digital signature standard.

39. Several comments suggested various modifications of the proposed definition of biometric/behavioral links, and suggested revisions that would exclude typing a password or identification code which, the comments noted, is a repeatable action. The comments suggested that actions be unique and measurable to meet the intent of a biometric method.

The agency agrees that the proposed definition of biometric/behavioral links should be revised to clarify the agency's intent that repetitive actions alone, such as typing an identification code and password, are not considered to be biometric in nature. Because comments also indicated that it would be preferable to simplify the term, the agency is changing the term ''biometric/behavioral link'' to ''biometrics.'' Accordingly, § 11.3(b)(3) defines the term ''biometrics'' to mean ''a method of verifying an individual's identity based on measurement of the individual's physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.''

40. One comment said that the agency should identify what biometric methods are acceptable to verify a person's identity and what validation acceptance criteria the agency has used to determine that biometric technologies are superior to other methods, such as use of identification codes and passwords.

The agency believes that there is a wide variety of acceptable technologies, regardless of whether they are based on biometrics, and regardless of the particular type of biometric mechanism that may be used. Under part 11, electronic signatures that employ at least two distinct identification components such as identification codes and passwords, and electronic signatures based on biometrics are equally acceptable substitutes for traditional handwritten signatures. Furthermore, all electronic record systems are subject to the same requirements of subpart B of part 11 regardless of the electronic signature technology being used. These provisions include requirements for validation.

Regarding the comment's suggestion that FDA apply quantitative acceptance criteria, the agency is not seeking to set specific numerical standards or statistical performance criteria in determining the threshold of acceptability for any type of technology. If such standards were to be set for biometrics-based electronic signatures, similar numerical performance and reliability requirements would have to be applied to other technologies as well. The agency advises, however, that the differences between system controls for biometrics-based electronic signatures and other electronic signatures are a result of the premise that biometrics-based electronic signatures, by their nature, are less prone to be compromised than other methods such as identification codes and passwords. Should it become evident that additional controls are warranted for biometrics-based electronic signatures, the agency will propose to revise part 11 accordingly.

41. Proposed § 11.3(b)(4) defined a closed system as an environment in which there is communication among multiple persons, and where system access is restricted to people who are part of the organization that operates the system.

Many comments requested clarification of the term ''organization'' and stated that the rule should account for persons who, though not strictly employees of the operating organization, are nonetheless obligated to it in some manner, or who would otherwise be granted system access by the operating organization. As examples of such persons, the comments cited outside contractors, suppliers, temporary employees, and consultants. The comments suggested a variety of alternative wording, including a change of emphasis from organizational membership to organizational control over system access. One comment requested clarification of whether the rule intends to address specific disciplines within a company.

Based on the comments, the agency has revised the proposed definition of closed system to state ''an environment in which system access is controlled by persons who are responsible for the content of electronic records that are on the system.'' The agency agrees that the most important factor in classifying a system as closed or open is whether the persons responsible for the content of the electronic records control access to the system containing those records. A system is closed if access is controlled by persons responsible for the content of the records. If those persons do not control such access, then the system is open because the records may be read, modified, or compromised by others to the possible detriment of the persons responsible for record content. Hence, those responsible for the records would need to take appropriate additional measures in an open system to protect those records from being read, modified, destroyed, or otherwise compromised by unauthorized and potentially unknown parties. The agency does not believe it is necessary to codify the basis or criteria for authorizing system access, such as existence of a fiduciary

responsibility or contractual relationship. By being silent on such criteria, the rule affords maximum flexibility to organizations by permitting them to determine those criteria for themselves.

42. Concerning the proposed definition of closed system, one comment suggested adding the words ''or devices'' after ''persons'' because communications may involve nonhuman entities.

The agency does not believe it is necessary to adopt the suggested revision because the primary intent of the regulation is to address communication among humans, not devices.

43. One comment suggested defining a closed system in terms of functional characteristics that include physical access control, having professionally written and approved procedures with employees and supervisors trained to follow them, conducting investigations when abnormalities may have occurred, and being under legal obligation to the organization responsible for operating the system.

The agency agrees that the functional characteristics cited by the comment are appropriate for a closed system, but has decided that it is unnecessary to include them in the definition. The functional characteristics themselves, however, such as physical access controls, are expressed as requirements elsewhere in part 11.

44. Two comments said that the agency should regard as closed a system in which dial-in access via public phone lines is permitted, but where access is authorized by, and under the control of, the organization that operates the system.

The agency advises that dial-in access over public phone lines could be considered part of a closed system where access to the system that holds the electronic records is under the control of the persons responsible for the content of those records. The agency cautions, however, that, where an organization's electronic records are stored on systems operated by third parties, such as commercial online services, access would be under control of the third parties and the agency would regard such a system as being open. The agency also cautions that, by permitting access to its systems by public phone lines, organizations lose the added security that results from restricting physical access to computer terminal and other input devices. In such cases, the agency believes firms would be prudent to implement additional security measures above and beyond those controls that the organization would use if the access device was within its facility and commensurate with the potential consequences of such unauthorized access. Such additional controls might include, for example, use of input device checks, caller identification checks (phone caller identification), call backs, and security cards.

45. Proposed § 11.3(b)(5) defined electronic record as a document or writing comprised of any combination of text, graphic representation, data, audio information, or video information, that is created, modified, maintained, or transmitted in digital form by a computer or related system. Many comments suggested revising the proposed definition to reflect more accurately the nature of electronic records and how they differ from paper records. Some comments suggested distinguishing between machine readable records and paper records created by machine. Some comments noted that the term ''document or writing'' is inappropriate for electronic records because electronic records could be any combination of pieces of information assembled (sometimes on a transient basis) from many noncontiguous places, and because the term does not accurately describe such electronic information as raw data or voice mail. Two comments suggested that the agency adopt definitions of electronic record that were established, respectively, by the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Electronic Data Interchange, and the American National Standards Institute/Institute of Electrical and Electronic Engineers Software Engineering (ANSI/IEEE) Standard (729–1983).

The agency agrees with the suggested revisions and has revised the definition of ''electronic record'' to emphasize this unique nature and to clarify that the agency does not regard a paper record to be an electronic record simply because it was created by a computer system. The agency has removed ''document or writing'' from this definition and elsewhere in part 11 for the sake of clarity, simplicity, and consistency.

However, the agency believes it is preferable to adapt or modify the words ''document'' and ''writing'' to electronic technologies rather than discard them entirely from the lexicon of computer technology. The agency is aware that the terms ''document'' and ''electronic document'' are used in contexts that clearly do not intend to describe paper. Therefore, the agency considers the terms ''electronic record'' and ''electronic document'' to be generally synonymous and may use the terms ''writing,'' ''electronic document,'' or ''document'' in other publications to describe records in electronic form. The agency believes that such usage is a prudent conservation of language and is consistent with the use of other terms and expressions that have roots in older technologies, but have nonetheless been adapted to newer technologies. Such terms include telephone ''dialing,'' internal combustion engine ''horse power,'' electric light luminance expressed as ''foot candles,'' and (more relevant to computer technology) execution of a ''carriage return.''

Accordingly, the agency has revised the definition of electronic record to mean ''any combination of text, graphics, data, audio, pictorial, or other information representation in digital form that is created, modified, maintained, archived, retrieved, or distributed by a computer system.''

46. Proposed § 11.3(b)(6) defined an electronic signature as the entry in the form of a magnetic impulse or other form of computer data compilation of any symbol or series of symbols, executed, adopted or authorized by a person to be the legally binding equivalent of the person's handwritten signature. One comment supported the definition as proposed, noting its consistency with dictionary definitions (*Random House Dictionary of the English Language*, Unabridged Ed. 1983, and *American Heritage Dictionary*, 1982). Several other comments, however, suggested revisions. One comment suggested replacing ''electronic signature'' with ''computer based signature,'' ''authentication,'' or ''computer based authentication'' because ''electronic signature'' is imprecise and lacks clear and recognized meaning in the information security and legal professions. The comment suggested a definition closer to the UNCITRAL draft definition:

> (1) [a] method used to identify the originator of the data message and to indicate the originator's approval of the information contained therein; and (2) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all circumstances, including any agreement between the originator and the addressee of the data message.

One comment suggested replacing ''electronic signature'' with ''electronic identification'' or ''electronic authorization'' because the terms include many types of technologies that are not easily distinguishable and because the preamble to the proposed rule gave a rationale for using ''electronic signature'' that was too ''esoteric for practical consideration.''

The agency disagrees that ''electronic signature'' as proposed should be replaced with other terms and definitions. As noted in the preamble to the proposed rule, the agency believes that it is vital to retain the word ''signature'' to maintain the equivalence and significance of various electronic technologies with the traditional handwritten signature. By not using the word ''signature,'' people may treat the electronic alternatives as less important, less binding, and less in need of controls to prevent falsification. The agency also believes that use of the word signature provides a logical bridge between paper and electronic technologies that facilitates the general transition from paper to electronic environments. The term helps people comply with current FDA regulations that specifically call for signatures. Nor does the agency agree that this reasoning is beyond the reach of practical consideration.

The agency declines to accept the suggested UNCITRAL definition because it is too narrow in context in that there is not always a specified message addressee for electronic records required by FDA regulations (e.g., a batch production record does not have a specific ''addressee'').

47. Concerning the proposed definition of ''electronic signature,'' other comments suggested deletion of the term ''magnetic impulse'' to render the term media neutral and thus allow for such alternatives as an optical disk. Comments also suggested that the term ''entry'' was unclear and recommended its deletion. Two comments suggested revisions that would classify symbols as an electronic signature only when they are committed to permanent storage because not every computer entry is a signature and processing to permanent storage must occur to indicate completion of processing.

The agency advises that the proposal did not limit electronic signature recordings to ''magnetic impulse'' because the proposed definition added, ''or other form of computer data * * *.'' However, in keeping with the agency's intent to accept a broad range of technologies, the terms ''magnetic impulse'' and ''entry'' have been removed from the proposed definition. The agency believes that recording of computer data to ''permanent'' storage is not a necessary or warranted qualifier because it is not relevant to the concept of equivalence to a handwritten signature. In addition, use of the qualifier regarding permanent storage could impede detection of falsified records if, for example, the signed falsified record was deleted after a predetermined period (thus, technically not recorded to ''permanent'' storage). An individual could disavow a signature because the record had ceased to exist.

For consistency with the proposed definition of handwritten signature, and to clarify that electronic signatures are those of individual human beings, and not those of organizations (as included in the act's definition of ''person''), FDA is changing ''person'' to ''individual'' in the final rule.

Accordingly, § 11.3(b)(7) defines electronic signature as a computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature.

48. Proposed § 11.3(b)(7) (redesignated § 11.3(b)(8) in the final rule) defined ''handwritten signature'' as the name of an individual, handwritten in script by that individual, executed or adopted with the present intention to authenticate a writing in a permanent form. The act of signing with a writing or marking instrument such as a pen or stylus is preserved. The proposed definition also stated that the scripted name, while conventionally applied to paper, may also be applied to other devices which capture the written name.

Many comments addressed this proposed definition. Two comments suggested that it be deleted on the grounds it is redundant and that, when handwritten signatures are recorded electronically, the result fits the definition of electronic signature.

The agency disagrees that the definition of handwritten signature should be deleted. In stating the criteria under which electronic signatures may be used in place of traditional handwritten signatures, the agency believes it is necessary to define handwritten signature. In addition, the agency believes that it is necessary to distinguish handwritten signatures from electronic signatures because, with handwritten signatures, the traditional act of signing one's name is preserved. Although the handwritten signature recorded electronically and electronic signatures, as defined in part 11, may both ultimately result in magnetic impulses or other forms of computerized symbol representations, the means of achieving those recordings and, more importantly, the controls needed to ensure their reliability and trustworthiness are quite different. In addition, the agency believes that a definition for handwritten signature is warranted to accommodate persons who wish to implement record systems that are combinations of paper and electronic technologies.

49. Several comments suggested replacing the reference to ''scripted name'' in the proposed definition of handwritten signature with ''legal mark'' so as to accommodate individuals who are physically unable to write their names in script. The comments asserted that the term ''legal mark'' would bring the definition to closer agreement with generally recognized legal interpretations of signature.

The agency agrees and has added the term ''legal mark'' to the definition of handwritten signature.

50. One comment recommended that the regulation state that, when the handwritten signature is not the result of the act of signing with a writing or marking instrument, but is applied to another device that captures the written name, a system should verify that the owner of the signature has authorized the use of the handwritten signature.

The agency declines to accept this comment because, if the act of signing or marking is not preserved, the type of signature would not be considered a handwritten signature. The comment appears to be referring to instances in which one person authorizes someone else to use his or her stamp or device. The agency views this as inappropriate when the signed record does not clearly show that the stamp owner did not actually execute the signature. As discussed elsewhere in this preamble, the agency believes that where one person authorizes another to sign a document on his or her behalf, the second person must sign his or her own name (not the name of the first person) along with some notation that, in doing so, he or she is acting in the capacity, or on behalf, of the first person.

51. One comment suggested that where handwritten signatures are captured by devices, there should be a register of manually written signatures to enable comparison for authenticity and the register also include the typed names of individuals.

The agency agrees that the practice of establishing a signature register has merit, but does not believe that it is necessary, in light of other part 11 controls. As noted elsewhere in this preamble (in the discussion of proposed § 11.50), the agency agrees that human readable displays of electronic records must display the name of the signer.

52. Several comments suggested various editorial changes to the proposed definition of handwritten signature including: (1) Changing the word ''also'' in the last sentence to ''alternatively,'' (2) clarifying the

difference between the words ''individual'' and ''person,'' (3) deleting the words ''in a permanent form,'' and (4) changing ''preserved'' to ''permitted.'' One comment asserted that the last sentence of the proposed definition was unnecessary.

The agency has revised the definition of handwritten signature to clarify its intent and to keep the regulation as flexible as possible. The agency believes that the last sentence of the proposed definition is needed to address devices that capture handwritten signatures. The agency is not adopting the suggestion that the word ''preserved'' be changed to ''permitted'' because ''preserved'' more accurately states the agency's intent and is a qualifier to help distinguish handwritten signatures from others. The agency advises that the word ''individual'' is used, rather than ''person,'' because the act's definition of person extends beyond individual human beings to companies and partnerships. The agency has retained the term ''permanent'' to discourage the use of pencils, but recognizes that ''permanent'' does not mean eternal.

53. One comment asked whether a signature that is first handwritten and then captured electronically (e.g., by scanning) is an electronic signature or a handwritten signature, and asked how a handwritten signature captured electronically (e.g., by using a stylus-sensing pad device) that is affixed to a paper copy of an electronic record would be classified.

FDA advises that when the act of signing with a stylus, for example, is preserved, even when applied to an electronic device, the result is a handwritten signature. The subsequent printout of the signature on paper would not change the classification of the original method used to execute the signature.

54. One comment asserted that a handwritten signature recorded electronically should be considered to be an electronic signature, based on the medium used to capture the signature. The comment argued that the word signature should be limited to paper technology.

The agency disagrees and believes it is important to classify a signature as handwritten based upon the preserved action of signing with a stylus or other writing instrument.

55. One comment asked if the definition of handwritten signature encompasses handwritten initials.

The agency advises that, as revised, the definition of handwritten signature includes handwritten initials if the initials constitute the legal mark executed or adopted with the present intention to authenticate a writing in a permanent form, and where the method of recording such initials involves the act of writing with a pen or stylus.

56. Proposed § 11.3(b)(8) (redesignated as § 11.3(b)(9) in the final rule) defined an open system as an environment in which there is electronic communication among multiple persons, where system access extends to people who are not part of the organization that operates the system.

Several comments suggested that, for simplicity, the agency define ''open system'' as any system that does not meet the definition of a closed system. One comment suggested that the definition be deleted on the grounds it is redundant, and that it is the responsibility of individual firms to take appropriate steps to ensure the validity and security of applications and information, regardless of whether systems are open or closed. Other comments suggested definitions of ''open system'' that were opposite to what they suggested for a closed system.

The agency has revised the definition of open system to mean ''an environment in which system access is not controlled by persons who are responsible for the content of electronic records that are on the system.'' The agency believes that, for clarity, the definition should stand on its own rather than as any system that is not closed. The agency rejects the suggestion that the term need not be defined at all because FDA believes that controls for open systems merit distinct provisions in part 11 and defining the term is basic to understanding which requirements apply to a given system. The agency agrees that companies have the responsibility to take steps to ensure the validity and security of their applications and information. However, FDA finds it necessary to establish part 11 as minimal requirements to help ensure that those steps are, in fact, acceptable.

VII. Electronic Records—Controls for Closed Systems (§ 11.10)

The introductory paragraph of proposed § 11.10 states that:

> Closed systems used to create, modify, maintain, or transmit electronic records shall employ procedures and controls designed to ensure the authenticity, integrity, and confidentiality of electronic records, and to ensure that the signer cannot readily repudiate the signed record as not genuine. * * *

The rest of the section lists specific procedures and controls.

57. One comment expressed full support for the list of proposed controls, calling them generally appropriate and stated that the agency is correctly accommodating the fluid nature of various electronic record and electronic signature technologies. Another comment, however, suggested that controls should not be implemented at the time electronic records are first created, but rather only after a document is accepted by a company.

The agency disagrees with this suggestion. To ignore such controls at a stage before official acceptance risks compromising the record. For example, if ''preacceptance'' records are signed by technical personnel, it is vital to ensure the integrity of their electronic signatures to prevent record alteration. The need for such integrity is no less important at preacceptance stages than at later stages when managers officially accept the records. The possibility exists that some might seek to disavow, or avoid FDA examination of, pertinent records by declaring they had not been formally ''accepted.'' In addition, FDA routinely can and does inspect evolving paper documents (e.g., standard operating procedures and validation protocols) even though they have yet to receive a firm's final acceptance.

58. One comment said proposed § 11.10 contained insufficient requirements for firms to conduct periodic inspection and monitoring of their own systems and procedures to ensure compliance with the regulations. The comment also called for a clear identification of the personnel in a firm who would be responsible for system implementation, operation, change control, and monitoring.

The agency does not believe it is necessary at this time to codify a self-auditing requirement, as suggested by the comment. Rather, the agency intends to afford organizations flexibility in establishing their own internal mechanisms to ensure compliance with part 11. Self-audits, however, may be considered as a general control, within the context of the introductory paragraph of § 11.10. The agency encourages firms to conduct such audits periodically as part of an overall approach to ensure compliance with FDA regulations generally. Likewise, the agency does not believe it is necessary or practical to codify which individuals in an organization should be responsible for compliance with various provisions of part 11. However, ultimate responsibility for part 11 will generally rest with persons responsible for electronic record content, just as responsibility for compliance with paper record requirements generally lies with those responsible for the record's content.

59. Several comments interpreted proposed § 11.10 as applying all procedures and controls to closed systems and suggested revising it to permit firms to apply only those procedures and controls they deem necessary for their own operations, because some requirements are excessive in some cases.

The agency advises that, where a given procedure or control is not intended to apply in all cases, the language of the rule so indicates. Specifically, use of operational checks (§ 11.10(f)) and device checks (§ 11.10(h)) is not required in all cases. The remaining requirements do apply in all cases and are, in the agency's opinion, the minimum needed to ensure the trustworthiness and reliability of electronic record systems. In addition, certain controls that firms deem adequate for their routine internal operations might nonetheless leave records vulnerable to manipulation and, thus, may be incompatible with FDA's responsibility to protect public health. The suggested revision would effectively permit firms to implement various controls selectively and possibly shield records from FDA, employ unqualified personnel, or permit employees to evade responsibility for fraudulent use of their electronic signatures.

The agency believes that the controls in § 11.10 are vital, and notes that almost all of them were suggested by comments on the ANPRM. The agency believes the wording of the regulation nonetheless permits firms maximum flexibility in how to meet those requirements.

60. Two comments suggested that the word ''confidentiality'' in the introductory paragraph of proposed § 11.10 be deleted because it is unnecessary and inappropriate. The comments stated that firms should determine if certain records need to be confidential, and that as long as records could not be altered or deleted without appropriate authority, it would not matter whether they could read the records.

The agency agrees that not all records required by FDA need to be kept confidential within a closed system and has revised the reference in the introductory paragraph of § 11.10 to state ''* * * and, when appropriate, the confidentiality of electronic records.'' The agency believes, however that the need for retaining the confidentiality of certain records is not diminished because viewers cannot change them. It may be prudent for persons to carefully assess the need for record confidentiality. (See, e.g., 21 CFR 1002.42, Confidentiality of records furnished by dealers and distributors, with respect to certain radiological health products.) In addition, FDA's obligation to retain the confidentiality of information it receives in some submissions hinges on the degree to which the submitter maintains confidentiality, even within its own organization. (See, e.g., 21 CFR 720.8(b) with respect to cosmetic ingredient information in voluntary filings of cosmetic product ingredient and cosmetic raw material composition statements.)

61. One comment asked if the procedures and controls required by proposed § 11.10 were to be built into software or if they could exist in written form.

The agency expects that, by their nature, some procedures and controls, such as use of time-stamped audit trails and operational checks, will be built into hardware and software. Others, such as validation and determination of personnel qualifications, may be implemented in any appropriate manner regardless of whether the mechanisms are driven by, or are external to, software or hardware. To clarify this intent, the agency has revised the introductory paragraph of proposed § 11.10 to read, in part, ''Persons who use closed systems to create, modify * * *.'' Likewise, for clarity and consistency, the agency is introducing the same phrase, ''persons who use * * *'' in §§ 11.30 and 11.300.

62. One comment contended that the distinction between open and closed systems should not be predominant because a $100,000 transaction in a closed system should not have fewer controls than a $1 transaction in an open system.

The agency believes that, within part 11, firms have the flexibility they need to adjust the extent and stringency of controls based on any factors they choose, including the economic value of the transaction. The agency does not believe it is necessary to modify part 11 at this time so as to add economic criteria.

63. One comment suggested that the reference to repudiation in the introductory paragraph of § 11.10 should be deleted because repudiation can occur at any time in legal proceedings. Another comment, noting that the proposed rule appeared to address only nonrepudiation of a signer, said the rule should address nonrepudiation of record ''genuineness'' or extend to nonrepudiation of submission, delivery, and receipt. The comment stated that some firms provide nonrepudiation services that can prevent someone from successfully claiming that a record has been altered.

In response to the first comment, the agency does not agree that the reference to repudiation should be deleted because reducing the likelihood that someone can readily repudiate an electronic signature as not his or her own, or that the signed record had been altered, is vital to the agency's basic acceptance of electronic signatures. The agency is aware that the need to deter such repudiation has been addressed in many forums and publications that discuss electronic signatures. Absent adequate controls, FDA believes some people would be more likely to repudiate an electronically-signed record because of the relative ease with which electronic records may be altered and the ease with which one individual could impersonate another. The agency notes, however, that the rule does not call for nonrepudiation as an absolute guarantee, but requires that the signer cannot ''readily'' repudiate the signature.

In response to the second comment, the agency agrees that it is also important to establish nonrepudiation of submission, delivery, and receipt of electronic records, but advises that, for purposes of § 11.10, the agency's intent is to limit nonrepudiation to the genuineness of the signer's record. In other words, an individual should not be able to readily say that: (1) He or she did not, in fact, sign the record; (2) a given electronic record containing the individual's signature was not, in fact, the record that the person signed; or (3) the originally signed electronic record had been altered after having been signed.

64. Proposed § 11.10(a) states that controls for closed systems are to include the validation of systems to ensure accuracy, reliability, consistent intended performance, and the ability to conclusively discern invalid or altered records.

Many comments objected to this proposed requirement because the word ''conclusively'' inferred an unreasonably high and unattainable standard, one which is not applied to paper records.

The agency intends to apply the same validation concepts and standards to electronic record and electronic signature systems as it does to paper systems. As such, FDA does not intend the word ''conclusively'' to suggest an unattainable absolute and has, therefore, deleted the word from the final rule.

65. One comment suggested qualifying the proposed validation requirement in § 11.10(a) to state that validation be performed ''where

necessary'' and argued that validation of commercially available software is not necessary because such software has already been thoroughly validated. The comment acknowledged that validation may be required for application programs written by manufacturers and others for special needs.

The agency disagrees with the comment's claim that all commercial software has been validated. The agency believes that commercial availability is no guarantee that software has undergone ''thorough validation'' and is unaware of any regulatory entity that has jurisdiction over general purpose software producers. The agency notes that, in general, commercial software packages are accompanied not by statements of suitability or compliance with established standards, but rather by disclaimers as to their fitness for use. The agency is aware of the complex and sometimes controversial issues in validating commercial software. However, the need to validate such software is not diminished by the fact that it was not written by those who will use the software.

In the future, the agency may provide guidance on validation of commercial software used in electronic record systems. FDA has addressed the matter of software validation in general in such documents as the ''Draft Guideline for the Validation of Blood Establishment Computer Systems,'' which is available from the Manufacturers Assistance and Communications Staff, Center for Biologics Evaluation and Research (HFM–42), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2000. This guideline is also available by sending e-mail to the following Internet address: CBER__INFO@A1.CBER.FDA.GOV). For the purposes of part 11, however, the agency believes it is vital to retain the validation requirement.

66. One comment requested an explanation of what was meant by the phrase ''consistent intended'' in proposed § 11.10(a) and why ''consistent performance'' was not used instead. The comment suggested that the rule should distinguish consistent intended performance from well-recognized service ''availability.''

The agency advises that the phrase ''consistent intended performance'' relates to the general principle of validation that planned and expected performance is based upon predetermined design specifications (hence, ''intended''). This concept is in accord with the agency's 1987 ''Guideline on General Principles of Process Validation,'' which is available from the Division of Manufacturing and Product Quality, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0093). This guideline defines validation as establishing documented evidence that provides a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes. The agency believes that the comment's concepts are accommodated by this definition to the extent that system ''availability'' may be one of the predetermined specifications or quality attributes.

67. One comment said the rule should indicate whether validation of systems does, or should, require any certification or accreditation.

The agency believes that although certification or accreditation may be a part of validation of some systems, such certification or accreditation is not necessary in all cases, outside of the context of any such approvals within an organization itself. Therefore, part 11 is silent on the matter.

68. One comment said the rule should clarify whether system validation should be capable of discerning the absence of electronic records, in light of agency concerns about falsification. The comment added that the agency's concerns regarding invalid or altered records can be mitigated by use of cryptographically enhanced methods, including secure time and date stamping.

The agency does not believe that it is necessary at this time to include an explicit requirement that systems be capable of detecting the absence of records. The agency advises that the requirement in § 11.10(e) for audit trails of operator actions would cover those actions intended to delete records. Thus, the agency would expect firms to document such deletions, and would expect the audit trail mechanisms to be included in the validation of the electronic records system.

69. Proposed § 11.10(b) states that controls for closed systems must include the ability to generate true copies of records in both human readable and electronic form suitable for inspection, review, and copying by the agency, and that if there were any questions regarding the ability of the agency to perform such review and copying, persons should contact the agency.

Several comments objected to the requirement for ''true'' copies of electronic records. The comments asserted that information in an original record (as may be contained in a database) may be presented in a copy in a different format that may be more usable. The comments concluded that, to generate precise ''true'' copies of electronic records, firms may have to retain the hardware and software that had been used to create those records in the first place (even when such hardware and software had been replaced by newer systems). The comments pointed out that firms may have to provide FDA with the application logic for ''true'' copies, and that this may violate copyright provisions. One comment illustrated the difference between ''true'' copies and other equally reliable, but not exact, copies of electronic records by noting that pages from FDA's paper publications (such as the CFR and the Compliance Policy Guidance Manual) look quite different from electronic copies posted to FDA's bulletin board. The comments suggested different wording that would effectively require accurate and complete copies, but not necessarily ''true'' copies.

The agency agrees that providing exact copies of electronic records in the strictest meaning of the word ''true'' may not always be feasible. The agency nonetheless believes it is vital that copies of electronic records provided to FDA be accurate and complete. Accordingly, in § 11.10(b), ''true'' has been replaced with ''accurate and complete.'' The agency expects that this revision should obviate the potential problems noted in the comments. The revision should also reduce the costs of providing copies by making clear that firms need not maintain obsolete equipment in order to make copies that are ''true'' with respect to format and computer system.

70. Many comments objected to the proposed requirement that systems be capable of generating electronic copies of electronic records for FDA inspection and copying, although they generally agreed that it was appropriate to provide FDA with readable paper copies. Alternative wording was suggested that would make providing electronic copies optional, such that persons could provide FDA with nothing but paper copies if they so wished. The comments argued that providing FDA with electronic copies was unnecessary, unjustified, not practical considering the different types of computer systems that may be in use, and would unfairly limit firms in their selection of hardware and software if they could only use systems that matched FDA's capabilities (capabilities which, it was argued, would not be uniform throughout the United States). One comment suggested that the rule specify

a particular format, such as ASCII, for electronic copies to FDA.

The agency disagrees with the assertion that FDA need only be provided with paper copies of electronic records. To operate effectively, the agency must function on the same technological plane as the industries it regulates. Just as firms realize efficiencies and benefits in the use of electronic records, FDA should be able to conduct audits efficiently and thoroughly using the same technology. For example, where firms perform computerized trend analyses of electronic records to improve their processes, FDA should be able to use computerized methods to audit electronic records (on site and off, as necessary) to detect trends, inconsistencies, and potential problem areas. If FDA is restricted to reviewing only paper copies of those records, the results would severely impede its operations. Inspections would take longer to complete, resulting in delays in approvals of new medical products, and expenditure of additional resources both by FDA (in performing the inspections and transcribing paper records to electronic format) and by the inspected firms, which would generate the paper copies and respond to questions during the resulting lengthened inspections.

The agency believes that it also may be necessary to require that persons furnish certain electronic copies of electronic records to FDA because paper copies may not be accurate and complete if they lack certain audit trail (metadata) information. Such information may have a direct bearing on record trustworthiness and reliability. These data could include information, for example, on when certain items of electronic mail were sent and received.

The agency notes that people who use different computer systems routinely provide each other with electronic copies of electronic records, and there are many current and developing tools to enable such sharing. For example, at a basic level, records may be created in, or transferred to, the ASCII format. Many different commercial programs have the capability to import from, and export to, electronic records having different formats. Firms use electronic data interchange (commonly known as EDI) and agreed upon transaction set formats to enable them to exchange copies of electronic records effectively. Third parties are also developing portable document formats to enable conversion among several diverse formats.

Concerning the ability of FDA to handle different formats of electronic records, based upon the emergence of format conversion tools such as those mentioned above, the agency's experience with electronic submissions such as computer assisted new drug applications (commonly known as CANDA's), and the agency's planned Submissions Management and Review Tracking System (commonly known as SMART), FDA is confident that it can work with firms to minimize any formatting difficulties. In addition, substitution of the words ''accurate and complete'' for ''true,'' as discussed in comment 69, should make it easier for firms to provide FDA with electronic copies of their electronic records. FDA does not believe it is necessary to specify any particular format in part 11 because it prefers, at this time, to afford industry and the agency more flexibility in deciding which formats meet the capabilities of all parties. Accordingly, the agency has revised proposed § 11.10(b) to read:

> The ability to generate accurate and complete copies of records in both human readable and electronic form suitable for inspection, review, and copying by the agency. Persons should contact the agency if there are any questions regarding the ability of the agency to perform such review and copying of the electronic records.

71. Proposed § 11.10(c) states that procedures and controls for closed systems must include the protection of records to enable their accurate and ready retrieval throughout the records retention period.

One firm commented that, because it replaces systems often (about every 3 years), it may have to retain supplanted systems to meet these requirements. Another comment suggested that the rule be modified to require records retention only for as long as ''legally mandated.''

The agency notes that, as discussed in comment 70 of this document, persons would not necessarily have to retain supplanted hardware and software systems provided they implemented conversion capabilities when switching to replacement technologies. The agency does not believe it is necessary to add the qualifier ''legally mandated'' because the retention period for a given record will generally be established by the regulation that requires the record. Where the regulations do not specify a given time, the agency would expect firms to establish their own retention periods. Regardless of the basis for the retention period, FDA believes that the requirement that a given electronic record be protected to permit it to be accurately and readily retrieved for as long as it is kept is reasonable and necessary.

72. Proposed § 11.10(e) would require the use of time-stamped audit trails to document record changes, all write-to-file operations, and to independently record the date and time of operator entries and actions. Record changes must not obscure previously recorded information and such audit trail documentation must be retained for a period at least as long as required for the subject electronic documents and must be available for agency review and copying.

Many comments objected to the proposed requirement that all write-to-file operations be documented in the audit trail because it is unnecessary to document all such operations. The comments said that this would require audit trails for such automated recordings as those made to internal buffers, data swap files, or temporary files created by word processing programs. The comments suggested revising § 11.10(e) to require audit trails only for operator entries and actions.

Other comments suggested that audit trails should cover: (1) Operator data inputs but not actions, (2) only operator changes to records, (3) only critical write-to-file information, (4) operator changes as well as all actions, (5) only new entries, (6) only systems where data can be altered, (7) only information recorded by humans, (8) information recorded by both humans and devices, and (9) only entries made upon adoption of the records as official. One comment said audit trails should not be required for data acquisition systems, while another comment said audit trails are critical for data acquisition systems.

It is the agency's intent that the audit trail provide a record of essentially who did what, wrote what, and when. The write-to-file operations referenced in the proposed rule were not intended to cover the kind of ''background'' nonhuman recordings the comments identified.

The agency considers such operator actions as activating a manufacturing sequence or turning off an alarm to warrant the same audit trail coverage as operator data entries in order to document a thorough history of events and those responsible for such events. Although FDA acknowledges that not every operator ''action,'' such as switching among screen displays, need be covered by audit trails, the agency is concerned that revising the rule to cover only ''critical'' operations would result in excluding much information and actions that are necessary to document events thoroughly.

The agency believes that, in general, the kinds of operator actions that need to be covered by an audit trail are those important enough to memorialize in the electronic record itself. These are actions which, for the most part, would be recorded in corresponding paper records according to existing recordkeeping requirements.

The agency intends that the audit trail capture operator actions (e.g., a command to open a valve) at the time they occur, and operator information (e.g., data entry) at the time the information is saved to the recording media (such as disk or tape), in much the same manner as such actions and information are memorialized on paper. The audit trail need not capture every keystroke and mistake that is held in a temporary buffer before those commitments. For example, where an operator records the lot number of an ingredient by typing the lot number, followed by the ''return key'' (where pressing the return key would cause the information to be saved to a disk file), the audit trail need not record every ''backspace delete'' key the operator may have previously pressed to correct a typing error. Subsequent ''saved'' corrections made after such a commitment, however, must be part of the audit trail.

At this time, the agency's primary concern relates to the integrity of human actions. Should the agency's experience with part 11 demonstrate a need to require audit trails of device operations and entries, the agency will propose appropriate revisions to these regulations. Accordingly, the agency has revised proposed § 11.10(e) by removing reference to all write-to-file operations and clarifying that the audit trail is to cover operator entries and actions that create, modify, or delete electronic records.

73. A number of comments questioned whether proposed § 11.10(e) mandated that the audit trail be part of the electronic record itself or be kept as a separate record. Some comments interpreted the word ''independently'' as requiring a separate record. Several comments focused on the question of whether audit trails should be generated manually under operator control or automatically without operator control. One comment suggested a revision that would require audit trails to be generated by computer, because the system, not the operator, should record the audit trail. Other comments said the rule should facilitate date and time recording by software, not operators, and that the qualifier ''securely'' be added to the language describing the audit trail. One comment, noting that audit trails require validation and qualification to ensure that time stamps are accurate and independent, suggested that audit trails be required only when operator actions are witnessed.

The agency advises that audit trail information may be contained as part of the electronic record itself or as a separate record. FDA does not intend to require one method over the other. The word ''independently'' is intended to require that the audit trail not be under the control of the operator and, to prevent ready alteration, that it be created independently of the operator.

To maintain audit trail integrity, the agency believes it is vital that the audit trail be created by the computer system independently of operators. The agency believes it would defeat the purpose of audit trails to permit operators to write or change them. The agency believes that, at this time, the source of such independent audit trails may effectively be within the organization that creates the electronic record. However, the agency is aware of a situation under which time and date stamps are provided by trusted third parties outside of the creating organization. These third parties provide, in effect, a public electronic notary service. FDA will monitor development of such services in light of part 11 to determine if a requirement for such third party services should be included in these regulations. For now, the agency considers the advent of such services as recognition of the need for strict objectivity in recording time and date stamps.

The agency disagrees with the premise that only witnessed operator actions need be covered by audit trails because the opportunities for record falsification are not limited to cases where operator actions are witnessed. Also, the need for validating audit trails does not diminish the need for their implementation.

FDA agrees with the suggestion that the proposed rule be revised to require a secure audit trail—a concept inherent in having such a control at all. Accordingly, proposed § 11.10(e) has been revised to require use of ''secure, computer-generated'' audit trails.

74. A few comments objected to the requirement that time be recorded, in addition to dates, and suggested that time be recorded only when necessary and feasible. Other comments specifically supported the requirement for recording time, noting that time stamps make electronic signatures less vulnerable to fraud and abuse. The comments noted that, in any setting, there is a need to identify the date, time, and person responsible for adding to or changing a value. One of the comments suggested that the rule require recording the reason for making changes to electronic records. Other comments implicitly supported recording time.

FDA believes that recording time is a critical element in documenting a sequence of events. Within a given day a number of events and operator actions may take place, and without recording time, documentation of those events would be incomplete. For example, without time stamps, it may be nearly impossible to determine such important sequencing as document approvals and revisions and the addition of ingredients in drug production. Thus, the element of time becomes vital to establishing an electronic record's trustworthiness and reliability.

The agency notes that comments on the ANPRM frequently identified use of date/time stamps as an important system control. Time recording, in the agency's view, can also be an effective deterrent to records falsification. For example, event sequence codes alone would not necessarily document true time in a series of events, making falsification of that sequence easier if time stamps are not used. The agency believes it should be very easy for firms to implement time stamps because there is a clock in every computer and document management software, electronic mail systems and other electronic record/electronic applications, such as digital signature programs, commonly apply date and time stamps. The agency does not intend that new technologies, such as cryptographic technologies, will be needed to comply with this requirement. The agency believes that implementation of time stamps should be feasible in virtually all computer systems because effective computer operations depend upon internal clock or timing mechanisms and, in the agency's experience, most computer systems are capable of precisely recording such time entries as when records are saved.

The agency is implementing the time stamp requirement based on the understanding that all current computers, electronic document software, electronic mail, and related electronic record systems include such technologies. The agency also understands that time stamps are applied automatically by these systems, meaning firms would not have to install additional hardware, software, or incur additional burden to implement this control. In recognition of this, the agency wishes to clarify that a primary intent of this provision is to ensure that people take reasonable measures to

ensure that those built in time stamps are accurate and that people do not alter them casually so as to readily mask unauthorized record changes.

The agency advises that, although part 11 does not specify the time units (e.g., tenth of a second, or even the second) to be used, the agency expects the unit of time to be meaningful in terms of documenting human actions.

The agency does not believe part 11 needs to require recording the reason for record changes because such a requirement, when needed, is already in place in existing regulations that pertain to the records themselves.

75. One comment stated that proposed § 11.10(e) should not require an electronic signature for each write-to-file operation.

The agency advises that § 11.10(e) does not require an electronic signature as the means of authenticating each write-to-file operation. The agency expects the audit trail to document who did what and when, documentation that can be recorded without electronic signatures themselves.

76. Several comments, addressing the proposed requirement that record changes not obscure previously recorded information, suggested revising proposed § 11.10(e) to apply only to those entries intended to update previous information.

The agency disagrees with the suggested revision because the rewording is too narrow. The agency believes that some record changes may not be ''updates'' but significant modifications or falsifications disguised as updates. All changes to existing records need to be documented, regardless of the reason, to maintain a complete and accurate history, to document individual responsibility, and to enable detection of record falsifications.

77. Several comments suggested replacing the word ''document'' with ''record'' in the phrase ''Such audit trails shall be retained for a period at least as long as required for the subject electronic documents * * *'' because not all electronic documents are electronic records and because the word document connotes paper.

As discussed in section III.D. of this document, the agency equates electronic documents with electronic records, but for consistency, has changed the phrase to read ''Such audit trail documentation shall be retained for a period at least as long as that required for the subject electronic records * * *.''

78. Proposed § 11.10(k)(ii) (§ 11.10(k)(2) in this regulation) addresses electronic audit trails as a systems documentation control. One comment noted that this provision appears to be the same as the audit trail provision of proposed § 11.10(e) and requested clarification.

The agency wishes to clarify that the kinds of records subject to audit trails in the two provisions cited by the comment are different. Section 11.10(e) pertains to those records that are required by existing regulations whereas § 11.10(k)(2) covers the system documentation records regarding overall controls (such as access privilege logs, or system operational specification diagrams). Accordingly, the first sentence of § 11.10(e) has been revised to read ''Use of secure, computer-generated, time-stamped audit trails to independently record and date the time of operator entries and actions that create, modify, or delete electronic records.''

79. Proposed § 11.10(f) states that procedures and controls for closed systems must include the use of operational checks to enforce permitted sequencing of events, as appropriate.

Two comments requested clarification of the agency's intent regarding operational checks.

The agency advises that the purpose of performing operational checks is to ensure that operations (such as manufacturing production steps and signings to indicate initiation or completion of those steps) are not executed outside of the predefined order established by the operating organization.

80. Several comments suggested that, for clarity, the phrase ''operational checks'' be modified to ''operational system checks.''

The agency agrees that the added modifier ''system'' more accurately reflects the agency's intent that operational checks be performed by the computer systems and has revised proposed § 11.10(f) accordingly.

81. Several comments suggested revising proposed § 11.10(f) to clarify what is to be checked. The comments suggested that ''steps'' in addition to ''events'' be checked, only critical steps be checked, and that ''records'' also be checked.

The agency intends the word ''event'' to include ''steps'' such as production steps. For clarity, however, the agency has revised proposed § 11.10(f) by adding the word ''steps.'' The agency does not, however, agree that only critical steps need be subject to operational checks because a given specific step or event may not be critical, yet it may be very important that the step be executed at the proper time relative to other steps or events. The agency does not believe it necessary to add the modifier ''records'' to proposed § 11.10(f) because creation, deletion, or modification of a record is an event. Should it be necessary to create, delete, or modify records in a particular sequence, operational system checks would ensure that the proper sequence is followed.

82. Proposed § 11.10(g) states that procedures and controls for closed systems must include the use of authority checks to ensure that only authorized individuals use the system, electronically sign a record, access the operation or device, alter a record, or perform the operation at hand.

One comment suggested that the requirement for authority checks be qualified with the phrase ''as appropriate,'' on the basis that it would not be necessary for certain parts of a system, such as those not affecting an electronic record. The comment cited pushing an emergency stop button as an example of an event that would not require an authority check. Another comment suggested deleting the requirement on the basis that some records can be read by all employees in an organization.

The agency advises that authority checks, and other controls under § 11.10, are intended to ensure the authenticity, integrity, and confidentiality of electronic records, and to ensure that signers cannot readily repudiate a signed record as not genuine. Functions outside of this context, such as pressing an emergency stop button, would not be covered. However, even in this example, the agency finds it doubtful that a firm would permit anyone, such as a stranger from outside the organization, to enter a facility and press the stop button at will regardless of the existence of an emergency. Thus, there would likely be some generalized authority checks built into the firm's operations.

The agency believes that few organizations freely permit anyone from within or without the operation to use their computer system, electronically sign a record, access workstations, alter records, or perform operations. It is likely that authority checks shape the activities of almost every organization. The nature, scope, and mechanism of performing such checks is up to the operating organization. FDA believes, however, that performing such checks is one of the most fundamental measures to ensure the integrity and trustworthiness of electronic records.

Proposed § 11.10(g) does not preclude all employees from being permitted to read certain electronic records. However, the fact that some records may be read by all employees would not

justify deleting the requirement for authority checks entirely. The agency believes it is highly unlikely that all of a firm's employees would have authority to read, write, and sign all of its electronic records.

83. One comment said authority checks are appropriate for document access but not system access, and suggested that the phrase ''access the operation or device'' be deleted. The comment added, with respect to authority checks on signing records, that in many organizations, more than one individual has the authority to sign documents required under FDA regulations and that such authority should be vested with the individual as designated by the operating organization. Another comment said proposed § 11.10(g) should explicitly require access authority checks and suggested that the phrase ''use the system'' be changed to ''access and use the system.'' The comment also asked for clarification of the term ''device.''

The agency disagrees that authority checks should not be required for system access because, as discussed in comment 82 of this document, it is unlikely that a firm would permit any unauthorized individuals to access its computer systems. System access control is a basic security function because system integrity may be impeached even if the electronic records themselves are not directly accessed. For example, someone could access a system and change password requirements or otherwise override important security measures, enabling individuals to alter electronic records or read information that they were not authorized to see. The agency does not believe it necessary to add the qualifier ''access and'' because § 11.10(d) already requires that system access be limited to authorized individuals. The agency intends the word ''device'' to mean a computer system input or output device and has revised proposed § 11.10(g) to clarify this point.

Concerning signature authority, FDA advises that the requirement for authority checks in no way limits organizations in authorizing individuals to sign multiple records. Firms may use any appropriate mechanism to implement such checks. Organizations do not have to embed a list of authorized signers in every record to perform authority checks. For example, a record may be linked to an authority code that identifies the title or organizational unit of people who may sign the record. Thus, employees who have that corresponding code, or belong to that unit, would be able to sign the record. Another way to implement controls would be to link a list of authorized records to a given individual, so that the system would permit the individual to sign only records in that list.

84. Two comments addressed authority checks within the context of PDMA and suggested that such checks not be required for drug sample receipt records. The comments said that different individuals may be authorized to accept drug samples at a physician's office, and that the large number of physicians who would potentially qualify to receive samples would be too great to institute authority checks.

The agency advises that authority checks need not be automated and that in the context of PDMA such checks would be as valid for electronic records as they are for paper sample requests because only licensed practitioners or their designees may accept delivery of drug samples. The agency, therefore, acknowledges that many individuals may legally accept samples and, thus, have the authority to sign electronic receipts. However, authority checks for electronic receipts could nonetheless be performed by sample manufacturer representatives by using the same procedures as the representatives use for paper receipts. Accordingly, the agency disagrees with the comment that proposed § 11.10(g) should not apply to PDMA sample receipts.

The agency also advises that under PDMA, authority checks would be particularly important in the case of drug sample request records because only licensed practitioners may request drug samples.

Accordingly, proposed § 11.10(g) has been revised to read: ''Use of authority checks to ensure that only authorized individuals can use the system, electronically sign a record, access the operation or computer system input or output device, alter a record, or perform the operation at hand.''

85. Proposed § 11.10(h) states that procedures and controls for closed systems must include the use of device (e.g., terminal) location checks to determine, as appropriate, the validity of the source of data input or operational instruction. Several comments objected to this proposed requirement and suggested its deletion because it is: (1) Unnecessary (because the data source is always known by virtue of system design and validation); (2) problematic with respect to mobile devices, such as those connected by modem; (3) too much of a ''how to;'' (4) not explicit enough to tell firms what to do; (5) unnecessary in the case of PDMA; and (6) technically challenging. One comment stated that a device's identification, in addition to location, may be important and suggested that the proposed rule be revised to require device identification as well.

FDA advises that, by use of the term ''as appropriate,'' it does not intend to require device checks in all cases. The agency believes that these checks are warranted where only certain devices have been selected as legitimate sources of data input or commands. In such cases, the device checks would be used to determine if the data or command source was authorized. In a network, for example, it may be necessary for security reasons to limit issuance of critical commands to only one authorized workstation. The device check would typically interrogate the source of the command to ensure that only the authorized workstation, and not some other device, was, in fact, issuing the command.

The same approach applies for remote sources connected by modem, to the extent that device identity interrogations could be made automatically regardless of where the portable devices were located. To clarify this concept, the agency has removed the word ''location'' from proposed § 11.10(h). Device checks would be necessary under PDMA when the source of commands or data is relevant to establishing authenticity, such as when licensed practitioners order drug samples directly from the manufacturer or authorized distributor without the intermediary of a sales representative. Device checks may also be useful to firms in documenting and identifying which sales representatives are transmitting drug sample requests from licensed practitioners.

FDA believes that, although validation may demonstrate that a given terminal or workstation is technically capable of sending information from one point to another, validation alone would not be expected to address whether or not such device is authorized to do so.

86. Proposed § 11.10(i) states that procedures and controls for closed systems must include confirmation that persons who develop, maintain, or use electronic record or signature systems have the education, training, and experience to perform their assigned tasks.

Several comments objected to the word ''confirmation'' because it is redundant with, or more restrictive than, existing regulations, and suggested alternate wording, such as ''evidence.'' Two comments interpreted the proposed wording as requiring that checks of personnel qualifications be performed automatically by computer systems that perform database type

matches between functions and personnel training records.

The agency advises that, although there may be some overlap in proposed § 11.10(i) and other regulations regarding the need for personnel to be properly qualified for their duties, part 11 is specific to functions regarding electronic records, an issue that other regulations may or may not adequately address. Therefore, the agency is retaining the requirement.

The agency does not intend to require that the check of personnel qualifications be performed automatically by a computer system itself (although such automation is desirable). The agency has revised the introductory paragraph of § 11.10, as discussed in section VII. of this document, to clarify this point. The agency agrees that another word should be used in place of ''confirmation,'' and for clarity has selected ''determination.''

87. One comment suggested that the word ''training'' be deleted because it has the same meaning as ''education'' and ''experience,'' and objected to the implied requirement for records of employee training. Another comment argued that applying this provision to system developers was irrelevant so long as systems perform as required and have been appropriately validated. The comment suggested revising proposed § 11.10(i) to require employees to be trained only ''as necessary.'' One comment, noting that training and experience are very important, suggested expanding proposed § 11.10(i) to require appropriate examination and certification of persons who perform certain high-risk, high-trust functions and tasks.

The agency regards this requirement as fundamental to the proper operation of a facility. Personnel entrusted with important functions must have sufficient training to do their jobs. In FDA's view, formal education (e.g., academic studies) and general industry experience would not necessarily prepare someone to begin specific, highly technical tasks at a given firm. Some degree of on-the-job training would be customary and expected. The agency believes that documentation of such training is also customary and not unreasonable.

The agency also disagrees with the assertion that personnel qualifications of system developers are irrelevant. The qualifications of personnel who develop systems are relevant to the expected performance of the systems they build and their ability to explain and support these systems. Validation does not lessen the need for personnel to have the education, training, and experience to do their jobs properly. Indeed, it is highly unlikely that poorly qualified developers would be capable of producing a system that could be validated. The agency advises that, although the intent of proposed § 11.10(i) is to address qualifications of those personnel who develop systems within an organization, rather than external ''vendors'' per se, it is nonetheless vital that vendor personnel are likewise qualified to do their work. The agency agrees that periodic examination or certification of personnel who perform certain critical tasks is desirable. However, the agency does not believe that at this time a specific requirement for such examination and certification is necessary.

88. Proposed § 11.10(j) states that procedures and controls for closed systems must include the establishment of, and adherence to, written policies that hold individuals accountable and liable for actions initiated under their electronic signatures, so as to deter record and signature falsification.

Several comments suggested changing the word ''liable'' to ''responsible'' because the word ''responsible'' is broader, more widely understood by employees, more positive and inclusive of elements of honesty and trust, and more supportive of a broad range of disciplinary measures. One comment argued that the requirement would not deter record or signature falsification because employee honesty and integrity cannot be regulated.

The agency agrees because, although the words ''responsible'' and ''liable'' are generally synonymous, ''responsible'' is preferable because it is more positive and supportive of a broad range of disciplinary measures. There may be a general perception that electronic records and electronic signatures (particularly identification codes and passwords) are less significant and formal than traditional paper records and handwritten signatures. Individuals may therefore not fully equate the seriousness of electronic record falsification with paper record falsification. Employees need to understand the gravity and consequences of signature or record falsification. Although FDA agrees that employee honesty cannot be ensured by requiring it in a regulation, the presence of strong accountability and responsibility policies is necessary to ensure that employees understand the importance of maintaining the integrity of electronic records and signatures.

89. Several comments expressed concern regarding employee liability for actions taken under their electronic signatures in the event that such signatures are compromised, and requested ''reasonable exceptions.'' The comments suggested revising proposed § 11.10(j) to hold people accountable only where there has been intentional falsification or corruption of electronic data.

The agency considers the compromise of electronic signatures to be a very serious matter, one that should precipitate an appropriate investigation into any causative weaknesses in an organization's security controls. The agency nonetheless recognizes that where such compromises occur through no fault or knowledge of individual employees, there would be reasonable limits on the extent to which disciplinary action would be taken. However, to maintain emphasis on the seriousness of such security breeches and deter the deliberate fabrication of ''mistakes,'' the agency believes § 11.10 should not provide for exceptions that may lessen the import of such a fabrication.

90. One comment said the agency should consider the need for criminal law reform because current computer crime laws do not address signatures when unauthorized access or computer use is not an issue. Another comment argued that proposed § 11.10(j) should be expanded beyond ''individual'' accountability to include business entities.

The agency will consider the need for recommending legislative initiatives to address electronic signature falsification in light of the experience it gains with this regulation. The agency does not believe it necessary to address business entity accountability specifically in § 11.10 because the emphasis is on actions and accountability of individuals, and because individuals, rather than business entities, apply signatures.

91. One comment suggested that proposed § 11.10(j) should be deleted because it is unnecessary because individuals are presumably held accountable for actions taken under their authority, and because, in some organizations, individuals frequently delegate authority to sign their names.

As discussed in comments 88 to 90 of this document, the agency has concluded that this section is necessary. Furthermore it does not limit delegation of authority as described in the comment. However, where one individual signs his or her name on behalf of someone else, the signature applied should be that of the delegatee, with some notation of that fact, and not the name of the delegator. This is the

same procedure commonly used on paper documents, noted as ''X for Y.''

92. Proposed § 11.10(k) states that procedures and controls for closed systems must include the use of appropriate systems documentation controls, including: (1) Adequate controls over the distribution, access to, and use of documentation for system operation and maintenance; and (2) records revision and change control procedures to maintain an electronic audit trail that documents time-sequenced development and modification of records. Several comments requested clarification of the type of documents covered by proposed § 11.10(k). One comment noted that this section failed to address controls for record retention. Some comments suggested limiting the scope of systems documentation to application and configurable software, or only to software that could compromise system security or integrity. Other comments suggested that this section should be deleted because some documentation needs wide distribution within an organization, and that it is an onerous burden to control user manuals.

The agency advises that § 11.10(k) is intended to apply to systems documentation, namely, records describing how a system operates and is maintained, including standard operating procedures. The agency believes that adequate controls over such documentation are necessary for various reasons. For example, it is important for employees to have correct and updated versions of standard operating and maintenance procedures. If this documentation is not current, errors in procedures and/or maintenance are more likely to occur. Part 11 does not limit an organization's discretion as to how widely or narrowly any document is to be distributed, and FDA expects that certain documents will, in fact, be widely disseminated. However, some highly sensitive documentation, such as instructions on how to modify system security features, would not routinely be widely distributed. Hence, it is important to control distribution of, access to, and use of such documentation.

Although the agency agrees that the most critical types of system documents would be those directly affecting system security and integrity, FDA does not agree that control over system documentation should only extend to security related software or to application or configurable software. Documentation that relates to operating systems, for example, may also have an impact on security and day-to-day operations. The agency does not agree that it is an onerous burden to control documentation that relates to effective operation and security of electronic records systems. Failure to control such documentation, as discussed above, could permit and foster records falsification by making the enabling instructions for these acts readily available to any individual.

93. Concerning the proposed requirement for adequate controls over documentation for system operation and maintenance, one comment suggested that it be deleted because it is under the control of system vendors, rather than operating organizations. Several comments suggested that the proposed provision be deleted because it duplicates § 11.10(e) with respect to audit trails. Some comments also objected to maintaining the change control procedures in electronic form and suggested deleting the word ''electronic'' from ''electronic audit trails.''

The agency advises that this section is intended to apply to systems documentation that can be changed by individuals within an organization. If systems documentation can only be changed by a vendor, this provision does not apply to the vendor's customers. The agency acknowledges that systems documentation may be in paper or electronic form. Where the documentation is in paper form, an audit trail of revisions need not be in electronic form. Where systems documentation is in electronic form, however, the agency intends to require the audit trail also be in electronic form, in accordance with § 11.10(e). The agency acknowledges that, in light of the comments, the proposed rule may not have been clear enough regarding audit trails addressed in § 11.10(k) compared to audit trails addressed in § 11.10(e) and has revised the final rule to clarify this matter.

The agency does not agree, however, that the audit trail provisions of § 11.10(e) and (k), as revised, are entirely duplicative. Section 11.10(e) applies to electronic records in general (including systems documentation); § 11.10(k) applies exclusively to systems documentation, regardless of whether such documentation is in paper or electronic form.

As revised, § 11.10(k) now reads as follows:

(k) Use of appropriate controls over systems documentation including:

(1) Adequate controls over the distribution of, access to, and use of documentation for system operation and maintenance.

(2) Revision and change control procedures to maintain an audit trail that documents time-sequenced development and modification of systems documentation.

VIII. Electronic Records—Controls for Open Systems (§ 11.30)

Proposed § 11.30 states that: ''Open systems used to create, modify, maintain, or transmit electronic records shall employ procedures and controls designed to ensure the authenticity, integrity and confidentiality of electronic records from the point of their creation to the point of their receipt.'' In addition, § 11.30 states:

* * * Such procedures and controls shall include those identified in § 11.10, as appropriate, and such additional measures as document encryption and use of established digital signature standards acceptable to the agency, to ensure, as necessary under the circumstances, record authenticity, integrity, and confidentiality.

94. One comment suggested that the reference to digital signature standards be deleted because the agency should not be setting standards and should not dictate how to ensure record authenticity, integrity, and confidentiality. Other comments requested clarification of the agency's expectations with regard to digital signatures: (1) The kinds that would be acceptable, (2) the mechanism for announcing which standards were acceptable (and whether that meant FDA would be certifying particular software), and (3) a definition of digital signature. One comment asserted that FDA should accept international standards for digital signatures. Some comments also requested a definition of encryption. One comment encouraged the agency to further define open systems.

The agency advises that § 11.30 requires additional controls, beyond those identified in § 11.10, as needed under the circumstances, to ensure record authenticity, integrity, and confidentiality for open systems. Use of digital signatures is one measure that may be used, but is not specifically required. The agency wants to ensure that the digital signature standard used is, in fact, appropriate. Development of digital signature standards is a complex undertaking, one FDA does not expect to be performed by individual firms on an ad hoc basis, and one FDA does not now seek to perform.

The agency is nonetheless concerned that such standards be robust and secure. Currently, the agency is aware of two such standards, the RSA (Rivest-Shamir-Adleman), and NIST's Digital Signature Standard (DSS). The DSS became Federal Information Processing Standard (FIPS) 186 on December 1, 1994. These standards are incorporated in different software programs. The agency does not seek to certify or otherwise approve of such programs,

but expects people who use such programs to ensure that they are suitable for their intended use. FDA is aware that NIST provides certifications regarding mathematical conformance to the DSS core algorithms, but does not formally evaluate the broader programs that contain those algorithms. The agency has revised the final rule to clarify its intent that firms retain the flexibility to use any appropriate digital signature as an additional system control for open systems. FDA is also including a definition of digital signature under § 11.3(b)(5).

The agency does not believe it necessary to codify the term ''encryption'' because, unlike the term digital signature, it has been in general use for many years and is generally understood to mean the transforming of a writing into a secret code or cipher. The agency is aware that there are several commercially available software programs that implement both digital signatures and encryption.

95. Two comments noted that use of digital signatures and encryption is not necessary in the context of PDMA, where access to an electronic record is limited once it is signed and stored. One of the comments suggested that proposed § 11.30 be revised to clarify this point.

As discussed in comment 94 of this document, use of digital signatures and encryption would be an option when extra measures are necessary under the circumstances. In the case of PDMA records, such measures may be warranted in certain circumstances, and unnecessary in others. For example, if electronic records were to be transmitted by a firm's representative by way of a public online service to a central location, additional measures would be necessary. On the other hand, where the representative's records are hand delivered to that location, or transferred by direct connection between the representative and the central location, such additional measures to ensure record authenticity, confidentiality, and integrity may not be necessary. The agency does not believe that it is practical to revise § 11.30 to elaborate on every possible situation in which additional measures would or would not be needed.

96. One comment addressed encryption of submissions to FDA and asked if people making those submissions would have to give the agency the appropriate ''keys'' and, if so, how the agency would protect the security of such information.

The agency intends to develop appropriate procedures regarding the exchange of ''keys'' attendant to use of encryption and digital signatures, and will protect those keys that must remain confidential, in the same manner as the agency currently protects trade secrets. Where the agency and a submitter agree to use a system that calls for the exchange of secret keys, FDA will work with submitters to achieve mutually agreeable procedures. The agency notes, however, that not all encryption and digital signature systems require that enabling keys be secret.

97. One comment noted that proposed § 11.30 does not mention availability and nonrepudiation and requested clarification of the term ''point of receipt.'' The comment noted that, where an electronic record is received at a person's electronic mailbox (which resides on an open system), additional measures may be needed when the record is transferred to the person's own local computer because such additional transfer entails additional security risks. The comment suggested wording that would extend open system controls to the point where records are ultimately retained.

The agency agrees that, in the situation described by the comment, movement of the electronic record from an electronic mailbox to a person's local computer may necessitate open system controls. However, situations may vary considerably as to the ultimate point of receipt, and FDA believes proposed § 11.30 offers greater flexibility in determining open system controls than revisions suggested by the comment. The agency advises that the concept of nonrepudiation is part of record authenticity and integrity, as already covered by § 11.10(c). Therefore, FDA is not revising § 11.30 as suggested.

IX. Electronic Records—Signature Manifestations (§ 11.50)

Proposed § 11.50 requires that electronic records that are electronically signed must display in clear text the printed name of the signer, and the date and time when the electronic signature was executed. This section also requires that electronic records clearly indicate the meaning (such as review, approval, responsibility, and authorship) associated with their attendant signatures.

98. Several comments suggested that the information required under proposed § 11.50 need not be contained in the electronic records themselves, but only in the human readable format (screen displays and printouts) of such records. The comments explained that the records themselves need only contain links, such as signature attribute codes, to such information to produce the displays of information required. The comments noted, for example, that, where electronic signatures consist of an identification code in combination with a password, the combined code and password itself would not be part of the display. Some comments suggested that proposed § 11.50 be revised to clarify what items are to be displayed.

The agency agrees and has revised proposed § 11.50 accordingly. The intent of this section is to require that human readable forms of signed electronic records, such as computer screen displays and printouts bear: (1) The printed name of the signer (at the time the record is signed as well as whenever the record is read by humans); (2) the date and time of signing; and (3) the meaning of the signature. The agency believes that revised § 11.50 will afford persons the flexibility they need to implement the display of information appropriate for their own electronic records systems, consistent with other system controls in part 11, to ensure record integrity and prevent falsification.

99. One comment stated that the controls in proposed § 11.50 would not protect against inaccurate entries.

FDA advises that the purpose of this section is not to protect against inaccurate entries, but to provide unambiguous documentation of the signer, when the signature was executed, and the signature's meaning. The agency believes that such a record is necessary to document individual responsibility and actions.

In a paper environment, the printed name of the individual is generally present in the signed record, frequently part of a traditional ''signature block.'' In an electronic environment, the person's name may not be apparent, especially where the signature is based on identification codes combined with passwords. In addition, the meaning of a signature is generally apparent in a paper record by virtue of the context of the record or, more often, explicit phrases such as ''approved by,'' ''reviewed by,'' and ''performed by.'' Thus, the agency believes that for clear documentation purposes it is necessary to carry such meanings into the electronic record environment.

100. One comment suggested that proposed § 11.50 should apply only to those records that are required to be signed, and that the display of the date and time should be performed in a secure manner.

The agency intends that this section apply to all signed electronic records regardless of whether other regulations require them to be signed. The agency believes that if it is important enough that a record be signed, human readable

displays of such records must include the printed name of the signer, the date and time of signing, and the meaning of the signature. Such information is crucial to the agency's ability to protect public health. For example, a message from a firm's management to employees instructing them on a particular course of action may be critical in litigation. This requirement will help ensure clear documentation and deter falsification regardless of whether the signature is electronic or handwritten.

The agency agrees that the display of information should be carried out in a secure manner that preserves the integrity of that information. The agency, however, does not believe it is necessary at this time to revise § 11.50 to add specific security measures because other requirements of part 11 have the effect of ensuring appropriate security.

Because signing information is important regardless of the type of signature used, the agency has revised § 11.50 to cover all types of signings.

101. Several comments objected to the requirement in proposed § 11.50(a) that the time of signing be displayed in addition to the date on the grounds that such information is: (1) Unnecessary, (2) costly to implement, (3) needed in the electronic record for auditing purposes, but not needed in the display of the record, and (4) only needed in critical applications. Some comments asserted that recording time should be optional. One comment asked whether the time should be local to the signer or to a central network when electronic record systems cross different time zones.

The agency believes that it is vital to record the time when a signature is applied. Documenting the time when a signature was applied can be critical to demonstrating that a given record was, or was not, falsified. Regarding systems that may span different time zones, the agency advises that the signer's local time is the one to be recorded.

102. One comment assumed that a person's user identification code could be displayed instead of the user's printed name, along with the date and time of signing.

This assumption is incorrect. The agency intends that the printed name of the signer be displayed for purposes of unambiguous documentation and to emphasize the importance of the act of signing to the signer. The agency believes that because an identification code is not an actual name, it would not be a satisfactory substitute.

103. One comment suggested that the word ''printed'' in the phrase ''printed name'' be deleted because the word was superfluous. The comment also stated that the rule should state when the clear text must be created or displayed because some computer systems, in the context of electronic data interchange transactions, append digital signatures to records before, or in connection with, communication of the record.

The agency disagrees that the word ''printed'' is superfluous because the intent of this section is to show the name of the person in an unambiguous manner that can be read by anyone. The agency believes that requiring the printed name of the signer instead of codes or other manifestations, more effectively provides clarity.

The agency has revised this section to clarify the point at which the signer's information must be displayed, namely, as part of any human readable form of the electronic record. The revision, in the agency's view, addresses the comment's concern regarding the application of digital signatures. The agency advises that under § 11.50, any time after an electronic record has been signed, individuals who see the human readable form of the record will be able to immediately tell who signed the record, when it was signed, and what the signature meant. This includes the signer who, as with a traditional signature to paper, will be able to review the signature instantly.

104. One comment asked if the operator would have to see the meaning of the signature, or if the information had to be stored on the physical electronic record.

As discussed in comment 100 of this document, the information required by § 11.50(b) must be displayed in the human readable format of the electronic record. Persons may elect to store that information directly within the electronic record itself, or in logically associated records, as long as such information is displayed any time a person reads the record.

105. One comment noted that proposed § 11.50(b) could be interpreted to require lengthy explanations of the signatures and the credentials of the signers. The comment also stated that this information would more naturally be contained in standard operating procedures, manuals, or accompanying literature than in the electronic records themselves.

The agency believes that the comment misinterprets the intent of this provision. Recording the meaning of the signature does not infer that the signer's credentials or other lengthy explanations be part of that meaning. The statement must merely show what is meant by the act of signing (e.g., review, approval, responsibility, authorship).

106. One comment noted that the meaning of a signature may be included in a (digital signature) public key certificate and asked if this would be acceptable. The comment also noted that the certificate might be easily accessible by a record recipient from either a recognized database or one that might be part of, or associated with, the electronic record itself. The comment further suggested that FDA would benefit from participating in developing rules of practice regarding certificate-based public key cryptography and infrastructure with the Information Security Committee, Section of Science and Technology, of the American Bar Association (ABA).

The intent of this provision is to clearly discern the meaning of the signature when the electronic record is displayed in human readable form. The agency does not expect such meaning to be contained in or displayed by a public key certificate because the public key is generally a fixed value associated with an individual. The certificate is used by the recipient to authenticate a digital signature that may have different meanings, depending upon the record being signed. FDA acknowledges that it is possible for someone to establish different public keys, each of which may indicate a different signature meaning. Part 11 would not prohibit multiple ''meaning'' keys provided the meaning of the signature itself was still clear in the display of the record, a feature that could conceivably be implemented by software.

Regarding work of the ABA and other standard-setting organizations, the agency welcomes an open dialog with such organizations, for the mutual benefit of all parties, to establish and facilitate the use of electronic record/electronic signature technologies. FDA's participation in any such activities would be in accordance with the agency's policy on standards stated in the Federal Register of October 11, 1995 (60 FR 53078).

Revised § 11.50, signature manifestations, reads as follows:

(a) Signed electronic records shall contain information associated with the signing that clearly indicates all of the following:

(1) The printed name of the signer;

(2) The date and time when the signature was executed; and

(3) The meaning (such as review, approval, responsibility, or authorship) associated with the signature.

(b) The items identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section shall be subject to the same controls as for electronic records and shall be included as part of any human readable form of the electronic record (such as electronic display or printout).

X. Electronic Records—Signature/Record Linking (§ 11.70)

107. Proposed § 11.70 states that electronic signatures and handwritten signatures executed to electronic records must be verifiably bound to their respective records to ensure that signatures could not be excised, copied, or otherwise transferred to falsify another electronic record.

Many comments objected to this provision as too prescriptive, unnecessary, unattainable, and excessive in comparison to paper-based records. Some comments asserted that the objectives of the section could be attained through appropriate procedural and administrative controls. The comments also suggested that objectives of the provision could be met by appropriate software (i.e., logical) links between the electronic signatures and electronic records, and that such links are common in systems that use identification codes in combination with passwords. One firm expressed full support for the provision, and noted that its system implements such a feature and that signature-to-record binding is similar to the record-locking provision of the proposed PDMA regulations.

The agency did not intend to mandate use of any particular technology by use of the word ''binding.'' FDA recognizes that, because it is relatively easy to copy an electronic signature to another electronic record and thus compromise or falsify that record, a technology based link is necessary. The agency does not believe that procedural or administrative controls alone are sufficient to ensure that objective because such controls could be more easily circumvented than a straightforward technology based approach. In addition, when electronic records are transferred from one party to another, the procedural controls used by the sender and recipient may be different. This could result in record falsification by signature transfer.

The agency agrees that the word ''link'' would offer persons greater flexibility in implementing the intent of this provision and in associating the names of individuals with their identification codes/passwords without actually recording the passwords themselves in electronic records. The agency has revised proposed § 11.70 to state that signatures shall be linked to their electronic records.

108. Several comments argued that proposed § 11.70 requires absolute protection of electronic records from falsification, an objective that is unrealistic to the extent that determined individuals could falsify records.

The agency acknowledges that, despite elaborate system controls, certain determined individuals may find a way to defeat antifalsification measures. FDA will pursue such illegal activities as vigorously as it does falsification of paper records. For purposes of part 11, the agency's intent is to require measures that prevent electronic records falsification by ordinary means. Therefore, FDA has revised § 11.70 by adding the phrase ''by ordinary means'' at the end of this section.

109. Several comments suggested changing the phrase ''another electronic record'' to ''an electronic record'' to clarify that the antifalsification provision applies to the current record as well as any other record.

The agency agrees and has revised § 11.70 accordingly.

110. Two comments argued that signature-to-record binding is unnecessary, in the context of PDMA, beyond the point of record creation (i.e., when records are transmitted to a point of receipt). The comments asserted that persons who might be in a position to separate a signature from a record (for purposes of falsification) are individuals responsible for record integrity and thus unlikely to falsify records. The comments also stated that signature-to-record binding is produced by software coding at the time the record is signed, and suggested that proposed § 11.70 clarify that binding would be necessary only up to the point of actual transmission of the electronic record to a central point of receipt.

The agency disagrees with the comment's premise that the need for binding to prevent falsification depends on the disposition of people to falsify records. The agency believes that reliance on individual tendencies is insufficient insurance against falsification. The agency also notes that in the traditional paper record, the signature remains bound to its corresponding record regardless of where the record may go.

111. One comment suggested that proposed § 11.70 be deleted because it appears to require that all records be kept on inalterable media. The comment also suggested that the phrase ''otherwise transferred'' be deleted on the basis that it should be permissible for copies of handwritten signatures (recorded electronically) to be made when used, in addition to another unique individual identification mechanism.

The agency advises that neither § 11.70, nor other sections in part 11, requires that records be kept on inalterable media. What is required is that whenever revisions to a record are made, the original entries must not be obscured. In addition, this section does not prohibit copies of handwritten signatures recorded electronically from being made for legitimate reasons that do not relate to record falsification. Section 11.70 merely states that such copies must not be made that falsify electronic records.

112. One comment suggested that proposed § 11.70 be revised to require application of response cryptographic methods because only those methods could be used to comply with the regulation. The comment noted that, for certificate based public key cryptographic methods, the agency should address verifiable binding between the signer's name and public key as well as binding between digital signatures and electronic records. The comment also suggested that the regulation should reference electronic signatures in the context of secure time and date stamping.

The agency intends to permit maximum flexibility in how organizations achieve the linking called for in § 11.70, and, as discussed above, has revised the regulation accordingly. Therefore, FDA does not believe that cryptographic and digital signature methods would be the only ways of linking an electronic signature to an electronic document. In fact, one firm commented that its system binds a person's handwritten signature to an electronic record. The agency agrees that use of digital signatures accomplishes the same objective because, if a digital signature were to be copied from one record to another, the second record would fail the digital signature verification procedure. Furthermore, FDA notes that concerns regarding binding a person's name with the person's public key would be addressed in the context of § 11.100(b) because an organization must establish an individual's identity before assigning or certifying an electronic signature (or any of the electronic signature components).

113. Two comments requested clarification of the types of technologies that could be used to meet the requirements of proposed § 11.70.

As discussed in comment 107 of this document, the agency is affording persons maximum flexibility in using any appropriate method to link electronic signatures to their respective electronic records to prevent record falsification. Use of digital signatures is one such method, as is use of software locks to prevent sections of codes

representing signatures from being copied or removed. Because this is an area of developing technology, it is likely that other linking methods will emerge.

XI. Electronic Signatures—General Requirements (§ 11.100)

Proposed § 11.100(a) states that each electronic signature must be unique to one individual and not be reused or reassigned to anyone else.

114. One comment asserted that several people should be permitted to share a common identification code and password where access control is limited to inquiry only.

Part 11 does not prohibit the establishment of a common group identification code/password for read only access purposes. However, such commonly shared codes and passwords would not be regarded, and must not be used, as electronic signatures. Shared access to a common database may nonetheless be implemented by granting appropriate common record access privileges to groups of people, each of whom has a unique electronic signature.

115. Several comments said proposed § 11.100(a) should permit identification codes to be reused and reassigned from one employee to another, as long as an audit trail exists to associate an identification code with a given individual at any one time, and different passwords are used. Several comments said the section should indicate if the agency intends to restrict authority delegation by the nonreassignment or nonreuse provision, or by the provision in § 11.200(a)(2) requiring electronic signatures to be used only by their genuine owners. The comments questioned whether reuse means restricting one noncryptographic based signature to only one record and argued that passwords need not be unique if the combined identification code and password are unique to one individual. One comment recommended caution in using the term ''ownership'' because of possible confusion with intellectual property rights or ownership of the computer systems themselves.

The agency advises that, where an electronic signature consists of the combined identification code and password, § 11.100 would not prohibit the reassignment of the identification code provided the combined identification code and password remain unique to prevent record falsification. The agency believes that such reassignments are inadvisable, however, to the extent that they might be combined with an easily guessed password, thus increasing the chances that an individual might assume a signature belonging to someone else. The agency also advises that where people can read identification codes (e.g., printed numbers and letters that are typed at a keyboard or read from a card), the risks of someone obtaining that information as part of a falsification effort would be greatly increased as compared to an identification code that is not in human readable form (one that is, for example, encoded on a ''secure card'' or other device).

Regarding the delegation of authority to use electronic signatures, FDA does not intend to restrict the ability of one individual to sign a record or otherwise act on behalf of another individual. However, the applied electronic signature must be the assignee's and the record should clearly indicate the capacity in which the person is acting (e.g., on behalf of, or under the authority of, someone else). This is analogous to traditional paper records and handwritten signatures when person ''A'' signs his or her own name under the signature block of person ''B,'' with appropriate explanatory notations such as ''for'' or ''as representative of'' person B. In such cases, person A does not simply sign the name of person B. The agency expects the same procedure to be used for electronic records and electronic signatures.

The agency intends the term ''reuse'' to refer to an electronic signature used by a different person. The agency does not regard as ''reuse'' the replicate application of a noncryptographic based electronic signature (such as an identification code and password) to different electronic records. For clarity, FDA has revised the phrase ''not be reused or reassigned to'' to state ''not be reused by, or reassigned to,'' in § 11.100(a).

The reference in § 11.200(a) to ownership is made in the context of an individual owning or being assigned a particular electronic signature that no other individual may use. FDA believes this is clear and that concerns regarding ownership in the context of intellectual property rights or hardware are misplaced.

116. One comment suggested that proposed § 11.100(a) should accommodate electronic signatures assigned to organizations rather than individuals.

The agency advises that, for purposes of part 11, electronic signatures are those of individual human beings and not organizations. For example, FDA does not regard a corporate seal as an individual's signature. Humans may represent and obligate organizations by signing records, however. For clarification, the agency is substituting the word ''individual'' for ''person'' in the definition of electronic signature (§ 11.3(b)(7)) because the broader definition of person within the act includes organizations.

117. Proposed § 11.100(b) states that, before an electronic signature is assigned to a person, the identity of the individual must be verified by the assigning authority.

Two comments noted that where people use identification codes in combination with passwords only the identification code portion of the electronic signature is assigned, not the password. Another comment argued that the word ''assigned'' is inappropriate in the context of electronic signatures based upon public key cryptography because the appropriate authority certifies the bind between the individual's public key and identity, and not the electronic signature itself.

The agency acknowledges that, for certain types of electronic signatures, the authorizing or certifying organization issues or approves only a portion of what eventually becomes an individual's electronic signature. FDA wishes to accommodate a broad variety of electronic signatures and is therefore revising § 11.100(b) to require that an organization verify the identity of an individual before it establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature or any element of such electronic signature.

118. One comment suggested that the word ''verified'' in proposed § 11.100(b) be changed to ''confirmed.'' Other comments addressed the method of verifying a person's identity and suggested that the section specify acceptable verification methods, including high level procedures regarding the relative strength of that verification, and the need for personal appearances or supporting documentation such as birth certificates. Two comments said the verification provision should be deleted because normal internal controls are adequate, and that it was impractical for multinational companies whose employees are globally dispersed.

The agency does not believe that there is a sufficient difference between ''verified'' and ''confirmed'' to warrant a change in this section. Both words indicate that organizations substantiate a person's identity to prevent impersonations when an electronic signature, or any of its elements, is being established or certified. The agency disagrees with the assertion that this requirement is unnecessary. Without verifying someone's identity at the outset of establishing or certifying

an individual's electronic signature, or a portion thereof, an imposter might easily access and compromise many records. Moreover, an imposter could continue this activity for a prolonged period of time despite other system controls, with potentially serious consequences.

The agency does not believe that the size of an organization, or global dispersion of its employees, is reason to abandon this vital control. Such dispersion may, in fact, make it easier for an impostor to pose as someone else in the absence of such verification. Further, the agency does not accept the implication that multinational firms would not verify the identity of their employees as part of other routine procedures, such as when individuals are first hired.

In addition, in cases where an organization is widely dispersed and electronic signatures are established or certified centrally, § 11.100(b) does not prohibit organizations from having their local units perform the verification and relaying this information to the central authority. Similarly, local units may conduct the electronic signature assignment or certification.

FDA does not believe it is necessary at this time to specify methods of identity verification and expects that organizations will consider risks attendant to sanctioning an erroneously assigned electronic signature.

119. Proposed § 11.100(c) states that persons using electronic signatures must certify to the agency that their electronic signature system guarantees the authenticity, validity, and binding nature of any electronic signature. Persons utilizing electronic signatures would, upon agency request, provide additional certification or testimony that a specific electronic signature is authentic, valid, and binding. Such certification would be submitted to the FDA district office in which territory the electronic signature system is in use.

Many comments objected to the proposed requirement that persons provide FDA with certification regarding their electronic signature systems. The comments asserted that the requirement was: (1) Unprecedented, (2) unrealistic, (3) unnecessary, (4) contradictory to the principles and intent of system validation, (5) too burdensome for FDA to manage logistically, (6) apparently intended only to simplify FDA litigation, (7) impossible to meet regarding ''guarantees'' of authenticity, and (8) an apparent substitute for FDA inspections.

FDA agrees in part with these comments. This final rule reduces the scope and burden of certification to a statement of intent that electronic signatures are the legally binding equivalent of handwritten signatures.

As noted previously, the agency believes it is important, within the context of its health protection activities, to ensure that persons who implement electronic signatures fully equate the legally binding nature of electronic signatures with the traditional handwritten paper-based signatures. The agency is concerned that individuals might disavow an electronic signature as something completely different from a traditional handwritten signature. Such contention could result in confusion and possibly extensive litigation.

Moreover, a limited certification as provided in this final rule is consistent with other legal, regulatory, and commercial practices. For example, electronic data exchange trading partner agreements are often written on paper and signed with traditional handwritten signatures to establish that certain electronic identifiers are recognized as equivalent to traditional handwritten signatures.

FDA does not expect electronic signature systems to be guaranteed foolproof. The agency does not intend, under § 11.100(c), to establish a requirement that is unattainable. Certification of an electronic signature system as the legally binding equivalent of a traditional handwritten signature is separate and distinct from system validation. This provision is not intended as a substitute for FDA inspection and such inspection alone may not be able to determine in a conclusive manner an organization's intent regarding electronic signature equivalency.

The agency has revised proposed § 11.100(c) to clarify its intent. The agency wishes to emphasize that the final rule dramatically curtails what FDA had proposed and is essential for the agency to be able to protect and promote the public health because FDA must be able to hold people to the commitments they make under their electronic signatures. The certification in the final rule is merely a statement of intent that electronic signatures are the legally binding equivalent of traditional handwritten signatures.

120. Several comments questioned the procedures necessary for submitting the certification to FDA, including: (1) The scheduling of the certification; (2) whether to submit certificates for each individual or for each electronic signature; (3) the meaning of ''territory'' in the context of wide area networks; (4) whether such certificates could be submitted electronically; and (5) whether organizations, after submitting a certificate, had to wait for a response from FDA before implementing their electronic signature systems. Two comments suggested revising proposed § 11.100(c) to require that all certifications be submitted to FDA only upon agency request. One comment suggested changing ''should'' to ''shall'' in the last sentence of § 11.100(c) if the agency's intent is to require certificates to be submitted to the respective FDA district office.

The agency intends that certificates be submitted once, in the form of a paper letter, bearing a traditional handwritten signature, at the time an organization first establishes an electronic signature system after the effective date of part 11, or, where such systems have been used before the effective date, upon continued use of the electronic signature system.

A separate certification is not needed for each electronic signature, although certification of a particular electronic signature is to be submitted if the agency requests it. The agency does not intend to establish certification as a review and approval function. In addition, organizations need not await FDA's response before putting electronic signature systems into effect, or before continuing to use an existing system.

A single certification may be stated in broad terms that encompass electronic signatures of all current and future employees, thus obviating the need for subsequent certifications submitted on a preestablished schedule.

To further simplify the process and to minimize the number of certifications that persons would have to provide, the agency has revised § 11.100(c) to permit submission of a single certification that covers all electronic signatures used by an organization. The revised rule also simplifies the process by providing a single agency receiving unit. The final rule instructs persons to send certifications to FDA's Office of Regional Operations (HFC–100), 5600 Fishers Lane, Rockville, MD 20857. Persons outside the United States may send their certifications to the same office.

The agency offers, as guidance, an example of an acceptable § 11.100(c) certification:

> Pursuant to Section 11.100 of Title 21 of the Code of Federal Regulations, this is to certify that [name of organization] intends that all electronic signatures executed by our employees, agents, or representatives, located anywhere in the world, are the legally binding equivalent of traditional handwritten signatures.

The agency has revised § 11.100 to clarify where and when certificates are to be submitted.

The agency does not agree that the initial certification be provided only upon agency request because FDA believes it is vital to have such certificates, as a matter of record, in advance of any possible litigation. This would clearly establish the intent of organizations to equate the legally binding nature of electronic signatures with traditional handwritten signatures. In addition, the agency believes that having the certification on file ahead of time will have the beneficial effect of reinforcing the gravity of electronic signatures by putting an organization's employees on notice that the organization has gone on record with FDA as equating electronic signatures with handwritten signatures.

121. One comment suggested that proposed § 11.100(c) be revised to exclude from certification instances in which the purported signer claims that he or she did not create or authorize the signature.

The agency declines to make this revision because a provision for nonrepudiation is already contained in § 11.10.

As a result of the considerations discussed in comments 119 and 120 of this document, the agency has revised proposed § 11.100(c) to state that:

(c) Persons using electronic signatures shall, prior to or at the time of such use, certify to the agency that the electronic signatures in their system, used on or after August 20, 1997, are intended to be the legally binding equivalent of traditional handwritten signatures.

(1) The certification shall be submitted in paper form and signed with a traditional handwritten signature to the Office of Regional Operations (HFC–100), 5600 Fishers Lane, Rockville, MD 20857.

(2) Persons using electronic signatures shall, upon agency request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

XII. Electronic Signature Components and Controls (§ 11.200)

122. Proposed § 11.200 sets forth requirements for electronic signature identification mechanisms and controls. Two comments suggested that the term ''identification code'' should be defined. Several comments suggested that the term ''identification mechanisms'' should be changed to ''identification components'' because each component of an electronic signature need not be executed by a different mechanism.

The agency believes that the term ''identification code'' is sufficiently broad and generally understood and does not need to be defined in these regulations. FDA agrees that the word ''component'' more accurately reflects the agency's intent than the word ''mechanism,'' and has substituted ''component'' for ''mechanism'' in revised § 11.200. The agency has also revised the section heading to read ''Electronic signature components and controls'' to be consistent with the wording of the section.

123. Proposed § 11.200(a) states that electronic signatures not based upon biometric/behavioral links must: (1) Employ at least two distinct identification mechanisms (such as an identification code and password), each of which is contemporaneously executed at each signing; (2) be used only by their genuine owners; and (3) be administered and executed to ensure that attempted use of an individual's electronic signature by anyone other than its genuine owner requires collaboration of two or more individuals.

Two comments said that proposed § 11.200(a) should acknowledge that passwords may be known not only to their genuine owners, but also to system administrators in case people forget their passwords.

The agency does not believe that system administrators would routinely need to know an individual's password because they would have sufficient privileges to assist those individuals who forget passwords.

124. Several comments argued that the agency should accept a single password alone as an electronic signature because: (1) Combining the password with an identification code adds little security, (2) administrative controls and passwords are sufficient, (3) authorized access is more difficult when two components are needed, (4) people would not want to gain unauthorized entry into a manufacturing environment, and (5) changing current systems that use only a password would be costly.

The comments generally addressed the need for two components in electronic signatures within the context of the requirement that all components be used each time an electronic signature is executed. Several comments suggested that, for purposes of system access, individuals should enter both a user identification code and password, but that, for subsequent signings during one period of access, a single element (such as a password) known only to, and usable by, the individual should be sufficient.

The agency believes that it is very important to distinguish between those (nonbiometric) electronic signatures that are executed repetitively during a single, continuous controlled period of time (access session or logged-on period) and those that are not. The agency is concerned, from statements made in comments, that people might use passwords that are not always unique and are frequently words that are easily associated with an individual. Accordingly, where nonbiometric electronic signatures are not executed repetitively during a single, continuous controlled period, it would be extremely bad practice to use a password alone as an electronic signature. The agency believes that using a password alone in such cases would clearly increase the likelihood that one individual, by chance or deduction, could enter a password that belonged to someone else and thereby easily and readily impersonate that individual. This action could falsify electronic records.

The agency acknowledges that there are some situations involving repetitive signings in which it may not be necessary for an individual to execute each component of a nonbiometric electronic signature for every signing. The agency is persuaded by the comments that such situations generally involve certain conditions. For example, an individual performs an initial system access or ''log on,'' which is effectively the first signing, by executing all components of the electronic signature (typically both an identification code and a password). The individual then performs subsequent signings by executing at least one component of the electronic signature, under controlled conditions that prevent another person from impersonating the legitimate signer. The agency's concern here is the possibility that, if the person leaves the workstation, someone else could access the workstation (or other computer device used to execute the signing) and impersonate the legitimate signer by entering an identification code or password.

The agency believes that, in such situations, it is vital to have stringent controls in place to prevent the impersonation. Such controls include: (1) Requiring an individual to remain in close proximity to the workstation throughout the signing session; (2) use of automatic inactivity disconnect measures that would ''de-log'' the first individual if no entries or actions were taken within a fixed short timeframe; and (3) requiring that the single component needed for subsequent signings be known to, and usable only by, the authorized individual.

The agency's objective in accepting the execution of fewer than all the components of a nonbiometric

electronic signature for repetitive signings is to make it impractical to falsify records. The agency believes that this would be attained by complying with all of the following procedures where nonbiometric electronic signatures are executed more than once during a single, continuous controlled session: (1) All electronic signature components are executed for the first signing; (2) at least one electronic signature component is executed at each subsequent signing; (3) the electronic signature component executed after the initial signing is only used by its genuine owner, and is designed to ensure it can only be used by its genuine owner; and (4) the electronic signatures are administered and executed to ensure that their attempted use by anyone other than their genuine owners requires collaboration of two or more individuals. Items 1 and 4 are already incorporated in proposed § 11.200(a). FDA has included items 2 and 3 in final § 11.200(a).

The agency cautions, however, that if its experience with enforcement of part 11 demonstrates that these controls are insufficient to deter falsifications, FDA may propose more stringent controls.

125. One comment asserted that, if the agency intends the term ''identification code'' to mean the typical user identification, it should not characterize the term as a distinct mechanism because such codes do not necessarily exhibit security attributes. The comment also suggested that proposed § 11.200(a) address the appropriate application of each possible combination of a two-factor authentication method.

The agency acknowledges that the identification code alone does not exhibit security attributes. Security derives from the totality of system controls used to prevent falsification. However, uniqueness of the identification code when combined with another electronic signature component, which may not be unique (such as a password), makes the combination unique and thereby enables a legitimate electronic signature. FDA does not now believe it necessary to address, in § 11.200(a), the application of all possible combinations of multifactored authentication methods.

126. One comment requested clarification of ''each signing,'' noting that a laboratory employee may enter a group of test results under one signing.

The agency advises that each signing means each time an individual executes a signature. Particular requirements regarding what records need to be signed derive from other regulations, not part 11. For example, in the case of a laboratory employee who performs a number of analytical tests, within the context of drug CGMP regulations, it is permissible for one signature to indicate the performance of a group of tests (21 CFR 211.194(a)(7)). A separate signing is not required in this context for each separate test as long as the record clearly shows that the single signature means the signer performed all the tests.

127. One comment suggested that the proposed requirement, that collaboration of at least two individuals is needed to prevent attempts at electronic signature falsification, be deleted because a responsible person should be allowed to override the electronic signature of a subordinate. Several comments addressed the phrase ''attempted use'' and suggested that it be deleted or changed to ''unauthorized use.'' The comments said that willful breaking or circumvention of any security measure does not require two or more people to execute, and that the central question is whether collaboration is required to use the electronic signature.

The agency advises that the intent of the collaboration provision is to require that the components of a nonbiometric electronic signature cannot be used by one individual without the prior knowledge of a second individual. One type of situation the agency seeks to prevent is the use of a component such as a card or token that a person may leave unattended. If an individual must collaborate with another individual by disclosing a password, the risks of betrayal and disclosure are greatly increased and this helps to deter such actions. Because the agency is not condoning such actions, § 11.200(a)(2) requires that electronic signatures be used only by the genuine owner. The agency disagrees with the comments that the term ''attempted use'' should be changed to ''unauthorized uses,'' because ''unauthorized uses'' could infer that use of someone else's electronic signature is acceptable if it is authorized.

Regarding electronic signature ''overrides,'' the agency would consider as falsification the act of substituting the signature of a supervisor for that of a subordinate. The electronic signature of the subordinate must remain inviolate for purposes of authentication and documentation. Although supervisors may overrule the actions of their staff, the electronic signatures of the subordinates must remain a permanent part of the record, and the supervisor's own electronic signature must appear separately. The agency believes that such an approach is fully consistent with procedures for paper records.

As a result of the revisions noted in comments 123 to 127 of this document, § 11.200(a) now reads as follows:

(a) Electronic signatures that are not based upon biometrics shall:

(1) Employ at least two distinct identification components such as an identification code and password.

(i) When an individual executes a series of signings during a single, continuous period of controlled system access, the first signing shall be executed using all electronic signature components; subsequent signings shall be executed using at least one electronic signature component that is only executable by, and designed to be used only by, the individual.

(ii) When an individual executes one or more signings not performed during a single, continuous period of controlled system access, each signing shall be executed using all of the electronic signature components.

(2) Be used only by their genuine owners; and

(3) Be administered and executed to ensure that attempted use of an individual's electronic signature by anyone other than its genuine owner requires collaboration of two or more individuals.

128. Proposed § 11.200(b) states that electronic signatures based upon biometric/behavioral links be designed to ensure that they could not be used by anyone other than their genuine owners.

One comment suggested that the agency make available, by public workshop or other means, any information it has regarding existing biometric systems so that industry can provide proper input. Another comment asserted that proposed § 11.200(b) placed too great an emphasis on biometrics, did not establish particular levels of assurance for biometrics, and did not provide for systems using mixtures of biometric and nonbiometric electronic signatures. The comment recommended revising the phrase ''designed to ensure they cannot be used'' to read ''provide assurances that prevent their execution.''

The agency's experience with biometric electronic signatures is contained in the administrative record for this rulemaking, under docket no. 92N–0251, and includes recommendations from public comments to the ANPRM and the proposed rule. The agency has also gathered, and continues to gather, additional information from literature reviews, general press reports, meetings, and the agency's experience with this technology. Interested persons have had extensive opportunity for input and comment regarding biometrics in part 11. In addition, interested persons may continue to contact the agency at any time regarding biometrics or any other relevant technologies. The agency notes

that the rule does not require the use of biometric-based electronic signatures.

As the agency's experience with biometric electronic signatures increases, FDA will consider holding or participating in public workshops if that approach would be helpful to those wishing to adopt such technologies to comply with part 11.

The agency does not believe that proposed § 11.200(b) places too much emphasis on biometric electronic signatures. As discussed above, the regulation makes a clear distinction between electronic signatures that are and are not based on biometrics, but treats their acceptance equally.

The agency recognizes the inherent security advantages of biometrics, however, in that record falsification is more difficult to perform. System controls needed to make biometric-based electronic signatures reliable and trustworthy are thus different in certain respects from controls needed to make nonbiometric electronic signatures reliable and trustworthy. The requirements in part 11 reflect those differences.

The agency does not believe that it is necessary at this time to set numerical security assurance standards that any system would have to meet.

The regulation does not prohibit individuals from using combinations of biometric and nonbiometric-based electronic signatures. However, when combinations are used, FDA advises that requirements for each element in the combination would also apply. For example, if passwords are used in combination with biometrics, then the benefits of using passwords would only be realized, in the agency's view, by adhering to controls that ensure password integrity (see § 11.300).

In addition, the agency believes that the phrase ''designed to ensure that they cannot be used'' more accurately reflects the agency's intent than the suggested alternate wording, and is more consistent with the concept of systems validation. Under such validation, falsification preventive attributes would be designed into the biometric systems.

To be consistent with the revised definition of biometrics in § 11.3(b)(3), the agency has revised § 11.200(b) to read, ''Electronic signatures based upon biometrics shall be designed to ensure that they cannot be used by anyone other than their genuine owners.''

XIII. Electronic Signatures—Controls for Identification Codes/Passwords (§ 11.300)

The introductory paragraph of proposed § 11.300 states that electronic signatures based upon use of identification codes in combination with passwords must employ controls to ensure their security and integrity.

To clarify the intent of this provision, the agency has added the words ''[p]ersons who use'' to the first sentence of § 11.300. This change is consistent with §§ 11.10 and 11.30. The introductory paragraph now reads, ''Persons who use electronic signatures based upon use of identification codes in combination with passwords shall employ controls to ensure their security and integrity. Such controls shall include: * * *.''

129. One comment suggested deletion of the phrase ''in combination with passwords'' from the first sentence of this section.

The agency disagrees with the suggested revision because the change is inconsistent with FDA's intent to address controls for electronic signatures based on combinations of identification codes and passwords, and would, in effect, permit a single component nonbiometric-based electronic signature.

130. Proposed § 11.300(a) states that controls for identification codes/passwords must include maintaining the uniqueness of each issuance of identification code and password.

One comment alleged that most passwords are commonly used words, such as a child's name, a State, city, street, month, holiday, or date, that are significant to the person who creates the password. Another stated that the rule should explain uniqueness and distinguish between issuance and use because identification code/password combinations generally do not change for each use.

FDA does not intend to require that individuals use a completely different identification code/password combination each time they execute an electronic signature. For reasons explained in the response to comment 16, what is required to be unique is each combined password and identification code and FDA has revised the wording of § 11.300(a) to clarify this provision. The agency is aware, however, of identification devices that generate new passwords on a continuous basis in synchronization with a ''host'' computer. This results in unique passwords for each system access. Thus, it is possible in theory to generate a unique nonbiometric electronic signature for each signing.

The agency cautions against using passwords that are common words easily associated with their originators because such a practice would make it relatively easy for someone to impersonate someone else by guessing the password and combining it with an unsecured (or even commonly known) identification code.

131. Proposed § 11.300(b) states that controls for identification codes/passwords must ensure that code/password issuances are periodically checked, recalled, or revised.

Several comments objected to this proposed requirement because: (1) It is unnecessary, (2) it excessively prescribes ''how to,'' (3) it duplicates the requirements in § 11.300(c), and (4) it is administratively impractical for larger organizations. However, the comments said individuals should be encouraged to change their passwords periodically. Several comments suggested that proposed § 11.300(b) include a clarifying example such as ''to cover events such as password aging.'' One comment said that the section should indicate who is to perform the periodic checking, recalling, or revising.

The agency disagrees with the objections to this provision. FDA does not view the provision as a ''how to'' because organizations have full flexibility in determining the frequency and methods of checking, recalling, or revising their code/password issuances. The agency does not believe that this paragraph duplicates the regulation in § 11.300(c) because paragraph (c) specifically addresses followup to losses of electronic signature issuances, whereas § 11.300(b) addresses periodic issuance changes to ensure against their having been unknowingly compromised. This provision would be met by ensuring that people change their passwords periodically.

FDA disagrees that this system control is unnecessary or impractical in large organizations because the presence of more people may increase the opportunities for compromising identification codes/passwords. The agency is confident that larger organizations will be fully capable of handling periodic issuance checks, revisions, or recalls.

FDA agrees with the comments that suggested a clarifying example and has revised § 11.300(b) to include password aging as such an example. The agency cautions, however, that the example should not be taken to mean that password expiration would be the only rationale for revising, recalling, and checking issuances. If, for example, identification codes and passwords have been copied or compromised, they should be changed.

FDA does not believe it necessary at this time to specify who in an organization is to carry out this system control, although the agency expects

that units that issue electronic signatures would likely have this duty.

132. Proposed § 11.300(c) states that controls for identification codes/passwords must include the following of loss management procedures to electronically deauthorize lost tokens, cards, etc., and to issue temporary or permanent replacements using suitable, rigorous controls for substitutes.

One comment suggested that this section be deleted because it excessively prescribes ''how to.'' Another comment argued that the proposal was not detailed enough and should distinguish among fundamental types of cards (e.g., magstripe, integrated circuit, and optical) and include separate sections that address their respective use. Two comments questioned why the proposal called for ''rigorous controls'' in this section as opposed to other sections. One of the comments recommended that this section should also apply to cards or devices that are stolen as well as lost.

The agency believes that the requirement that organizations institute loss management procedures is neither too detailed nor too general. Organizations retain full flexibility in establishing the details of such procedures. The agency does not believe it necessary at this time to offer specific provisions relating to different types of cards or tokens. Organizations that use such devices retain full flexibility to establish appropriate controls for their operations. To clarify the agency's broad intent to cover all types of devices that contain or generate identification code or password information, FDA has revised § 11.300(c) to replace ''etc.'' with ''and other devices that bear or generate identification code or password information.''

The agency agrees that § 11.300(c) should cover loss management procedures regardless of how devices become potentially compromised, and has revised this section by adding, after the word ''lost,'' the phrase ''stolen, missing, or otherwise potentially compromised.'' FDA uses the term ''rigorous'' because device disappearance may be the result of inadequate controls over the issuance and management of the original cards or devices, thus necessitating more stringent measures to prevent problem recurrence. For example, personnel training on device safekeeping may need to be strengthened.

133. Proposed § 11.300(d) states that controls for identification codes/passwords must include the use of transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and, detecting and reporting to the system security unit and organizational management in an emergent manner any attempts at their unauthorized use.

Several comments suggested that the term ''emergent'' in proposed § 11.300(d) be replaced with ''timely'' to describe reports regarding attempted unauthorized use of identification codes/passwords because: (1) A timely report would be sufficient, (2) technology to report emergently is not available, and (3) timely is a more recognizable and common term.

FDA agrees in part. The agency considers attempts at unauthorized use of identification codes and passwords to be extremely serious because such attempts signal potential electronic signature and electronic record falsification, data corruption, or worse—consequences that could also ultimately be very costly to organizations. In FDA's view, the significance of such attempts requires the immediate and urgent attention of appropriate security personnel in the same manner that individuals would respond to a fire alarm. To clarify its intent with a more widely recognized term, the agency is replacing ''emergent'' with ''immediate and urgent'' in the final rule. The agency believes that the same technology that accepts or rejects an identification code and password can be used to relay to security personnel an appropriate message regarding attempted misuse.

134. One comment suggested that the word ''any'' be deleted from the phrase ''any attempts'' in proposed § 11.300(d) because it is excessive. Another comment, noting that the question of attempts to enter a system or access a file by unauthorized personnel is very serious, urged the agency to substitute ''all'' for ''any.'' This comment added that there are devices on the market that can be used by unauthorized individuals to locate personal identification codes and passwords.

The agency believes the word ''any'' is sufficiently broad to cover all attempts at misuse of identification codes and passwords, and rejects the suggestion to delete the word. If the word ''any'' were deleted, laxity could result from any inference that persons are less likely to be caught in an essentially permissive, nonvigilant system. FDA is aware of the ''sniffing'' devices referred to by one comment and cautions persons to establish suitable countermeasures against them.

135. One comment suggested that proposed § 11.300(d) be deleted because it is impractical, especially when simple typing errors are made. Another suggested that this section pertain to access to electronic records, not just the system, on the basis that simple miskeys may be typed when accessing a system.

As discussed in comments 133 and 134 of this document, the agency believes this provision is necessary and reasonable. The agency's security concerns extend to system as well as record access. Once having gained unauthorized system access, an individual could conceivably alter passwords to mask further intrusion and misdeeds. If this section were removed, falsifications would be more probable to the extent that some establishments would not alert security personnel.

However, the agency advises that a simple typing error may not indicate an unauthorized use attempt, although a pattern of such errors, especially in short succession, or such an apparent error executed when the individual who ''owns'' that identification code or password is deceased, absent, or otherwise known to be unavailable, could signal a security problem that should not be ignored. FDA notes that this section offers organizations maximum latitude in deciding what they perceive to be attempts at unauthorized use.

136. One comment suggested substituting the phrase ''electronic signature'' for ''passwords and/or identification codes.''

The agency disagrees with this comment because the net effect of the revision might be to ignore attempted misuse of important elements of an electronic signature such as a ''password'' attack on a system.

137. Several comments argued that: (1) It is not necessary to report misuse attempts simultaneously to management when reporting to the appropriate security unit, (2) security units would respond to management in accordance with their established procedures and lines of authority, and (3) management would not always be involved.

The agency agrees that not every misuse attempt would have to be reported simultaneously to an organization's management if the security unit that was alerted responded appropriately. FDA notes, however, that some apparent security breeches could be serious enough to warrant management's immediate and urgent attention. The agency has revised proposed § 11.300(d) to give organizations maximum flexibility in establishing criteria for management notification. Accordingly, § 11.300(d) now states that controls for identification codes/passwords must include:

Use of transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and to detect and report

in an immediate and urgent manner any attempts at their unauthorized use to the system security unit, and, as appropriate, to organizational management.

138. Proposed § 11.300(e) states that controls for identification codes/passwords must include initial and periodic testing of devices, such as tokens or cards, bearing identifying information, for proper function.

Many comments objected to this proposed device testing requirement as unnecessary because it is part of system validation and because devices are access fail-safe in that nonworking devices would deny rather than permit system access. The comments suggested revising this section to require that failed devices deny user access. One comment stated that § 11.300(e) is unclear on the meaning of ''identifying information'' and that the phrase ''tokens or cards'' is redundant because cards are a form of tokens.

FDA wishes to clarify the reason for this proposed requirement, and to emphasize that proper device functioning includes, in addition to system access, the correctness of the identifying information and security performance attributes. Testing for system access alone could fail to discern significant unauthorized device alterations. If, for example, a device has been modified to change the identifying information, system access may still be allowed, which would enable someone to assume the identity of another person. In addition, devices may have been changed to grant individuals additional system privileges and action authorizations beyond those granted by the organization. Of lesser significance would be simple wear and tear on such devices, which result in reduced performance. For instance, a bar code may not be read with the same consistent accuracy as intended if the code becomes marred, stained, or otherwise disfigured. Access may be granted, but only after many more scannings than desired. The agency expects that device testing would detect such defects.

Because validation of electronic signature systems would not cover unauthorized device modifications, or subsequent wear and tear, validation would not obviate the need for periodic testing.

The agency notes that § 11.300(e) does not limit the types of devices organizations may use. In addition, not all tokens may be cards, and identifying information is intended to include identification codes and passwords. Therefore, FDA has revised proposed § 11.300(e) to clarify the agency's intent and to be consistent with § 11.300(c). Revised § 11.300(e) requires initial and periodic testing of devices, such as tokens or cards, that bear or generate identification code or password information to ensure that they function properly and have not been altered in an unauthorized manner.

XIV. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, in accordance with 5 CFR 1320, the title, description, and description of respondents of the collection of information requirements are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Most of the burden created by the information collection provision of this final rule will be a one-time burden associated with the creation of standard operating procedures, validation, and certification. The agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA-required records.

Title: Electronic records; Electronic signatures.

Description: FDA is issuing regulations that provide criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Rules apply to any FDA records requirements unless specific restrictions are issued in the future. Records required to be submitted to FDA may be submitted electronically, provided the agency has stated its ability to accept the records electronically in an agency established public docket.

Description of Respondents: Businesses and other for-profit organizations, state or local governments, Federal agencies, and nonprofit institutions.

Although the August 31, 1994, proposed rule (59 FR 45160) provided a 90-day comment period under the Paperwork Reduction Act of 1980, FDA is providing an additional opportunity for public comment under the Paperwork Reduction Act of 1995, which was enacted after the expiration of the comment period and applies to this final rule. Therefore, FDA now 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. Individuals and organizations may submit comments on the information collection provisions of this final rule by May 19, 1997. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the Federal Register when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	Annual No. of Recordkeepers	Hours per Recordkeeper	Total Hours
11.10	50	40	2,000
11.30	50	40	2,000
11.50	50	40	2,000

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

21 CFR Section	Annual No. of Recordkeepers	Hours per Recordkeeper	Total Hours
11.300	50	40	2,000
Total annual burden hours			8,000

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Annual No. of Respondents	Hours per Response	Total Burden Hours
11.100	1,000	1	1,000
Total annual burden hours			1,000

XV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XVI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). 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; and distributive impacts and equity). Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This rule permits persons to maintain any FDA required record or report in electronic format. It also permits FDA to accept electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records and handwritten signatures executed on paper. The rule applies to any paper records required by statute or agency regulations. The rule was substantially influenced by comments to the ANPRM and the proposed rule. The provisions of this rule permit the use of electronic technology under conditions that the agency believes are necessary to ensure the integrity of electronic systems, records, and signatures, and the ability of the agency to protect and promote the public health.

This rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order. This rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act.

The activities regulated by this rule are voluntary; no entity is required by this rule to maintain or submit records electronically if it does not wish to do so. Presumably, no firm (or other regulated entity) will implement electronic recordkeeping unless the benefits to that firm are expected to exceed any costs (including capital and maintenance costs). Thus, the industry will incur no net costs as a result of this rule.

Based on the fact that the activities regulated by this rule are entirely voluntary and will not have any net adverse effects on small entities, the Commissioner of Food and Drugs certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

Although no further analysis is required, in developing this rule, FDA has considered the impact of the rule on small entities. The agency has also considered various regulatory options to maximize the net benefits of the rule to small entities without compromising the integrity of electronic systems, records, and signatures, or the agency's ability to protect and promote the public health. The following analysis briefly examines the potential impact of this rule on small businesses and other small entities, and describes the measures that FDA incorporated in this final rule to reduce the costs of applying electronic record/signature systems consistent with the objectives of the rule. This analysis includes each of the elements required for a final regulatory flexibility analysis under 5 U.S.C. 604(a).

A. Objectives

The purpose of this rule is to permit the use of a technology that was not contemplated when most existing FDA regulations were written, without undermining in any way the integrity of records and reports or the ability of FDA to carry out its statutory health protection mandate. The rule will permit regulated industry and FDA to operate with greater flexibility, in ways that will improve both the efficiency and the speed of industry's operations and the regulatory process. At the same time, it ensures that individuals will assign the same level of importance to affixing an electronic signature, and the records to which that signature attests, as they currently do to a handwritten signature.

B. Small Entities Affected

This rule potentially affects all large and small entities that are required by any statute administered by FDA, or any FDA regulation, to keep records or make reports or other submissions to FDA, including small businesses, nonprofit organizations, and small government entities. Because the rule affects such a broad range of industries, no data currently exist to estimate precisely the total number of small entities that will potentially benefit from the rule, but the number is substantial. For example, within the medical devices industry alone, the Small Business

Administration (SBA) estimates that over 3,221 firms are small businesses (i.e., have fewer than 500 employees). SBA also estimates that 504 pharmaceutical firms are small businesses with fewer than 500 employees. Of the approximately 2,204 registered blood and plasma establishments that are neither government-owned nor part of the American Red Cross, most are nonprofit establishments that are not nationally dominant and thus may be small entities as defined by the Regulatory Flexibility Act.

Not all submissions will immediately be acceptable electronically, even if the submission and the electronic record conform to the criteria set forth in this rule. A particular required submission will be acceptable in electronic form only after it has been identified to this effect in public docket 92S–0251. (The agency unit that can receive that electronic submission will also be identified in the docket.) Thus, although all small entities subject to FDA regulations are potentially affected by this rule, the rule will actually only benefit those that: (1) Are required to submit records or other documents that have been identified in the public docket as acceptable if submitted electronically, and (2) choose this method of submission, instead of traditional paper record submissions. The potential range of submissions includes such records as new drug applications, medical device premarket notifications, food additive petitions, and medicated feed applications. These, and all other required submissions, will be considered by FDA as candidates for optional electronic format.

Although the benefits of making electronic submissions to FDA will be phased in over time, as the agency accepts more submissions in electronic form, firms can, upon the rule's effective date, immediately benefit from using electronic records/signatures for records they are required to keep, but not submit to FDA. Such records include, but are not limited to: Pharmaceutical and medical device batch production records, complaint records, and food processing records.

Some small entities will be affected by this rule even if they are not among the industries regulated by FDA. Because it will increase the market demand for certain types of software (e.g., document management, signature, and encryption software) and services (e.g., digital notaries and digital signature certification authorities), this rule will benefit some small firms engaged in developing and providing those products and services.

C. Description of the Impact

For any paper record that an entity is required to keep under existing statutes or FDA regulations, FDA will now accept an electronic record instead of a paper one, as long as the electronic record conforms to the requirements of this rule. FDA will also consider an electronic signature to be equivalent to a handwritten signature if it meets the requirements of this rule. Thus, entities regulated by FDA may, if they choose, submit required records and authorizations to the agency electronically once those records have been listed in the docket as acceptable in electronic form. This action is voluntary; paper records and handwritten signatures are still fully acceptable. No entity will be required to change the way it is currently allowed to submit paper records to the agency.

1. Benefits and costs

For any firm choosing to convert to electronic recordkeeping, the direct benefits are expected to include:

(1) Improved ability for the firm to analyze trends, problems, etc., enhancing internal evaluation and quality control;

(2) Reduced data entry errors, due to automated checks;

(3) Reduced costs of storage space;

(4) Reduced shipping costs for data transmission to FDA; and

(5) More efficient FDA reviews and approvals of FDA-regulated products.

No small entity will be required to convert to electronic submissions. Furthermore, it is expected that no individual firm, or other entity, will choose the electronic option unless that firm finds that the benefits to the firm from conversion will exceed any conversion costs.

There may be some small entities that currently submit records on paper, but archive records electronically. These entities will need to ensure that their existing electronic systems conform to the requirements for electronic recordkeeping described in this rule. Once they have done so, however, they may also take advantage of all the other benefits of electronic recordkeeping. Therefore, no individual small entity is expected to experience direct costs that exceed benefits as a result of this rule.

Furthermore, because almost all of the rule's provisions reflect contemporary security measures and controls that respondents to the ANPRM identified, most firms should have to make few, if any, modifications to their systems.

For entities that do choose electronic recordkeeping, the magnitude of the costs associated with doing so will depend on several factors, such as the level of appropriate computer hardware and software already in place in a given firm, the types of conforming technologies selected, and the size and dispersion of the firm. For example, biometric signature technologies may be more expensive than nonbiometric technologies; firms that choose the former technology may encounter relatively higher costs. Large, geographically dispersed firms may need some institutional security procedures that smaller firms, with fewer persons in more geographically concentrated areas, may not need. Firms that require wholesale technology replacements in order to adopt electronic record/signature technology may face much higher costs than those that require only minor modifications (e.g., because they already have similar technology for internal security and quality control purposes). Among the firms that must undertake major changes to implement electronic recordkeeping, costs will be lower for those able to undertake these changes simultaneously with other planned computer and security upgrades. New firms entering the market may have a slight advantage in implementing technologies that conform with this rule, because the technologies and associated procedures can be put in place as part of the general startup.

2. Compliance requirements

If a small entity chooses to keep electronic records and/or make electronic submissions, it must do so in ways that conform to the requirements for electronic records and electronic signatures set forth in this rule. These requirements, described previously in section II. of this document, involve measures designed to ensure the integrity of system operations, of information stored in the system, and of the authorized signatures affixed to electronic records. The requirements apply to all small (and large) entities in all industry sectors regulated by FDA.

The agency believes that because the rule is flexible and reflects contemporary standards, firms should have no difficulty in putting in place the needed systems and controls. However, to assist firms in meeting the provisions of this rule, FDA may hold public meetings and publish more detailed guidance. Firms may contact FDA's Industry and Small Business Liaison Staff, HF–50, at 5600 Fishers Lane, Rockville, MD 20857 (301–827–3430) for more information.

3. Professional skills required

If a firm elects electronic recordkeeping and submissions, it must take steps to ensure that all persons involved in developing, maintaining, and using electronic records and electronic signature systems have the education, training, and experience to perform the tasks involved. The level of training and experience that will be required depends on the tasks that the person performs. For example, an individual whose sole involvement with electronic records is infrequent might only need sufficient training to understand and use the required procedures. On the other hand, an individual involved in developing an electronic record system for a firm wishing to convert from a paper recordkeeping system would probably need more education or training in computer systems and software design and implementation. In addition, FDA expects that such a person would also have specific on-the-job training and experience related to the particular type of records kept by that firm.

The relevant education, training, and experience of each individual involved in developing, maintaining, or using electronic records/submissions must be documented. However, no specific examinations or credentials for these individuals are required by the rule.

D. Minimizing the Burden on Small Entities

This rule includes several conditions that an electronic record or signature must meet in order to be acceptable as an alternative to a paper record or handwritten signature. These conditions are necessary to permit the agency to protect and promote the public health. For example, FDA must retain the ability to audit records to detect unauthorized modifications, simple errors, and to deter falsification. Whereas there are many scientific techniques to show changes in paper records (e.g., analysis of the paper, signs of erasures, and handwriting analysis), these methods do not apply to electronic records. For electronic records and submissions to have the same integrity as paper records, they must be developed, maintained, and used under circumstances that make it difficult for them to be inappropriately modified. Without these assurances, FDA's objective of enabling electronic records and signatures to have standing equal to paper records and handwritten signatures, and to satisfy the requirements of existing statutes and regulations, cannot be met.

Within these constraints, FDA has attempted to select alternatives that provide as much flexibility as practicable without endangering the integrity of the electronic records. The agency decided not to make the required extent and stringency of controls dependent on the type of record or transactions, so that firms can decide for themselves what level of controls are worthwhile in each case. For example, FDA chose to give firms maximum flexibility in determining: (1) The circumstances under which management would have to be notified of security problems, (2) the means by which firms achieve the required link between an electronic signature and an electronic record, (3) the circumstances under which extra security and authentication measures are warranted in open systems, (4) when to use operational system checks to ensure proper event sequencing, and (5) when to use terminal checks to ensure that data and instructions originate from a valid source.

Numerous other specific considerations were addressed in the public comments to the proposed rule. A summary of the issues raised by those comments, the agency's assessment of these issues, and any changes made in the proposed rule as a result of these comments is presented earlier in this preamble.

FDA rejected alternatives for limiting potentially acceptable electronic submissions to a particular category, and for issuing different electronic submissions standards for small and large entities. The former alternative would unnecessarily limit the potential benefits of this rule; whereas the latter alternative would threaten the integrity of electronic records and submissions from small entities.

As discussed previously in this preamble, FDA rejected comments that suggested a total of 17 additional more stringent controls that might be more expensive to implement. These include: (1) Examination and certification of individuals who perform certain important tasks, (2) exclusive use of cryptographic methods to link electronic signatures to electronic records, (3) controls for each possible combination of a two factored authentication method, (4) controls for each different type of identification card, and (5) recording in audit trails the reason why records were changed.

List of Subjects in 21 CFR Part 11

Administrative practice and procedure, Electronic records, Electronic signatures, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, Title 21, Chapter I of the Code of Federal Regulations is amended by adding part 11 to read as follows:

PART 11—ELECTRONIC RECORDS; ELECTRONIC SIGNATURES

Subpart A—General Provisions

Sec.

Subpart B—Electronic Records

Subpart C—Electronic Signatures

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

Subpart A—General Provisions

§ 11.1 Scope.

(a) The regulations in this part set forth the criteria under which the agency considers electronic records, electronic signatures, and handwritten signatures executed to electronic records to be trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper.

(b) This part applies to records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted, under any records requirements set forth in agency regulations. This part also applies to electronic records submitted to the agency under requirements of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, even if such records are not specifically identified in agency regulations. However, this part does not apply to paper records that are, or have been, transmitted by electronic means.

(c) Where electronic signatures and their associated electronic records meet the requirements of this part, the agency will consider the electronic signatures to be equivalent to full handwritten signatures, initials, and other general signings as required by agency regulations, unless specifically excepted by regulation(s) effective on or after

August 20, 1997.

(d) Electronic records that meet the requirements of this part may be used in lieu of paper records, in accordance with § 11.2, unless paper records are specifically required.

(e) Computer systems (including hardware and software), controls, and attendant documentation maintained under this part shall be readily available for, and subject to, FDA inspection.

§ 11.2 Implementation.

(a) For records required to be maintained but not submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met.

(b) For records submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that:

(1) The requirements of this part are met; and

(2) The document or parts of a document to be submitted have been identified in public docket No. 92S–0251 as being the type of submission the agency accepts in electronic form. This docket will identify specifically what types of documents or parts of documents are acceptable for submission in electronic form without paper records and the agency receiving unit(s) (e.g., specific center, office, division, branch) to which such submissions may be made. Documents to agency receiving unit(s) not specified in the public docket will not be considered as official if they are submitted in electronic form; paper forms of such documents will be considered as official and must accompany any electronic records. Persons are expected to consult with the intended agency receiving unit for details on how (e.g., method of transmission, media, file formats, and technical protocols) and whether to proceed with the electronic submission.

§ 11.3 Definitions.

(a) The definitions and interpretations of terms contained in section 201 of the act apply to those terms when used in this part.

(b) The following definitions of terms also apply to this part:

(1) *Act* means the Federal Food, Drug, and Cosmetic Act (secs. 201–903 (21 U.S.C. 321–393)).

(2) *Agency* means the Food and Drug Administration.

(3) *Biometrics* means a method of verifying an individual's identity based on measurement of the individual's physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.

(4) *Closed system* means an environment in which system access is controlled by persons who are responsible for the content of electronic records that are on the system.

(5) *Digital signature* means an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified.

(6) *Electronic record* means any combination of text, graphics, data, audio, pictorial, or other information representation in digital form that is created, modified, maintained, archived, retrieved, or distributed by a computer system.

(7) *Electronic signature* means a computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature.

(8) *Handwritten signature* means the scripted name or legal mark of an individual handwritten by that individual and executed or adopted with the present intention to authenticate a writing in a permanent form. The act of signing with a writing or marking instrument such as a pen or stylus is preserved. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other devices that capture the name or mark.

(9) *Open system* means an environment in which system access is not controlled by persons who are responsible for the content of electronic records that are on the system.

Subpart B—Electronic Records

§ 11.10 Controls for closed systems.

Persons who use closed systems to create, modify, maintain, or transmit electronic records shall employ procedures and controls designed to ensure the authenticity, integrity, and, when appropriate, the confidentiality of electronic records, and to ensure that the signer cannot readily repudiate the signed record as not genuine. Such procedures and controls shall include the following:

(a) Validation of systems to ensure accuracy, reliability, consistent intended performance, and the ability to discern invalid or altered records.

(b) The ability to generate accurate and complete copies of records in both human readable and electronic form suitable for inspection, review, and copying by the agency. Persons should contact the agency if there are any questions regarding the ability of the agency to perform such review and copying of the electronic records.

(c) Protection of records to enable their accurate and ready retrieval throughout the records retention period.

(d) Limiting system access to authorized individuals.

(e) Use of secure, computer-generated, time-stamped audit trails to independently record the date and time of operator entries and actions that create, modify, or delete electronic records. Record changes shall not obscure previously recorded information. Such audit trail documentation shall be retained for a period at least as long as that required for the subject electronic records and shall be available for agency review and copying.

(f) Use of operational system checks to enforce permitted sequencing of steps and events, as appropriate.

(g) Use of authority checks to ensure that only authorized individuals can use the system, electronically sign a record, access the operation or computer system input or output device, alter a record, or perform the operation at hand.

(h) Use of device (e.g., terminal) checks to determine, as appropriate, the validity of the source of data input or operational instruction.

(i) Determination that persons who develop, maintain, or use electronic record/electronic signature systems have the education, training, and experience to perform their assigned tasks.

(j) The establishment of, and adherence to, written policies that hold individuals accountable and responsible for actions initiated under their electronic signatures, in order to deter record and signature falsification.

(k) Use of appropriate controls over systems documentation including:

(1) Adequate controls over the distribution of, access to, and use of documentation for system operation and maintenance.

(2) Revision and change control procedures to maintain an audit trail that documents time-sequenced development and modification of systems documentation.

§ 11.30 Controls for open systems.

Persons who use open systems to create, modify, maintain, or transmit electronic records shall employ procedures and controls designed to

ensure the authenticity, integrity, and, as appropriate, the confidentiality of electronic records from the point of their creation to the point of their receipt. Such procedures and controls shall include those identified in § 11.10, as appropriate, and additional measures such as document encryption and use of appropriate digital signature standards to ensure, as necessary under the circumstances, record authenticity, integrity, and confidentiality.

§ 11.50 Signature manifestations.

(a) Signed electronic records shall contain information associated with the signing that clearly indicates all of the following:

(1) The printed name of the signer;

(2) The date and time when the signature was executed; and

(3) The meaning (such as review, approval, responsibility, or authorship) associated with the signature.

(b) The items identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section shall be subject to the same controls as for electronic records and shall be included as part of any human readable form of the electronic record (such as electronic display or printout).

§ 11.70 Signature/record linking.

Electronic signatures and handwritten signatures executed to electronic records shall be linked to their respective electronic records to ensure that the signatures cannot be excised, copied, or otherwise transferred to falsify an electronic record by ordinary means.

Subpart C—Electronic Signatures

§ 11.100 General requirements.

(a) Each electronic signature shall be unique to one individual and shall not be reused by, or reassigned to, anyone else.

(b) Before an organization establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization shall verify the identity of the individual.

(c) Persons using electronic signatures shall, prior to or at the time of such use, certify to the agency that the electronic signatures in their system, used on or after August 20, 1997, are intended to be the legally binding equivalent of traditional handwritten signatures.

(1) The certification shall be submitted in paper form and signed with a traditional handwritten signature, to the Office of Regional Operations (HFC–100), 5600 Fishers Lane, Rockville, MD 20857.

(2) Persons using electronic signatures shall, upon agency request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

§ 11.200 Electronic signature components and controls.

(a) Electronic signatures that are not based upon biometrics shall:

(1) Employ at least two distinct identification components such as an identification code and password.

(i) When an individual executes a series of signings during a single, continuous period of controlled system access, the first signing shall be executed using all electronic signature components; subsequent signings shall be executed using at least one electronic signature component that is only executable by, and designed to be used only by, the individual.

(ii) When an individual executes one or more signings not performed during a single, continuous period of controlled system access, each signing shall be executed using all of the electronic signature components.

(2) Be used only by their genuine owners; and

(3) Be administered and executed to ensure that attempted use of an individual's electronic signature by anyone other than its genuine owner requires collaboration of two or more individuals.

(b) Electronic signatures based upon biometrics shall be designed to ensure that they cannot be used by anyone other than their genuine owners.

§ 11.300 Controls for identification codes/passwords.

Persons who use electronic signatures based upon use of identification codes in combination with passwords shall employ controls to ensure their security and integrity. Such controls shall include:

(a) Maintaining the uniqueness of each combined identification code and password, such that no two individuals have the same combination of identification code and password.

(b) Ensuring that identification code and password issuances are periodically checked, recalled, or revised (e.g., to cover such events as password aging).

(c) Following loss management procedures to electronically deauthorize lost, stolen, missing, or otherwise potentially compromised tokens, cards, and other devices that bear or generate identification code or password information, and to issue temporary or permanent replacements using suitable, rigorous controls.

(d) Use of transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and to detect and report in an immediate and urgent manner any attempts at their unauthorized use to the system security unit, and, as appropriate, to organizational management.

(e) Initial and periodic testing of devices, such as tokens or cards, that bear or generate identification code or password information to ensure that they function properly and have not been altered in an unauthorized manner.

Dated: March 11, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

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BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92S–0251]

Electronic Submissions; Establishment of Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to provide information on submissions the agency is prepared to accept electronically. FDA is taking this action to provide easily accessible notice to the public when agency receiving units are prepared to accept electronic submissions and to promote the use of electronic technology.

ADDRESSES: The public docket is available under the docket number found in brackets in the heading of this notice and is located in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The public docket is also posted to the agency's Internet World Wide Web site at http://www.fda.gov

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1089, or e–mail address via Internet: Motise@CDER.FDA.GOV

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register FDA is finalizing part 11 (21 CFR part 11) providing the conditions under which the agency will accept electronic signatures, electronic records, and handwritten signatures executed to electronic records as equivalent to paper records and handwritten signatures executed to paper. Part 11 applies to any required records submissions under the Federal Food, Drug, and Cosmetic Act (the act), the Public Health Service Act (the PHS Act), or Title 21 of the Code of Federal Regulations (CFR) and supersedes any paper record requirements by providing that electronic records may be used in lieu of paper records. Electronic signatures that meet the requirements of part 11 will be considered to be equivalent to full handwritten signatures, initials, and other general signings required by agency regulations. Part 11 also provides that, for records required to be maintained but not submitted to the agency, electronic records and accompanying signatures may be used in lieu of traditional records and signatures provided certain requirements are met.

Records and signatures submitted to the agency must satisfy the requirements of part 11 and must be identified in public docket number 92S–0251 as the type of submission the agency will accept in electronic form. The public docket will contain information pertaining to submissions for such agency units as the Centers for Drug Evaluation and Research, Biologics Evaluation and Research, Devices and Radiological Health, Food Safety and Applied Nutrition, Veterinary Medicine, and the Office of Regulatory Affairs. The information available will include a description of the document that may be submitted electronically; a citation, if any, to that section of the act, the PHS Act, or the CFR under which the document is submitted; the agency unit prepared to accept the document electronically (the receiving unit); and the address of the receiving unit. Unless records are identified in this public docket as acceptable for electronic submission, only paper records will be regarded as official submissions.

Several comments submitted to FDA on the proposed rule on electronic records and signatures (59 FR 45160, August 31, 1994) requested that the public docket provide more specific information and that submission procedures be uniform throughout the agency. FDA has decided not to include such uniform and specific requirements at this time because of the rapid advances in electronic technology, the variety of information required by different receiving units, and the number of different electronic systems used in the agency and regulated industry. Instead, FDA will maintain only basic information in the public docket because the agency expects that persons planning to submit a document will be in direct contact with the agency unit assigned to receive the submission. The receiving unit will provide details on the technical aspects of submissions such as media, method of transmission, file format, archiving needs, and technical protocols.

The agency will update the public docket periodically as FDA units acquire the ability to accept electronic submissions. Persons should, however, consult the appropriate receiving units directly to obtain the most current and detailed information on electronic submissions.

The public docket is available for public review in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 12, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–6847 Filed 3–19–97; 8:45 am]

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Federal Register

Thursday
March 20, 1997

Part III

Department of Education

Star Schools Program; Notice Inviting Applications for New Awards for Fiscal Years 1997 and 1998

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.203A and C]

Star Schools Program; Notice Inviting Applications for New Awards for Fiscal Years 1997 and 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under the Star Schools Program competitions.

Purpose of Program: The purpose of this program is to encourage improved instruction in mathematics, science, foreign languages, and other subjects, such as literacy skills and vocational education, and to serve underserved populations, including the disadvantaged, illiterate, limited-English proficient, and individuals with disabilities through the use of distance learning technologies. Under this competition, the Secretary intends to support two separate grant competitions: General Projects and a Dissemination Project. General Projects are designed to, among other things:

(1) Develop, construct, acquire, maintain and operate telecommunications audio and visual facilities and equipment;

(2) Develop and acquire live interactive educational and instructional programming; and

(3) Obtain technical assistance for the use of such facilities and instructional programming.

The Dissemination Project is designed to provide dissemination and technical assistance to State and local educational agencies to assist them to plan and implement technology-based distance learning systems.

Eligible Applicants—General Projects

Only eligible entities, if at least one local educational agency is participating in the proposed project, may receive grants under the General Projects Competition. Eligible telecommunications partnerships must be organized on a statewide or multistate basis. Eligible entities include:

(a) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that any such agency or corporation represents the interests of elementary and secondary schools that are eligible to participate in the program under part A of title I of the Elementary and Secondary Education Act of 1965, as amended by P.L. 103–352 (ESEA); or

(b) A partnership that will provide telecommunications services and which includes three or more of the following entities, at least one of which shall be an agency described in (1) or (2):

(1) A local educational agency that serves a significant number of elementary and secondary schools that are eligible for assistance under part A of title I of the ESEA or elementary and secondary schools operated or funded for Indian children by the Department of the Interior eligible under section 1121(c) of the ESEA;

(2) A State educational agency;

(3) Adult and family education programs;

(4) An institution of higher education or a State higher education agency;

(5) A teacher training center or academy which—

(i) Provides teacher preservice and inservice training; and

(ii) Receives Federal financial assistance or has been approved by a State agency;

(6)(i) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or

(ii) A public broadcasting entity with such experience; or

(7) A public or private elementary or secondary school.

Eligible Applicants—Dissemination Projects

The statute places no restrictions on what parties are eligible to apply for Dissemination Projects under the Star Schools Program.

Deadline for Transmittal of Applications: May 9, 1997.

Deadline for Intergovernmental Review: June 23, 1997.

Available Funds: $15,000,000.

Estimated Size of Awards:
$2,000,000 (General Projects).
$500,000 (Dissemination Project).

Estimated Number of Awards:
7 (General projects).
1 (Dissemination project).

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Supplementary Information: It is the Department's intent to fund two cycles of General Projects awards from this competition. The first cycle of awards will be made from fiscal year 1997 funds. If General Projects applications of high quality remain unfunded, additional awards will be made in the second cycle in 1998, pending availability of fiscal year 1998 funds. This section does not apply to the Dissemination Project competition.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program

The Star Schools program is authorized by the ESEA, Title III, Part B (20 U.S.C. 6891–6900). Section 3204 of the ESEA authorizes the Secretary to award General Projects grants, on a competitive basis, to eligible entities to carry out the following:

(1) The development, construction, acquisition, maintenance and operation of telecommunications facilities and equipment;

(2) The development and acquisition of live, interactive instructional programming;

(3) The development and acquisition of preservice and inservice teacher training programs based on established research regarding teacher-to-teacher mentoring, effective skill transfer, and ongoing, in-class instruction;

(4) The establishment of teleconferencing facilities and resources for making interactive training available to teachers;

(5) Obtaining technical assistance; and

(6) The coordination of the design and connectivity of telecommunications networks to reach the greatest number of schools.

The Star Schools program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals. Furthermore, the Star Schools program addresses the President's technology initiative to help students achieve high content standards.

The Star Schools program is also authorized, by section 3207(c) of the ESEA (20 U.S.C. 6897(c)), to support activities that disseminate information, including lists and descriptions of services available from grant recipients under this program and carry out other activities designed to enhance the quality of long distance learning.

Geographic Distribution

In determining which applications under the General Projects competition are to be funded, the Secretary shall, to the extent feasible, ensure an equitable geographic distribution of services.

Definitions

The following definitions apply to the terms used in this notice:

''Educational institution'' means an institution of higher education, a local educational agency, or a State educational agency.

''Institution of higher education'' has the same meaning given that term under 20 U.S.C. 1141(a) (section 1201(a) of the Higher Education Act of 1965, as amended) (20 U.S.C. 8801(17)).

''Instructional programming'' means courses of instruction and training courses for elementary and secondary students, teachers, and others, and materials used in such instruction and training which have been prepared in audio and visual form on tape, disc, film, or live interactive presentations, and presented by means of telecommunications devices.

''Local educational agency'' has the same meaning given the term under section 14101(18) of the ESEA (20 U.S.C. 8801(18)).

''Public broadcasting entity'' has the same meaning given that term in section 397 of the Communications Act of 1934 (47 U.S.C. 397).

''State'' has the same meaning given that term under section 14101(27) of the ESEA (20 U.S.C. 8801(27)).

''State educational agency'' has the same meaning given that term under section 14101(28) of the ESEA (20 U.S.C. 8801(28)) and includes the Bureau of Indian Affairs for purposes of serving schools funded by the BIA in accordance with Title III of the ESEA of 1965, as amended.

''Secretary'' means the Secretary of Education.

Priorities

Invitational Priorities—General Projects (84.203A)

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in General Projects applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications. Applicants that propose to:

Invitational Priority 1—Deliver live, interactive instructional programming that integrates reading throughout the curriculum at all grade levels for all children and their families;

Invitational Priority 2—Deliver challenging content and advanced placement courses in mathematics, science, and foreign languages for elementary and secondary students;

Invitational Priority 3—Offer professional development opportunities for teachers to focus on early reading and elementary and middle school mathematics instruction to help students achieve to high standards; or

Invitational Priority 4—Employ multiple technologies which advance the role of distance learning in supporting school reform at the local level such as broadcast television coupled with computer networking or other technologies.

Competitive Priorities—General Projects (84.203A)

Under 34 CFR 75.105(b)(2)(iv) and (c)(2) and 20 U.S.C. 6896(c), the Secretary gives preference to General Projects applications that meet the following five competitive priorities. The Secretary awards up to two points for each competitive priorities met by the applicant in a particularly effective way. These points are in addition to any points the application earns under the selection criteria. An applicant can receive no more than ten competitive preference points. Competitive preference points will be awarded to an applicant that:

Competitive Priority 1—Proposes high-quality plans to assist in achieving one or more of the National Education Goals, will provide instruction consistent with State content standards, or will otherwise provide significant and specific assistance to States and local educational agencies undertaking systemic education reform;

Competitive Priority 2—Will provide services to programs serving adults, especially parents, with low levels of literacy or limited English proficiency;

Competitive Priority 3—Will serve schools with significant numbers of children counted for the purposes of part A of title I of the ESEA;

Competitive Priority 4—Will ensure that its proposed project will—

(A) Serve the broadest range of institutions, programs providing instruction outside of the school setting, programs serving adults, especially parents, with low levels of literacy, institutions of higher education, teacher training centers, research institutes, and private industry;

(B) Have substantial academic and teaching capabilities, including the capability of training, retraining, and inservice upgrading of teaching skills and the capability to provide professional development;

(C) Provide a comprehensive range of courses for educators to teach instructional strategies for students with different skill levels;

(D) Provide training to participating educators in ways to integrate telecommunications courses into existing school curriculum;

(E) Provide instruction for students, teachers, and parents;

(F) Serve a multistate area; and

(G) Give priority to the provision of equipment and linkages to isolated areas; and

Competitive Priority 5—Involve a telecommunications entity (such as a satellite, cable, telephone, computer organization, or public or private television stations) participating in the eligible entity and donating equipment or in-kind services for telecommunications linkages.

Absolute Priority—Dissemination Project (84.203C)

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only an application that meets this absolute priority.

A project that will disseminate information, including lists and descriptions of services available from grant recipients under the Star Schools program, and conduct other activities designed to enhance the quality of distance learning activities nationwide.

Invitational Priority—Dissemination Project (84.203C)

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in Dissemination Project applications that meet the following invitational priorities. However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Applications that propose to—

Invitational Priority 1—Use a variety of technologies and dissemination strategies to provide information and technical assistance services about distance education nationwide; and

Invitational Priority 2—Produce and disseminate information in print, electronic, media and other formats about instructional programming, promising and exemplary practices, policies, resources, and research involving distance education including Department-sponsored distance education projects and technology initiatives.

Application Requirements—General Projects

Each eligible entity desiring a General Project grant under this program shall submit an application to the Secretary that responds to the selection criteria. In addition, each application shall—

(1) Describe how the proposed project will assist in achieving the National

Education Goals, how the project will assist all students to have an opportunity to learn to challenging State standards, how the project will assist State and local educational reform efforts, and how the project will contribute to creating a high quality system of lifelong learning;

(2) Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought, which may include—

(A) The design, development, construction, acquisition, maintenance and operation of State or multistate educational telecommunications networks and technology resource centers;

(B) Microwave, fiber optics, cable, and satellite transmission equipment or any combination thereof;

(C) Reception facilities;

(D) Satellite time;

(E) Production facilities;

(F) Other telecommunications equipment capable of serving a wide geographic area;

(G) The provision of training services to instructors who will be using the facilities and equipment for which assistance is sought, including training in using these facilities and equipment and training in integrating programs into the classroom curriculum; and

(H) The development of educational and related programming for use on a telecommunications network;

(3) In the case of an application for assistance for instructional programming, describe the types of programming which will be developed to enhance instruction and training and provide assurances that the programming will be designed in consultation with professionals (including classroom teachers) who are experts in the applicable subject matter and grade level;

(4) Describe how the eligible entity has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the eligible entity will increase the availability of courses of instruction in English, mathematics, science, foreign languages, arts, history, geography, or other disciplines;

(5) Describe the professional development policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought;

(6) Describe the manner in which historically underserved students (such as students from low-income families, limited English proficient students, students with disabilities, or students who have low literacy skills) and their families, will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this program;

(7) Describe how existing telecommunications equipment, facilities, and services, where available, will be used;

(8) Provide assurances that the financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of these facilities and equipment;

(9) Provide assurances that a significant portion of any facilities and equipment, technical assistance, and programming for which assistance is sought for elementary and secondary schools will be made available to schools or local educational agencies that have a high number or percentage of children eligible to be counted under part A of title I of the ESEA;

(10) Provide assurances that the applicant will use the funds provided under this part to supplement and not supplant funds otherwise available for the purposes of this part;

(11) If any member of the consortia receives assistance under subpart 3 of part A of title III of the ESEA (''Regional Technical Support and Professional Development'') (20 U.S.C. 6861), describe how funds received under this part will be coordinated with funds received for educational technology in the classroom under such section;

(12) Describe the activities or services for which assistance is sought such as—

(A) Providing facilities, equipment, training services, and technical assistance;

(B) Making programs accessible to students with disabilities through mechanisms such as closed captioning and descriptive video services;

(C) Linking networks around issues of national importance (such as elections) or to provide information about employment opportunities, job training, or student and other social service programs;

(D) Sharing curriculum resources between networks and development of program guides which demonstrate cooperative, cross-network listing of programs for specific curriculum areas;

(E) Providing teacher and student support services including classroom and training support materials which permit student and teacher involvement in the live interactive distance learning telecasts;

(F) Incorporating community resources such as libraries and museums into instructional programs;

(G) Providing professional development for teachers, including, as appropriate, training to early childhood development and Head Start teachers and staff and vocational education teachers and staff, and adult and family educators;

(H) Providing programs for adults to maximize the use of telecommunications facilities and equipment;

(I) Providing teacher training on proposed or established voluntary national content standards in mathematics and science and other disciplines as such standards are developed; and

(J) Providing parent education programs during and after the regular school day which reinforce a student's course of study and actively involve parents in the learning process;

(13) Describe how the proposed project as a whole will be financed and how arrangements for future financing will be developed before the project expires;

(14) Provide an assurance that a significant portion of any facilities, equipment, technical assistance, and programming for which assistance is sought for elementary and secondary schools will be made available to schools in local educational agencies that have a high percentage of children counted for the purpose of part A of title I of the ESEA; and

(15) Provide an assurance that the applicant will provide this information and cooperate in any evaluation that the Secretary may conduct under this program.

Funding Requirement—General Projects

The Federal share for the first and second years of a General Project funded under this program shall not exceed 75 percent of the cost of the project. The Federal share for the third and fourth years of a General Project funded under this program shall not exceed 60 percent of the cost of the project. The Federal share for the fifth year of a General Project funded under this program shall not exceed 50 percent of the cost of the project. The recipient of a General Project grant under this program shall provide the remainder of the funds from non-Federal sources. The matching funds for the project may be in cash or in-kind support, fairly evaluated. In the case of financial hardship, an applicant may request that the Secretary reduce or waive the matching requirement. (This requirement does not apply to the dissemination projects.)

Application Requirements—Dissemination Projects

Each applicant for a Dissemination Project shall submit an application that responds to the selection criteria.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new General Projects and Dissemination Project grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.* (1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Star Schools Program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Star Schools Program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Star Schools Program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)A and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on August 20, 1996 (61 FR 43133–43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.203, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W. Washington, D.C. 20202–0124.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis for applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

Note: The deadline for receipt of applications is May 9, 1997. All applications must be received on or before that date. This requirement takes exception to EDGAR, 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

This closing date and procedures for guaranteeing timely submission will be strictly observed.

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.203 A and C), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and two copies of the complete application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.203 A or C), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept deliveries between 8:00 a.m. and 4:30 p.m. (Eastern Standard time) daily, except Saturdays, Sundays and Federal holidays.

Individuals delivering applications must use the D Street entrance. Proper identification is necessary to enter the building.

In order for an application sent through a Courier Service to be considered timely, the Courier Service must be in receipt of the application on or before the closing date.

Note: Although applicants are not obligated to do so, it would be helpful if an additional two copies of the application were submitted (an original and four copies). The additional copies would be used during the review process.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains forms and instructions plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. In preparing your application for submission to the Department, please organize your submitted application as follows:

1. *Application for Federal Assistance* (Standard Form 424 (Rev. 4–88)).

2. *Budget Information*—Non-Construction Programs (Standard Form 524).

Special Budget Instructions

The Department is participating in the Administration's Reinventing Government Initiative. As part of that initiative, the National Performance Review urged the Department to ''eliminate the continuation application process for budget years within the project period'' and replace it with ''yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery.'' The Department implemented this recommendation for programs beginning in fiscal year 1995. This policy requires all applicants for multi-year awards to provide detailed budget information for the total grant period requested. The Department will review at the time of the initial award the funding levels for each year of the grant award. A new generic budget form, included in this package, requests the relevant information in accordance with this initiative.

By requesting detailed budget information in the initial application for the total project period, the need for formal noncompeting continuation applications in the remaining years will be eliminated. An annual report will be used in place of the continuation application to determine progress, thereby relieving grantees of the burden to resubmit assurances, certifications, etc.

3. Application Narrative.

4. Estimated Public Reporting Burden.

5. Assurances—Non-Construction Programs (Standard Form 424B).

6. Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

8. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

9. Notice to Applicants.

An applicant may submit a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Joseph Wilkes or Deborah Williams, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave. N.W., Washington, D.C. 20208–5645. Telephone 202–219–2116. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950, on the Internet Gopher Server at (gopher://gcs.ed.gov); on the World Wide Web (http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Note: Some of the forms in the Appendix to this notice may not be available from these electronic sources.

Program Authority: 20 U.S.C. 6891–6900.

Dated: March 14, 1997.

Marshall S. Smith,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix

Instructions for Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priority, and the selection criteria the Secretary uses to evaluate applications.

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who

will render the telecommunications service, and when it will be delivered.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½″ × 11″ pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½″×11″ paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1850–0623. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Star Schools Program, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202–5645. Information collection approved under OMB control number 1850–0623. Expiration date: 4/30/98.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this section is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 3

TITLE: Star Schools Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT NAME	PR/AWARD NUMBER AND / OR PROJECT
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~11. Amount of Payment *(check all that apply):*~~	~~13. Type of Payment *(Check all that apply):*~~
~~$ _____ ☐ actual ☐ planned~~	~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16.	Signature: _____
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 97–6952 Filed 3–19–97; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Thursday
March 20, 1997

Part IV

Department of Education

Library Education and Human Resource Development Program (Higher Education Act, Title II–B, Institutes and Fellowships); Notice Inviting Applications for New Awards for FY 1997

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.036A and B]

Library Education and Human Resource Development Program (Higher Education Act, Title II–B, Institutes and Fellowships); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: The Library Education and Human Resource Development Program promotes high quality library and information science education and provides fellowship and institute grants to institutions of higher education and library organizations or agencies to recruit, educate, and train persons, and to establish, develop, or expand programs, through courses of study or staff development in library and information science. For FY 1997 the competition for new awards focuses on projects designed to meet one or more of the priorities listed in the ''PRIORITIES'' section of this notice.

Eligible Applicants: Institutions of higher education, library organizations, and library agencies.

For Fellowship Projects for FY 1997, only new Master's degree level applications will be accepted.

Deadline for Transmittal of Applications: 5/9/97.

Deadline for Intergovernmental Review: 7/9/97.

Applications Available: 3/20/97.

FISCAL INFORMATION

CFDA number and name	Available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.036A, Institute Projects	$900,000	$15,000–$150,000	$82,000	12
84.036B, Fellowship Projects	900,000	22,000–88,000	44,000	21

Note: The Department is not bound by any estimates in this notice.

Maximum Award: For Fellowship Projects, in no case does the Secretary make an award greater than $88,000 for a single budget period of 12 months. The Secretary does not consider an application that proposes a budget exceeding this maximum amount.

Project Periods

(a) *Institute Grants.* A long-term institute project must provide at least one academic year but no more than 12 months of training; a short-term institute project must provide at least one week but no more than six weeks of training.

(b) *Fellowship Grants.* A new fellowship grant at the master's level must be at least one academic year.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 776.

Priorities

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications that meet one or more of the absolute priorities in this notice. The Secretary funds under this competition only applications that meet one or more of these priorities.

Institute Projects and Fellowship Projects

Absolute Priority 1—To recruit, educate, train, retrain and retain minorities in library and information sciences.

Absolute Priority 2—To educate, train, or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, cataloging, and library service evaluation.

Absolute Priority 3—To educate, train, or retrain library personnel in new techniques of information acquisition, transfer, and management of communication technology.

Institute Projects Only

Absolute Priority 4—To educate, train, or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America, including Native Americans.

Invitational Priority: Within the absolute priorities, the Secretary is particularly interested in applications that meet the invitational priority in the next paragraph. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

To educate, train, or retrain library personnel in managing collaborative efforts with other libraries and educationally-centered organizations, e.g., museums, Girl Scouts, Boy Scouts, Head Start centers, and especially k–12 schools, for the purposes of promoting reading and library services to children, young adults, and their parents and caretakers.

For Applications or Information Contact: Chris Dunn or Judy Stark, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 300, Washington, DC 20208–5571. Telephone (202) 219–2299 or 219–2284. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher.//gcs. ed.gov); or on the World Wide Web server (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1021, 1032.

Dated: March 14, 1997.

Marshall S. Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–6953 Filed 3–19–97; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
March 20, 1997

Part V

Department of Education

Office of Educational Research and Improvement; National Institutes' Field-Initiated Studies Grant Program; Combined Notice Inviting Applications for New Awards for FY 1997

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.305F, 84.306F, 84.307F, 84.308F, and 84.309F]

Office of Educational Research and Improvement—National Institutes' Field-Initiated Studies Grant Program; Combined Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

SUMMARY: The Secretary invites applications for new awards for FY 1997 and announces closing dates for the transmittal of applications under the Field-Initiated Studies Grant Program supported by the five National Research Institutes:

1. Student Achievement, Curriculum, and Assessment (84.305F).
2. Education of At-Risk Students (84.306F).
3. Educational Governance, Finance, Policymaking, and Management (84.307F).
4. Early Childhood Development and Education (84.308F).
5. Postsecondary Education, Libraries, and Lifelong Learning (84.309F).

The Field-Initiated Studies Grant Program will support educational research projects related to the missions of the Institutes.

ADDRESSES: *For Applications or Further Information:* The address and telephone number for requesting an application or obtaining further information about individual institutes are listed in this notice under the section ''Institute Mission Statements.''

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at (gopher://gcs.ed.gov); or on the World Wide Web at (http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

SUPPLEMENTARY INFORMATION: The Educational Research, Development, Dissemination, and Improvement Act of 1994 (''Act'') (20 U.S.C. 6001 *et seq.*) established five national research institutes within the Department. Each of the institutes supports a Field-Initiated Studies (FIS) Grant program to fund field-initiated research projects on topics related to the legislative mission of the relevant Institute. Only applications for educational research projects will be considered for funding. Section 931 of the Act (20 U.S.C. 6031) contains a complete description of the mission of each Institute.

The Field-Initiated Studies Grant program provides assistance to institutions of higher education, public and private organizations, institutions, agencies, and individuals for educational research and development to improve American education. The Act defines ''educational research'' to include basic and applied research, inquiry with the purpose of applying tested knowledge gained to specific educational settings and problems, development, planning, surveys, assessments, evaluation, investigation, experiments, and demonstrations in the field of education and other fields relating to education (20 U.S.C. 6011(l)(6)). The Act also defines the term ''field-initiated research'' to mean education research in which topics and methods of study are generated by investigators, including teachers and other practitioners (20 U.S.C. 6011(l)(7)).

Invitational Priorities

National Research Priorities Plan

The Secretary is particularly interested in applications that meet one or more of the following priorities included in the Department's published Research Priorities Plan. If an applicant addresses one of the priorities in the plan, please indicate in the application which one is addressed. However, under 34 CFR 75.105(c)(1) an applicant that addresses one of these priorities will not receive competitive or absolute preference over other applicants.

The priorities include:

- Improving curriculum, instruction, assessment, and student learning at all levels of education to promote high academic achievement, problem-solving abilities, creativity, and the motivation for further learning;
- Ensuring effective teaching by expanding the supply of potential teachers, improving teacher preparation, and promoting career-long professional development at all levels of education;
- Strengthening schools, particularly middle and high schools, as institutions capable of engaging young people as active and responsible learners;
- Supporting schools to effectively prepare diverse populations to meet high standards for knowledge, skills, and productivity, and to participate fully in American economic, cultural, social and civic life;
- Promoting learning in informal and formal settings, and building the connections that cause out-of-school experiences to contribute to in-school achievement;
- Improving learning and development in early childhood so that all children can enter kindergarten prepared to learn and succeed in elementary and secondary schools;
- Understanding the changing requirements for adult competence in civic, work, and social contexts, and how these requirements affect learning and the futures of individuals in the nation.

The Department's Research Priorities Plan is available on-line at (http://www.ed.gov/offices/OERI/RschPriority/). Copies may also be requested by calling Paulette Lee at 202–219–1519.

Eligible Applicants: Eligible applicants are institutions of higher education, state and local agencies; public and private organizations, institutions, and agencies; and individuals.

Deadline for Transmittal of Applications: June 9, 1997.

Note: All applications must be received on or before that date. This requirement takes exception to EDGAR, 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Tentative Award Date: August 29, 1997.

Applications Available: April 18, 1997.

Available Funds: $1,050,000 per Institute.

Estimated Range of Awards: $100,000–225,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Periods: Research projects may extend from one to three years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85 and 86 (Part 86 applies to IHEs only); and (b) The regulations in 34 CFR Part 700.

Length of Application: The application narrative must not exceed a total of 40 pages, with printing on only

one side of the paper, on 8½×11 inch paper. This includes the title page form, table of contents, abstract, proposal narrative, the budget summary form, budget narrative, and all attachments. We strongly encourage applicants to use double-spacing, a 12 point or larger font size, and 1-inch margins. Applications should be concise, clearly written, and pages should be consecutively numbered.

Applicable Evaluation Criteria

In accordance with 34 CFR 700.30, the Secretary applies the following evaluation criteria to the Field-Initiated Studies Grant program competitions.

(1) *National Significance* (30 points).

(i) The Secretary considers the national significance of the proposed project.

(ii) In determining the national significance of the proposed project, the Secretary considers the following factors—

(A) The importance of the problem or issue to be addressed.

(B) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(C) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(2) *Quality of the Project Design* (30 points).

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors—

(A) Whether the goals, objectives, and outcomes to be achieved by the project are clearly specified and measurable.

(B) Whether a specific research design has been proposed, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(3) *Quality and potential contributions of personnel* (20 points).

(i) The secretary considers the quality and potential contributions of personnel for the proposed project.

(ii) In determining the quality and potential contributions of personnel for the proposed project, the Secretary considers the following factors—

(A) The qualifications, including training and experience, of the project director or principal investigator.

(B) The qualifications, including training and experience, of key project personnel.

(4) *Adequacy of Resources* (10 points).

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors—

(A) Whether the budget is adequate to support the project.

(B) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(5) *Quality of the Management Plan* (10 points).

(i) The Secretary considers the quality of the management plan of the proposed project.

(ii) In determining the quality of the management plan of a proposed project, the Secretary considers the following factors—

(A) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(B) Whether time commitments of the project director or principal investigator and other key personnel are appropriate and adequate to meet project objectives.

(C) How the applicant will ensure that persons who are otherwise eligible to participate in the project are selected without regard to race, color, national origin, gender, age, or disability.

Institute Mission Statements

CFDA No. 84.305F—The National Institute on Student Achievement, Curriculum, and Assessment, Field-Initiated Studies Program

Purpose of Program

The purpose of the National Institute on Student Achievement, Curriculum, and Assessment is to provide leadership to improve teaching and learning. The Institute will carry out a program of research to identify, develop, and evaluate innovative and exemplary methods to improve student knowledge K–12 in the core academic subject areas; to examine the areas of learning, cognition and performance, including the organization of schools which promote excellence in learning and instruction, and motivational issues related to student achievement; to identify, develop, and evaluate programs designed to enhance academic achievement and narrow performance gaps in a variety of subject areas; and to address such issues as validity, reliability, generalizability, costs, relative merits, and appropriate uses of various approaches and methods of assessing student learning and achievement.

For Applications or Information Contact: Clara Lawson-Holmes, or Carol Cameron Lyons, National Institute on Student Achievement, Curriculum, and Assessment, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208–5573. Telephone (202) 219–2079 or E-Mail: clawson@inet.ed.gov or Carol__Lyons@ed.gov

CFDA No. 84.306F—The National Institute on the Education of At-Risk Students, Field-Initiated Studies Program

Purpose of Program

The purpose of the National Institute for the Education of At-Risk Students is to expand research-based knowledge and strategies that will promote excellence and equity in the education of children and youth placed at risk of educational failure because of limited-English proficiency, poverty, race or ethnicity, or geographic location. The Institute will carry out a program of research and development to identify and assist others to replicate and adapt programs and models which promote greater achievement and educational success by at-risk students, including innovative methods of instruction, student assessments, professional development, and curricula.

For Applications or Information Contact: Beth Fine or Karen Suagee, National Institute on the Education of At-Risk Students, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 610, Washington, DC 20208–5521. Telephone (202) 219–1323 or E-Mail: bfine@inet.ed.gov; or (202) 219–2244 or E-Mail: Karen__Suagee@ed.gov

CFDA 84.307F—The National Institute on Early Childhood Development and Education, Field-Initiated Studies Program

Purpose of Program

The purpose of the National Institute on Early Childhood Development and Education is to identify, develop, evaluate and assist others to replicate methods and approaches that improve early childhood development and education. The Institute is to carry out a program of research and development for young children in areas such as the social and educational development; topics relating to school readiness, including prenatal care, health services, and nutrition; family literacy; the role of parental involvement in their children's learning; effective learning methods and curriculum for young children; methods for integrating learning in settings other than the classroom; the impact of outside influences, such as television, violence, and drug abuse; and

instruction that considers the cultural environment of children.

For Applications or Information Contact: Veda Bright, National Institute on Early Childhood Development and Education, U.S. Department of Education, 555 New Jersey Avenue, NW, Washington, DC 20208–5520. Telephone (202) 219–1935 or E-Mail: Veda__Bright@ed.gov

CFDA 84.308F—The National Institute on Educational Governance, Finance, Policy-Making, and Management, Field-Initiated Studies Program

Purpose of Program

The purpose of the National Institute on Educational Governance, Finance, Policy-Making, and Management is to develop and disseminate research-based information that helps guide the design and implementation of governance arrangements, finance systems, policy approaches, and management strategies that will support high levels of learning by all students. By law, the Institute supports work which promises to improve education equity and excellence at the State, local, tribal, school building, and classroom levels of elementary and secondary education in the United States.

For Applications or Information Contact: Jim Fox or Duc-Le To, National Institute on Educational Governance, Finance, Policy-Making, and Management, U.S. Department of Education, 555 New Jersey Avenue, NW, Washington, DC 20208–5573. Telephone (202) 219–2234 or E-Mail: Jim__Fox@ed.gov; (202) 219–2248 or E-Mail: Duc-Le__To@ed.gov

CFDA 94.309F—The National Institute on Postsecondary Education Libraries and Lifelong Learning, Field-Initiated Studies Program

Purpose of Program

The purpose of the National Institute on Postsecondary Education, Libraries and Lifelong Learning is to promote greater coordination of Federal research and development on issues related to adult learning and to carry out a program of research and development in adult learning to provide nonpartisan, research-based leadership to the United States as it seeks to improve libraries, postsecondary education, literacy, and lifelong learning throughout the United States.

For Applications or Information Contract: Delores Monroe or Norman Brandt, National Institute on Postsecondary Education, Libraries, and Lifelong Learning, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 620, Washington, DC 20208–5531. Telephone (202) 219–2229 or E-Mail: dmonroe@inet.ed.gov; or (202) 219–1662.

Program Authority: 20 U.S.C. 6031(c)(2)(B).

Dated: March 14, 1997.

Marshall S. Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–6949 Filed 3–19–97; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Thursday
March 20, 1997

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 187

Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28860; Amendment No. 187–7]

RIN 2120–AG17

Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; notice of public meeting.

SUMMARY: This document establishes fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. This document allows the FAA to reasonably recover the costs it incurs in performing these services. The document also requests comments concerning the fee schedule and the fee collection process. In addition, the FAA is announcing a public meeting on the interim final rule to provide an additional opportunity for public to comment.

DATES: Effective date May 19, 1997. Comments must be received by July 18, 1997.

The public meeting will be held on May 1, 1997; Registration: 8:30 a.m.; Meeting: 9:00 a.m.–5:00 p.m.

ADDRESSES: The public meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC, in the main auditorium on the 3rd Floor. Comments on this interim final rule should be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28860, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: 9-NPRM-CMTS@faa.dot.gov. Comments must be marked Docket No. 28860. Comments may be examined in the Rules Docket, Room 915–G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Jeffrey Wharff, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7035.

Requests to present a statement at the public meeting on the Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace interim final rule and questions regarding the logistics of the meeting should be directed to Regina L. Jones, Federal Aviation Administration, Office of Rulemaking (ARM–104), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9822; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments, and by commenting on the possible environmental, economic, and federalism-or energy-related impact of the adoption of this interim final rule. Comments concerning the implementation and effective date of the rule are also specifically requested.

Comments should identify the regulatory docket and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

The closing date for comments on the proposal [Insert date 120 after the date of publication]. This 120 day comment period is intended to allow the international commenters sufficient time to submit comments. In order to give the public an additional opportunity to comment on the interim final rule, the FAA is planning a public meeting. Because of this additional opportunity to comment on the interim final rule, the FAA will not intend to extend the closing date for comments.

Requests from persons who wish to present oral statements at the public meeting on the Fees for Air Traffic Services for Certain Flight Through U.S.-Controlled Airspace interim final rule should be received by the FAA no later than April 25, 1997. Such requests should be submitted to Regina L. Jones as listed in the section titled **FOR FURTHER INFORMATION CONTACT.** Requests received after April 25 will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Before taking any final action on this interim final rule, the Administrator will consider the comments made on or before the closing date for comments, and the interim final rule may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. 28860.'' When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Public Meeting Procedures

The public meeting will be held on May 1, 1997, at the Federal Aviation Administration, 800 Independence, Ave. S.W., Washington, D.C., in the main auditorium on the 3rd Floor; Registration: 8:30 a.m.; Meeting: 9:00 a.m.—5:00 p.m.

The following procedures are established to facilitate the public meeting on the interim final rule:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket

No. 28860). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the interim final rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the interim final rule. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Availability of the Interim Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's webpage at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of the document.

Background

Authority to Establish Fees

The Federal Aviation Authorization Act of 1996 (the Act) directs the Federal Aviation Administration to establish by interim final rule a fee schedule and collection process for air traffic control and related services provided to aircraft other than military and civilian aircraft to the United States government or of a foreign government that neither take off from, nor land in, the United States (49 U.S.C. 45301, as amended by Pub. L. 104–264), The Act states that the FAA may recover up to $100,000,000 in FY 1997. Also, the Act directs the FAA to ensure that the fees allowed by the Act are directly related to the FAA's costs of providing the service rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services that are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States.

In addition, under Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), the FAA has the authority to establish a fair and equitable system for recovering full costs expended for any service that provides a special benefit to an individual beyond those that accrue to the general public. The Independent Offices Appropriation Act (IOAA) provides, in pertinent part:

(a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. * * * Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

This statute has been reviewed several times by the Supreme Court and what is permissible under it is well defined. This statute must be followed in establishing fees unless another statute specifically authorizes fees in lieu of what is generally authorized under 31 U.S.C. 9701. The fees in this interim final rule are established under 49 U.S.C. 45301 in conjunction with 31 U.S.C. 9701.

Office of Management and Budget (OMB) Guidance

Office of Management and Budget (OMB) Circular No. A–25, User Charges, revised July 8, 1993, establishes guidelines for Federal agencies to establish fees for Government services. The Circular covers all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The objectives of OMB Circular A–25 are to ensure that the Government provision of special goods or services to specific recipients be self-sustaining. The FAA has followed the OMB guidelines in developing this interim final rule as it applies to these fees.

The Interim Final Rule

Beginning sixty days after the publication of the interim final rule, the FAA will assess a fee for air traffic and related services provided to users of aircraft (both commercial and general aviation) that transit U.S.-controlled airspace but do not take off or land in the United States. The rule does not apply to military and civil aircraft operated by the United States government or by a foreign government.

For the purpose of this rulemaking the U.S.-controlled airspace includes both U.S. sovereign airspace (hereafter ''domestic airspace'') and airspace allocated to the United States by the International Civil Aviation Organization (hereafter ''oceanic airspace''). Canada-to-Canada overflight operations are defined (hereafter ''Canada-to-Canada'') as flights, conducted by aircraft, that take off and land in Canada without intermediate stops outside Canada that operate in U.S.-controlled airspace. Commercial users are defined as those operators whose primary purpose is to provide passenger and/or cargo air transportation for compensation or hire. General aviation users are defined as those operators who do not provide passenger and/or cargo transportation for compensation or hire. Furthermore, in this rule general aviation users are divided into two groups: General aviation users operating piston-powered aircraft and general aviation users operating turbine-powered aircraft. General aviation turbine-powered aircraft include both turboprop and turbojet aircraft.

Operators of aircraft that transit U.S.-controlled airspace but do not land in or depart from the United States currently contribute nothing financially to the provision of air traffic services (ATS). This is despite the fact that they use ATS and other services that impose

costs on the U.S. air traffic control (ATC) system. Congress has determined that these users should bear a portion of the cost of those services.

The air transportation environment has changed over the past decades with the advent of increasing numbers of long range aircraft that fly at high altitudes far above areas of high density air traffic. The use of these aircraft and the routes they are able to fly have greatly increased the efficiency of air transportation. Although these overflight operations do not generally enter areas of high density air traffic, they do use FAA air traffic and related services.

Operators of overflight aircraft benefit from the FAA's provision of ATS in several ways. First, and most importantly, FAA's ATS enhance safety through air traffic control, navigation, and communications services. Second, flight through U.S.-controlled airspace provides optimized routing for long distance aircraft that is of great value to the users of these aircraft.

The level of ATS and other services that is actually provided to operators of overflights depends, in part, on the portions of U.S.-controlled airspace such flights transit. These services can include communications, navigation, radar surveillance, emergency services, and flight information services (flight plan filing, weather briefing, and others). For aircraft transiting U.S.-domestic airspace, Air Route Traffic Control Centers (ARTCCs) provide separation by means of radar surveillance (if they are operating under instrument flight rules or in airspace above 18,000 feet). Also, these flights generally use navigational aids and radio communication with ARTCCs.

For aircraft transiting oceanic airspace, where radar surveillance and navigational aids are not available, navigation is generally conducted by on-board systems. Aircraft separation, however, is provided under procedural control, under which flights report their position to an air traffic controller each time they fly over a specified reporting point.

The FAA estimates that approximately 213,000 non-public flights transit U.S.-controlled airspace without landing or taking off annually (See the *Analysis of Overflights Costs and Pricing* that has been placed in the public docket). Air carriers comprise over 210,000 of these flights and general aviation about 3,000.

The total cost to the FAA associated with all overflights is projected to be approximately $97 million for FY 1997, including the cost of collecting the fees. This amount represents the sum of the separate costs for providing air traffic control services to aircraft flying through domestic and oceanic airspace.

Charging overflights for ATS is accepted in the international arena. The International Civil Aviation Organization (ICAO) states that ''where air navigation services are provided for international use, the providers may require the users to pay their share of the costs. * * * (*Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services,* Paragraph 32 (Doc. 9082/4)). Further, paragraph 42 of Doc. 9082/4 notes that ''providers * * * may require all users to pay their share of the costs regardless of whether or not utilization takes place over the territory of the provider state.'' (Document 9082/4 has been placed in the docket.)

An important factor to consider when constructing an overflight fee is the extent that it will alter user behavior. The FAA believes an inappropriately constructed fee could encourage some users to reroute or otherwise avoid ATS. Excessive avoidance of air traffic control services could potentially reduce air traffic safety. ATS reduces hazards associated with adverse weather conditions and mid-air collisions and enhances the ability to rapidly provide search and rescue services. The FAA believes that some users are more likely to change their behavior in a manner that diminishes safety. Commercial users arguably are less likely to cease use of ATS and other services than general aviation users. Most commercial aircraft are designed to operate more efficiently at altitudes in excess of 18,000 feet. All operations at altitudes at or above 18,000 feet within the United States and its territories must be under air traffic control. Also, to some extent, commercial users are able to pass the overflight fee on to their passengers or cargo customers. Many general aviation users, on the other hands usually operate at altitudes less than 18,000 feet and bear the entire burden of the fee. Consequently, general aviation users are more likely to avoid ATS and other related services if the cost of these services are high relative to the aircraft's operating costs. This may be particularly true for general aviation aircraft users that transit domestic airspace or are involved in inter-island flights in the Caribbean or Pacific airspace. These user may elect to avoid using ATS.

In fact, using U.S. estimates of hourly variable operating costs for general aviation piston-powered and turbine-powered aircraft and assuming average cruising speeds of 130 kts and 300 kts, a fee consistent with full-cost recovery (as derived below) could represent a significant cost to these users. (Estimates of U.S. variable operating costs were derived from the ''all other category'' reported in Tables 23 and 25–B of the ''Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Program'', which can be found in the docket. Cost figures were adjusted to reflect 1997 dollars.) On a per-mile base, the full-cost overflight fee is approximately 144% of the variable operating cost for piston-powered aircraft and approximately 48% of the variable operating cost for turbine-powered aircraft.

In addition, an examination of the cost elasticity estimates for air traffic services suggests that general aviation users are much more responsive than commercial users to a change in the cost of receiving ATS. The ATS cost elasticities are discussed as part of the *Analysis of Overflights Costs and Pricing,* which can be found in the docket. These elasticity estimates measure the demand responsiveness (i.e., the propensity to change the amount consumed of ATS) of the user to a change in the cost of receiving ATS. In particular, the general aviation piston-powered aircraft cost elasticity is approximately 18 times larger than the cost elasticity estimate for commercial aircraft. Similarly, the general aviation turbine-powered aircraft cost elasticity is approximately 5 times larger than the cost elasticity estimate for commercial aircraft.

Because of the concern that users may change their behavior in a manner inconsistent with safety, the FAA has established fees for certain users of ATS services based on the statutory requirements of cost recovery balanced against its primary responsibility of promoting air traffic safety.

Defer Charging Canada-to-Canada Overflight Operations

Currently, it is cost effective for many Canada-to-Canada operations to transit U.S.-controlled airspace. Routing through U.S.-controlled airspace occurs because it is either the shortest route or it offers the most favorable flight conditions; both reduce operator costs. Canada currently has an overflight charge for aircraft that transit Canadian-controlled airspace. With the exception by flights of aircraft that weigh more than 200 tons and that land or take off in Alaska, domestic U.S. aircraft operations have been temporarily exempted from this charge in order to allow time for U.S. and Canadian consultation. NAV CANADA, a non-share capital corporation which owns,

manages, and operates Canada's civil air navigation system, is expected to implement a Canadian enroute charge by November 1, 1997.

If the FAA were to impose the overflight charge on these Canada-to-Canada operations, it is likely that a significant number of Canada overflights would divert to movement through Canadian-controlled airspace. NAV CANADA through informal, high-level, correspondence and meetings with the FAA regarding general principles of overflight charges and cross-border ATC operational issues, has expressed concern that charging Canada-to-Canada overflights prior to the implementation of the Canadian enroute charge would temporarily increase the workload at Canadian air control centers and could adversely impact existing bilateral agreements regarding U.S. air traffic control of certain Canadian airspace. Meeting records and correspondence have been placed in the docket.

Contined maintenance of U.S. control of this airspace is important for the optimized routing for a significant number of U.S. domestic aircraft operations. To allow time for U.S. Canadian consultation, the FAA has chosen to offer charging Canada-to-Canada overflights until October 1, 1997.

The Overflight Fee

As noted above, the Federal Aviation Authorization Act of 1996 directs the Federal Aviation Administration to establish a fee schedule and collection process for air traffic control and related services provided to aircraft other than military and civil aircraft operated by the United States government or by a foreign government that neither take off from, nor land in, the United States. The Act further directs the FAA to issue the initial fee schedule and associated collection process as an interim final rule, to ask for public comment, and to issue a subsequent final rule.

The Act requires that fees be directly related to the FAA's cost of providing the services rendered. Furthermore, the Conference Report for the Act states ''* * * assuming similar costs of serving different carrier and aircraft types, the fee may not vary based on factors such as aircraft seating capacity or revenue derived from passenger fares'' (*Congressional Record,* September 26, 1996, H11316). Consistent with statutory direction, the sense of Congress as documented in the Conference Report, and FAA's aviation safety mission, the FAA has adopted a tiered charging system.

Commercial users will be charged fees consistent with the principle of full cost recovery; general aviation users will be charged fees less than the recovery of full cost in order to minimize any potential safety risks. This method of charging will not result in the cross-subsidization of one user group by another. This charging system is also consistent with ICAO principles. ICAO notes that in determining the costs to be recovered from users ''Governments may choose to recover less than full costs in recognition of local, regional, or national benefits'' (Doc. 9082/4, paragraph 35). The FAA believes that the fees for general aviation should be set so that general aviation users will continue to use air traffic control services when such services enhance safe and efficient travel. Consequently, the fee for general aviation piston-powered aircraft users is 1/18th that of the full cost of service; and the fee for general aviation turbine-powered aircraft is 1/5th that of the full cost of service.

The overflight fee is computed based on distance flown through U.S.-controlled airspace. Separate computations are made for services provided in domestic airspace and in oceanic airspace in order to reflect the different costs of providing services in each of these environments. For any city-pair route, the distance within domestic airspace and within oceanic airspace is used, based on calculation of the great circle route (GCR) between the actual point of entry and the actual point of exit from each category of airspace. The use of this procedure for computing distance protects users within U.S.-controlled airspace from routing patterns created by unusual events, such as traffic congestion, weather situations, and other circumstances. Total fees assessed for using each type of airspace (domestic and oceanic) do not exceed the costs of providing services within that type of airspace.

To calculate the fee in a manner consistent with full-cost recovery two factors are taken into account: (1) the cost of providing air traffic control services for overflights in oceanic and domestic airspace, and (2) the distances flown in U.S.- controlled airspace. Cost pools were estimated for oceanic and domestic airspace as described and documented in the *Analysis of Overflights Costs and Pricing,* which has been placed in the docket. Each cost pool consists of incremental ATS and allocated fixed and common costs associated with providing air traffic control services in each airspace.

Incremental ATS costs, which include, but are not limited to, controller staffing requirements and training, were determined by multiplying the number of aircraft flying through a particular airspace by the incremental rate. The allocated fixed and common costs were assigned to each cost pool based on the pool's proportion of incremental cost. The allocated fixed and common costs associated with ATS and applied to overflights represent the ''Ramsey allocation'' of FAA's total fixed and common costs to the ATS line of business. Radio navigation is an example of a fixed cost. Program support, administration, and capital costs are examples of common costs. A detailed discussion of the cost allocation procedure is outlined in the *Analysis of Overflights Costs and Pricing.* For FY 1995 the estimated cost pools for overflights of U.S.-controlled oceanic and domestic airspace were $42.2 million and $47.5 million, respectively.

A charge is assessed for each 100 nautical miles flown in oceanic and domestic airspace. The oceanic and domestic charges per one hundred nautical miles are $69.50 and $78.90, respectively (expressed in 1997 dollars). These figures were derived in two steps. First, each FY 1995 cost pool was divided by the total number of overflight miles associated with the pool as calculated according to the origination/destination great circle route (OD–GCR). Currently, the OD–GCR mileage represents the best available flight data associated with these cost pools. Reliable GCR entry and exit data will become available; at which time, the unit charges will be adjusted to reflect historical GCR entry and exit data. OD–GCR and GCR entry and exit mileage are not expected to differ significantly in total for the year. Second, each fee was adjusted to capture the cost of collection and to reflect projected cost increases between 1995 and 1997. Unit charges derived in this manner are free from cross-subsidization. The collection assumes a one-time development cost of $2.1 million amortized over a two year period and an annual operating cost of $1.0 million. Projected cost increases are based on the ''all other'' deflation estimates published in the *1997 Budget of the United States Government* (page 160, Table 10.1).

The fee for users of a commercial aircraft overflight is calculated as follows:

$R_{ij}=\$69.50*DO_{ij}+\$78.90*DD_{ij}$,

where

R_{ij}=the fee charged to commercial aircraft flying between city i and city j,

DO_{ij}=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DD_{ij}=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

The fee for users of a general aviation turbine-powered aircraft overflight is calculated as

$GATR_{ij}=(\$69.50/5)*DO_{ij}+(\$78.90/5)*DD_{ij}$

or

$GATR_{ij}=\$13.90*DO_{ij}+\$15.78*DD_{ij}$,

where

$GATR_{ij}$=the fee charged to general aviation turbine-powered aircraft flying between city i and city j,

DO_{ij}=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DD_{ij}=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

The fee for users of a general aviation piston-powered aircraft overflight is calculated as

$GAPR_{ij} = (\$69.50/18) *DO_{ij} + (\$78.90/18)*DD_{ij}$

or

$GAPR_{ij}=\$3.86*DO_{ij}+\$4.38*DD_{ij}$,

where

$GAPR_{ij}$=the fee charged to general aviation piston-powered aircraft flying between city i and city j,

DO_{ij}=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DD_{ij}=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

These formulas assume that actual entry and exit data are available for individual flights in U.S.-controlled airspace. If not, best available flight data will be used.

All fees are designed to charge both direct and indirect costs to users in a logical and fair manner as required by IOAA. Because users of general aviation piston-powered aircraft are likely to be extremely price sensitive with potential impacts on the consumption of safety related services, and because their use of ATS appears minimal, general aviation users are charged a discounted fee (less than full-cost recovery). Also, general aviation piston-powered aircraft users transiting less than 250 nautical miles of U.S.-controlled airspace will not be charged a fee. The distance based exemption reflects a concern for administrative efficiency. The cost of collecting from this user group for distances less than 250 miles is likely to exceed any fee incurred.

The fees in this interim final rule will be reviewed at least once every 2 years, in accordance with OMB Circular A–25, and adjusted to reflect changes in costs. The first review is scheduled one year after the date of publication of the interim final rule. Fees will be adjusted to reflect historical GCR entry and exit mileage within U.S.-controlled airspace.

Based on the OD–GCR, the following table illustrates the tiered fee schedule.

REPRESENTATIVE FEE SCHEDULE FOR INTERNATIONAL OVERFLIGHTS

Origination	Destination	Aircraft type	Domestic airspace			Oceanic airspace			Total miles [2]	Total fee [3]
			Rate [1]	Miles [2]	Charge [3]	Rate [1]	Miles [2]	Charge [3]		
Canada:	Canada:									
YUL Dorval Int'l. Airport, Montreal	YHZ Halifax, Nova Scotia	Commercial	$78.90	149	$118	$69.50			149	$118
YYZ Pearson Airport, Toronto, Ontario	YYC Calgary, Alberta	Commercial	78.90	644	508	69.50			644	508
Canada:	Canada:									
YUL Dorval Int'l. Airport, Montreal	YHZ Halifax, Nova Scotia	GA Piston	4.38	149	7	3.86			149	None
YYZ Pearson Airport Toronto, Ontario	YYC Calgary, Alberta	GA Piston	4.38	644	28	3.86			644	28
Canada:	Canada:									
YUL Dorval Int'l. Airport, Montreal	YHZ Halifax, Nova Scotia	GA Turbine	15.78	149	24	13.90			149	24
YYZ Pearson Airport Toronto, Ontario	YYC Calgary, Alberta	GA Turbine	15.78	644	102	13.90			644	102
Canada:	Mexico:									
YVR International Airport, Vancouver	SJD San Jose Del Cabo	Commercial	78.90	1,084	855	69.50			1,084	855
Asia:	Canada:									
NRT Narita Airport, Tokyo, Japan	YYC Calgary, Alberta	Commercial	78.90	1,938	1,590	69.50	470	$327	2,408	1,917
Europe:	Caribbean:									
AMS Amsterdam, Netherlands	MBJ Montego Bay, Jamaica	Commercial	78.90			69.50	2,118	1,472	2,118	1,472
Europe:	Mexico:									
LHR Heathrow Airport London, Eng	Mexico City	Commercial	78.90	1,515	1,195	69.50	256	178	1,771	1,373
Asia:	Pacific:									
SEL Seoul, South Korea	Sydney, Australia	Commercial	78.90			69.50	1,111	772	1,111	772

[1] Rates are expressed per 100 nautical miles.
[2] Miles are nautical miles.
[3] Charges and total fee are rounded to the nearest dollar.

Fee Collection Process

The FAA has established and maintains data from several sources, including but not limited to, flight plans and radar/radio data, that identifies the point of entry and exit, aircraft registration number and the type of aircraft for all aircraft entering U.S.-controlled airspace. Information will be extracted from the database and used, along with the fee formula, to compute each fee.

The FAA will bill users by sending a monthly invoice. Affected air carrier users are requested to designate and submit to the FAA the name and address of a U.S. agent for billing. All other users are requested to submit a billing address to the FAA. Users not providing a billing address will be billed at the address of record of the aircraft owner as maintained in the country where the aircraft is registered.

As provided in § 187.15(d), monthly remittance of fees of $1,000 or more are to be paid by electronic funds transfer. Monthly remittances below $1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft. All payments must be in U.S. currency.

Invoices that become delinquent will be processed according to 49 CFR part 89.

Comments Requested

As noted above, the FAA seeks comments on the interim final rule, specifically, the fee schedule, formulas used to determine the cost per unit, the associated collection process, and the scope of services for which costs will be recovered. Commenters should be aware, however, that the FAA does not have discretion to make changes to some aspects of the fee that were specifically mandated by Congress.

The FAA is aware of several different approaches used throughout the world by civil aviation authorities in constructing overflight fees. ICAO identifies several parameters that, in principle, can be used to construct an ATS fee. These parameters include distance flown, aircraft weight, and time-in-system. (Doc. 9161/2, paragraphs 73, 74, and 78). A fee system can be designed to recover some or all of the costs of providing air traffic control services. For practical reasons, such as billing efficiency, managing traffic patterns, equity, or issues related to safety, a civil aviation authority may prefer one changing method over another. A civil aviation authority may also decide to recover only a portion of the total cost of providing ATS from particular user groups. Below are two different approaches to the fee system that the FAA has adopted in this interim final rule.

Alternative Approaches

One approach that was not adopted by the FAA is to base the fee on distance flown and aircraft weight, though the use of weight when viewed as a measure of value of the service to the user is not consistent with the FAA's current authority. In general, the following formula could be used to establish an ATS charge under this approach:

R=T*D*P,

where

R=fee,
T=unit rate,
D=great circle distance flown expressed in hundreds of nautical miles,
P=a proportional measure of aircraft weight (e.g., the square root of weight).

As with the fee structure adopted by the FAA, two separate unit rates could be developed to reflect the cost of providing ATS and other services in both domestic and oceanic airspace. Given the appropriate choice of unit rates, this approach is also consistent with full-cost recovery. This approach not only reflects the cost of providing ATS but also incorporates users' ability/willingness to pay. That is, civil aviation authorities are able to charge for ATS based on the value of service received. Heavier (lighter) aircraft users pay more (less) for the use of ATS. Proponents of this approach suggest that a distance- and weight-based fee will encourage the additional use of ATS and other safety related services while permitting full cost recovery by the provider. Consequently, the air transportation community will benefit, as a whole, from a safer and more efficient use of airspace without the provider subsidizing any user (in contrast, the fee described in the interim final rule results in subsidization of general aviation users by the provider).

Internationally, this option has had some acceptance. Eurocontrol (The European Organization for the Safety of Air Navigation) uses this formula to charge civil aircraft flying either for a part of or for the whole flight under Instrument Flight Rules and to military aircraft flying as General Air Traffic. The weight component is taken to be the square root of the maximum take-off weight of an aircraft expressed in metric tons divided by 50. This approach could not be adopted by the FAA unless Congress specifically authorized its use.

Another approach which was not adopted by the FAA is to base the fee on an aircraft's time-in-system. In principle, a time-in-system approach would provide a highly accurate measure of the amount of ATC services used. Higher speeds mean less time spent in a given airspace and therefore a reduction in the service provided. A charging mechanism based on this approach could take the following form:

R=T*Z,

where

R=fee,
T=unit rate,
Z=time in system.

A time-in-system approach, however, favors faster aircraft and may impose a heavier fee burden on slower users. Although this approach could be used to recover the full cost of ATS, it appears to have several shortcomings that must first be resolved. First, it requires actual flight data for an aircraft transiting controlled airspace or some estimated time based on an aircraft's speed and distance flown in controlled airspace. Second, it can be argued that ATC systems were primarily developed to serve the faster commercial users and not slower general aviation users. Slower aircraft should therefore not be required to pay proportionally more for ATS. Third, rerouting due to weather conditions or excessive air traffic can significantly impact a time-in-system fee. To date, there is no universally accepted standard for measuring time-in-system.

Commenters are welcome to address any different approaches that they believe would be consistent with the purposes and limitations of the Act and the IOAA.

Comments Concerning Emergency Services

Under the current fee formula, the only emergency service costs recovered are those costs associated with enroute center coordination of these services. Costs associated with the provision of alternative landing sites, search and rescue services, and crash fire rescue are not recovered. Such costs are borne by the FAA through the AIP program, by the U.S. Coast Guard, by other military services, and by the airports themselves. At the finalization of the rule, commenters should be advised that the FAA is considering an adjustment to the fee formula to include such costs. Commenters are encouraged to submit comment on this adjustment and to provide suggestions regarding the means by which the fee should be adjusted.

Comments From U.S. Entities

Additionally, the FAA is requesting comment from any small U.S. entity who believes that this rule will create a significant economic impact on their operations. As detailed below, the FAA does not believe there will be any such impact.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade.

This section summarizes the FAA's economic and trade analyses, findings, and determinations in response to these requirements. The complete economic and trade analyses are contained in the docket.

Analysis of Benefits

The fees would reimburse the FAA for the actual cost of services provided to commercial users and a portion of the cost of services provided to general aviation users in the manner authorized by Congress, so that the beneficiaries of this service, rather than the taxpayer, would pay for the service provided by the FAA. Moreover, the fees being imposed by the FAA cover no more than the costs of providing these service. The FAA believes that the fees are equitable.

A fee will establish a mechanism through which those who use a service provide the majority of resources necessary to fund the service that is provided. This will result in a more efficient allocation of scarce societal and FAA resources. The efficient allocation

of resources will benefit society at large, because more resources will become available for other service demanded by the public.

On an annualized basis for 1997, the overflight fee is expected to generate approximately $60 million in fee revenue.

Cost of Collection of User Fees to the FAA

The FAA estimates a one-time development cost of $2.1 million amortized over a two-year period and an annual operating cost of $1.0 million.

The costs of collection of the fee is relatively small compared to the revenue that can be generated. The cost of collection along with the fee charges will be reviewed at least once every 2 years and adjusted either upward or downward in order to reflect the current costs of performing the services covered. The first review is scheduled one year after the date of publication of the interim final rule. Fees will be adjusted to reflect historical GCR entry and exit mileage within U.S.-controlled airspace.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to specifically review rules that may have a ''significant economic impact on a substantial number of small entities.''

The FAA's criteria for ''a substantial number'' are a number which is not less that 11 and which is more than one third of the small entities subject to this rule. For all carriers, a small entity has been defined as one which owns, but does not necessarily operate, nine or fewer aircraft. The FAA's criteria for ''a significant impact'' are as follows: At least $4,900 per year for an unscheduled air carrier, $70,100 per year for a scheduled carrier having airplanes with only 60 or fewer seats, and $125,500 per year for a scheduled carrier having an airplane with 61 or more seats.

Using these criteria and the data available at this time, the FAA has determined that the interim final rule will not have a significant economic impact on a substantial number of small U.S. entities. However, since this is a rule issued without notice, the FAA is seeking comment on this issue in the comment section of the preamble. If comments are received that indicate a significant economic impact on a substantial number of small U.S. entities, the final rule will be revised.

International Trade Impact

The overflight provisions would primarily affect foreign airlines. The rule may have a favorable competitive impact on U.S. air carriers. Currently U.S. airlines are at a comparative disadvantage with foreign airlines because all airlines (U.S. and foreign) must pay user fees to transverse other countries' airspace while foreign airlines do not have to pay a fee to transverse U.S. controlled airspace. The interim final rule would enhance the competitiveness of domestic firms.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Reform Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule 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 (adjusted annually for inflation) in any one year. Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Reform Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations do not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this document, the FAA has reviewed the SARP of Annex 6, Parts I and II, applicable to foreign commercial air transportation operations and foreign general aviation operations respectively. The FAA has determined that this interim final rule will not present any differences with ICAO guidance.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this rule.

Justification For No Public Notice and Comment

The Administrative Procedure's Act, 5 U.S.C. 553 et. seq., requires that prior to the issuance of a final rule, an agency will give notice to the public and seek comment on a proposed rule. This interim final rule is issued without public notice and comment pursuant to subsequent and specific authority. This authority is found at 49 U.S.C. 45301(b)(2), which requires that this interim final rule be issued before public comment is sought. A final rule will be issued subsequent to this public comment.

Conclusion

The FAA has determined that this regulation: (1) is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings ''Trade Impact Statement'' and ''Regulatory Flexibility Determination,'' the FAA certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. A

copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 187

Administrative practice and procedure and Air transportation.

The Amendment

The Federal Aviation Administration amends part 187 of the Federal Aviation Regulations [14 CFR part 187] as follows:

PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40104–40105, 40109, 40113–40114, 44702, 45301–45303.

2. Section 187.1 is amended by adding the following sentences to the end of the section to read as follows:

§ 187.1 Scope.

* * * Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix B to this part prescribes the fees for certain aircraft flights that transit U.S.-controlled airspace.

3. Section 187.15 is amended by adding new paragraph (d) to read as follows:

§ 187.15 Payment of fees.

* * * * *

(d) The fees described in appendix B of this party are payable to the Federal Aviation Administration in U.S. currency. Remittance of fees of $1,000 or more are to be paid by electronic funds transfer. Remittances below $1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft.

4. Part 187 is amended by adding new appendix B to read as follows:

Appendix B to Part 187—Fees for Air Traffic Services for Certain Flights Through U.S-Controlled Airspace

(a) *Applicability.* Except as provided in paragraph (b) and (c) of this appendix, this appendix applies to any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States. U.S.-controlled airspace includes both U.S. sovereign airspace (hereafter ''domestic airspace'') and airspace allocated to the United States by the International Civil Aviation Organization (hereafter ''oceanic airspace'').

(b) *Government flights.* This appendix does not apply to any military or civil aircraft operated by the United States government or by any foreign government.

(c) *Deferral of Overflight Charges.* This appendix will not apply to aircraft that take off and land in Canada without intermediate stops outside Canada that operate in U.S.-controlled airspace prior to October 1, 1997.

(d) *Services.* Persons covered by paragraph (a) of this appendix shall pay a fee for the use of air traffic control services and associated services including but not limited to the following:

(1) Air traffic management.
(2) Communications.
(3) Navigation.
(4) Radar surveillance, including separation services.
(5) Flight information services, such as flight plan filing, and weather briefings.
(6) Procedural control.
(7) Emergency services and training.

(e) *Methodology for the Computation of fees.*

(1) For the use of any of the services listed in paragraph (d) of this appendix, the fee is computed based on user type and distance flown. Distance flown is based on the great circle route (GCR) for the actual point of entry and the actual point of exit of U.S.-controlled airspace. Fees are assessed using the methodology presented in paragraph (d) (2), (3), and (4) of this appendix. Where actual entry and exit points are not available, the best available flight data will be used.

(2) For commercial users a fee is assessed for each 100 nautical miles flown in U.S-controlled airspace. Commercial users are defined as those operators whose primary purpose is to provide passenger and/or cargo air transportation for compensation or hire. Separate calculations are made for transiting domestic and oceanic airspace. The total fee charged for an overflight between any two cities is equal to the sum of these two charges. Expressed in 1997 dollars, this relationship is summarized as

R_{ij}=$69.50*$DO_{ij}$+$78.90*DD_{ij},

where

R_{ij}=the fee charged to commercial aircraft flying between city i and city j,
DO_{ij}=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,
DD_{ij}=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

(3) for a general aviation user of turbine-powered aircraft, the total fee charged between any two cities (expressed in 1997 dollars) is calculated as

$GATR_{ij}$=$13.90*$DO_{ij}$+$15.78*DD_{ij},

where

$GATR_{ij}$=the fee charged to general aviation turbine-powered aircraft flying between city i and city j,
DO_{ij}=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,
DD_{ij}=distance traveled in U.S.-controlled domestic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

A general aviation user of turbine-powered aircraft is defined as those operators who do not provide passenger and/or cargo transportation for compensation or hire.

(4) For a general aviation user of piston-powered aircraft, the total fee charged between any two cities (expressed in 1997 dollars) is calculated as

$GAPR_{ij}$=$3.86*$DO_{ij}$+$4.38*DD_{ij}

where

$GATR_{ij}$=the fee charged to general aviation piston-powered aircraft flying between city i and city j,
DO_{ij}=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,
DD_{ij}=distance traveled in U.S.-controlled domestic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

A general aviation user of piston-powered aircraft is defined as those operators who do not provide passenger and/or cargo transportation for compensation or hire.

(5) General aviation users of piston-powered aircraft traversing less than 250 nautical miles of U.S.-controlled airspace will not be charged a fee under this appendix.

(f) *Billing and payment procedures.*

(1) *Billing.* The FAA will send an invoice to each user that is covered by this appendix. Users will be billed at the address of record in the country where the aircraft its registered, unless a billing address is otherwise provided.

(2) *Payment.* Payment shall be made by one of the methods described in § 187.15.

(g) *Review of fees.* The fees prescribed in this appendix will be reviewed at least once every 2 years, at the beginning of the fiscal year, and adjusted either upward or downward in order to reflect the current costs of performing the services covered by this appendix.

Issued in Washington, DC, on March 14, 1997.

Barry L. Valentine,

Acting Administrator.

[FR Doc. 97–6980 Filed 3–17–97; 11:23 am]

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Federal Register

Thursday
March 20, 1997

Part VII

Department of Housing and Urban Development

Community Outreach Partnership Centers (COPC) Funding Availability, FY 1997; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4187–N–01]

Fiscal Year 1997 Notice of Funding Availability for Community Outreach Partnership Centers (COPC)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1997.

SUMMARY: This NOFA announces the availability of Fiscal Year 1997 funding to make grants to establish and operate Community Outreach Partnership Centers (COPC).

Available funding. Approximately $7.5 million to implement the fourth year of this demonstration program.

Eligible applicants. Public and private nonprofit institutions of higher education.

Purpose. To assist in establishing or carrying out research and outreach activities addressing the problems of urban areas. Funding under this demonstration program shall be used to establish and operate Community Outreach Partnership Centers (COPC).

The NOFA contains information concerning: (1) the principal objectives of the competition, the funding available, eligible applicants and activities and factors for award; (2) the application process, including how to apply and how selections will be made; and (3) a checklist of application submission requirements.

DATES AND INSTRUCTIONS FOR OBTAINING APPLICATIONS: Application kits may be requested on or after March 25, 1997.

Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control, in Room 8230 by 4:30 p.m. Eastern Standard Time on June 19, 1997. Facsimiles of applications will not be accepted. The above-stated application deadline is *firm* as to *date, hour* and *place.* In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

ADDRESSES: To obtain a copy of the application kit, contact: HUD USER, ATTN: COPC, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301–251–5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to ''Document FR–4187.'' The application kit is also available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://oup.org; or from a Gopher Server at: gopher://oup.org:89

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110 Washington, DC 20410, telephone (202) 708–1537. Hearing or speech-impaired individuals may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (Federal Information Relay service TTY). Other than the ''800'' number, these are not toll-free numbers. Ms. Karadbil can also be contacted via the Internet at Jane__R.__Karadbil@hud.gov. An information broadcast via satellite will be held on April 30, 1997 for potential applicants to learn more about the program and preparation of an application. For more information about attending the broadcast, please contact Ms. Karadbil.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2528–0180. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in this fiscal year. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan. Attached to this NOFA, as Appendix A, is a list of HUD's NOFAs that the Department has published or expects to publish this fiscal year.

To foster comprehensive, coordinated approaches by communities, the Department intends for the remainder of FY 1997 to continue to alert applicants of HUD's NOFA activity. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps to better coordinated HUD's NOFAs are being considered for FY 1998.

To help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; hereafter referred to as the ''COPC Act''). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (HCD Act of 1992). Section 801(c) of the HCD Act of 1992 authorizes $7.5 million for each year of the 5-year demonstration to create Community Outreach Partnership Centers as authorized in the COPC Act. The COPC Act also required HUD to establish a national clearinghouse to disseminate information resulting from research and outreach conducted at the centers.

COPC is administered by the Office of University Partnerships (OUP) in the Office of Policy Development and Research. OUP is responsible for five of the Department's grant programs for institutions of higher education—Community Outreach Partnership Centers program, Joint Community

Development program, Community Development Work Study program, Hispanic-serving Institutions Work Study program, and the Doctoral Dissertation Grant program. In addition, OUP is responsible for a variety of new outreach initiatives to involve these institutions in local community development, public housing, and revitalization partnerships.

B. Allocation and Form of Award

The competition in this NOFA is for up to $7.5 million to fund the fourth year of the COPC program authorized as indicated above.

Under this NOFA, HUD will fund two kinds of grants—New Grants and Institutionalization Grants. New Grants will be awarded to institutions of higher education to begin or expand their applied research and outreach activities. Institutionalization Grants will be awarded to certain COPC grantees to help ensure that their COPC activities are institutionalized as an integral part of the teaching, research, and service missions of their colleges and universities. There will be two separate competitions within this year's funding. To institutionalize their COPC functions, up to $1.4 million will be set-aside for a competition among the grantees awarded two-year grants in FY 1995. Up to $6.1 million will be used to fund new COPC grantees. HUD has administratively determined that FY 1995 grantees are only eligible for Institutionalization Grants, not for New Grants. (FY 1994 and FY 1996 COPC grantees are not eligible for either kind of grant, nor are universities that received Joint Community Development Program grants.) If any funds set-aside for Institutionalization Grants are not awarded, they will be used instead as part of the funding for New Grantees, funding these grantees in rank order based on the rating factors. (Program requirements for Institutionalization Grants are the same as for New Grants, except as noted in Section IV of this NOFA, below.) It is estimated that approximately 15 COPC awards to new grantees can be made with the $6.1 million available.

Each New Grant will be for a three-year period of performance (i.e., applicants must complete their proposed activities within three years). The maximum size of any New Grant will be $400,000, while the minimum will be $250,000. Both amounts are over the three year grant period. Applicants must submit an application within this range or they will be disqualified. Several applicants were disqualified last year because they asked for $400,000 for each of the three years of the grant period. Each Institutionalization Grant will be for a one-year period, with a maximum grant size of $100,000. Applicants for Institutionalization Grants will be disqualified if they request more than the maximum allowable amount.

C. Description of Competition

The Congress has mandated that the Department carry out ''a 5-year demonstration to determine the feasibility of facilitating partnerships between institutions of higher education and communities to solve urban problems through research, outreach and the exchange of information.''

The COPC Act stipulates that grants are to go to public and private institutions of higher education to establish and operate COPCs. These COPCs shall: ''(A) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (B) Facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems.''

Grants under the COPC program must focus on the following specific problems: ''problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary.''

Furthermore, the COPC Act states: ''The Secretary shall give preference to institutions of higher education that undertake research and outreach activities by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban problems.''

COPC programs must combine research with outreach, work with communities and local governments and address the multi-dimensional problems that beset urban areas. Single purpose applications are not eligible. Applications must be multifaceted and address three or more urban problems, as described in selection factor #1. The scope of applications for Institutionalization Grants is covered elsewhere below.

To be most effective during the term of the demonstration, the funded research must have a clear near-term potential for solving specific, significant urban problems. The selected institutions must have the capacity to apply their research results and to work with communities and local institutions, including neighborhood groups, in applying these results to specific real-life urban problems.

The five key concepts of the COPC program are:

(1) The program should provide outreach, technical assistance, applied research, and empowerment to neighborhoods and neighborhood-based organizations based on what the residents decide is needed, not based on what the institution thinks is appropriate for that neighborhood;

(2) Community-based organizations should be partners with the institutions throughout the life of the project, from planning to implementation;

(3) The applied research should be related to the outreach activities and be usable in these activities within the grant period or shortly after it ends, rather than research without practical application;

(4) The assistance to neighborhoods should be provided primarily by the faculty, students, or to a limited extent, by neighborhood residents or community-based organizations funded by the university; and

(5) The program should be part of the institution's broader effort to meet its urban mission, and be supported by senior officials, rather than just the work of a few faculty members. Proposed activities should not duplicate those of other entities in the community and should be appropriate for an institution of higher education to undertake in light of its teaching, research, and service missions.

D. Eligible Applicants

Applicants for this competition must be public or private nonprofit institutions of higher education granting two-or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education. Consortia of eligible institutions may apply, as long as one institution is designated the lead applicant. Each institution may be part of only one consortium or submit only one application or it will be disqualified. HUD will hold an institution responsible for ensuring that neither it nor any part of the institution, including specific faculty, participates in more than one application. Applicants must submit proposals that address the problems of urban areas (see rating factor 1, for further enumeration of these problems).

Different campuses of the same university system are eligible to apply, even if one campus has already received COPC funding. Such campuses are eligible as separate applicants only if they have administrative and budgeting

structures independent of other campuses in the system.

E. Program Requirements

Grantees must meet the following program requirements:

1. *Responsibilities.* In accordance with section 851(h) of the HCD Act of 1992, each COPC shall:

''(a) Employ the research and outreach resources of its sponsoring institution of higher education to solve specific urban problems identified by communities served by the Center;

(b) Establish outreach activities in areas identified in the grant application as the communities to be served;

(c) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(d) Coordinate outreach activities in communities to be served by the Center;

(e) Facilitate public service projects in the communities served by the Center;

(f) Act as a clearinghouse for dissemination of information;

(g) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(h) Exchange information with other Centers.

The clearinghouse function in (f) above refers to a local or regional clearinghouse for dissemination of information and is separate and distinct from the functions in (h) above, which relate to the provision of information to the University Partnerships Clearinghouse, which is the national clearinghouse for the program.

2. *Cap on Research Costs.* No more than 25 percent of the total project costs (Federal share plus match) can be spent on research activities.

3. *Match.* Grantees must meet the following match requirements. Note, as shown in the selection factors (II.A.(2)), applicants will receive points for providing matching funds above those required.

(a) *Research Activities.* 50 percent of the total project costs of establishing and operating research activities.

(b) *Outreach Activities.* 25 percent of the total project costs of establishing and operating outreach activities.

This non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in 24 CFR Part 84, and in particular Section 84.23 entitled ''cost sharing or matching.''

In order to avoid confusion about the calculation of the match, an example is provided.

Assume that the total project cost for a COPC was $500,000, with $125,000 for research and $375,000 for outreach. Note that this project meets the requirement that no more than one-quarter of the total project costs be for research. The total amount of the required match would be $156,250. The research match would be $62,500 ($125,000×50 percent) and the outreach match would be $93,750 ($375,000×25 percent). The Federal grant requested would be $343,750 ($500,000 minus the match of $156,250). In calculating the match, administrative costs should be applied to the appropriate attributable outreach or research component.

4. *Administrative.* The grant will be governed by the provision of 24 CFR Part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of Institutions of Higher Education and other Nonprofit Institutions), as implemented at 24 CFR part 45. No more than 20% of the Federal grant funds may be used for planning and program administrative costs. Overhead costs directly related to carrying out activities under research and outreach need not be considered planning and program administrative costs, since those costs are eligible under that section. The 20% limitation imposed under this program applies only to Federal funds received through this grant, not to matching funds.

F. Eligible Activities

Eligible activities include:

1. Research activities which have practical application for solving specific problems in designated communities and neighborhoods, including evaluation of the effectiveness of the outreach activities. Such activities may not total more than one-quarter of the total project costs contained in any grant made under this NOFA (including the required 50 percent match).

2. Outreach, technical assistance and information exchange activities which are designed to address specific urban problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of the total project costs contained in any grant made under this NOFA (including the required 25 percent match).

Examples of outreach activities include, but are not limited to:

(a) Job training and other training projects, such as workshops, seminars and one-on-one and on-the-job training;

(b) Design of community strategies to resolve urban problems of communities and neighborhoods;

(c) Innovative use of funds to provide direct technical expertise and assistance to local community groups and residents to assist them in resolving local problems such as homelessness, housing discrimination, and impediments to fair housing choice;

(d) Technical assistance in business start-up activities for low-and moderate-income individuals and organizations, including business start-up training and technical expertise and assistance, mentor programs, assistance in developing small loan funds, business incubators, etc;

(e) Technical assistance to local public housing authorities on welfare-to-work initiatives and physical transformations of public or assisted housing;

(f) Assistance to communities to improve consolidated housing and community development plans and remove impediments to design and implementation of such plans; and

(g) Assistance to communities to improve the fair housing planning process.

3. Funds for faculty development including paying for course time or summer support to enable faculty members to work on the COPC.

4. Funds for stipends for students (which cannot cover tuition and fees) when they are working on the COPC.

5. Activities to carry out the ''Responsibilities'' listed under Section I.E.1 of this NOFA. These activities may include leases for office space in which to house the Community Outreach Partnership Center, under the following conditions:

a. The lease must be for existing facilities;

b. No repairs or renovations of the property may be undertaken with Federal funds; and

c. Properties in the Coastal Barrier Resource System designated under the Coastal Barrier Resources Act (16 U.S.C. 3501) cannot be leased with Federal funds.

G. Ineligible Activities

Grants funds cannot be used for:

1. Research activities which have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

2. Any type of construction, rehabilitation, or other physical development costs.

3. Costs used for routine operations and day-to-day administration of regular

programs of institutions of higher education, local governments or neighborhood groups.

II. Rating Factors/Selection Process for New Grantees

A. Rating Factors

HUD will use the following criteria to rate and rank applications for New Grants received in response to this NOFA. Several modifications have been made to the factors, as they were issued last year. These modifications are described below. Selection factors for Institutionalization Grants are described below in Section IV of this NOFA.

The factors and maximum points for each factor are provided below. The maximum number of points is 100.

Rating of the ''applicant'' or the ''applicant's organization and staff,'' unless otherwise specified, will include any sub-contractors, consultants and sub-recipients which are firmly committed to the project.

(1) *(5 points)* The demonstrated research and outreach resources available to the applicant for carrying out the purposes of the COPC Act. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant and successful experience in:

(a) Undertaking research activities in specific communities which have clear near-term potential for practical application to significant urban problems associated with affordable housing, fair housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning and community organizing, and

(b) Undertaking outreach activities in specific communities to solve or ameliorate significant urban problems. Under this factor, HUD will also evaluate the capability of the applicant to provide leadership in solving community problems and in making national contributions to solving long-term and immediate urban problems. In assessing this factor, HUD will look at past and current relevant projects of the applicant with community-based organizations or local governments.

(2) *(10 points)* The demonstrated commitment of the applicant to supporting research and outreach programs by providing matching contributions for the Federal assistance received. In rating this factor, HUD will provide an increasing number of points for increasing amounts of contributions beyond the statutory 50 percent for research and 25 percent for outreach, up to a maximum of five points. Maximum points will be awarded for applications that secure 50 percent more than the amount of match required. Because the Department is interested in promoting the institutionalization of COPC projects, up to an additional five points will be awarded for the extent to which matching funds are provided from sources other than the applicant (e.g., funds from the city, including CDBG, other State or local government agencies, public or private organizations, or foundations). Factor 7 has been reduced by five points to compensate for the points added to this factor.

(3) *(10 points)* The extent of need in the communities to be served by the applicant. The applicant must demonstrate that it is serving areas with substantial low-income populations, low standards of living, and large numbers of empty or abandoned dwellings. HUD will consider the extent to which the proposal clearly delineates a need or needs in the specific communities or neighborhoods, that can be resolved through the activities of a COPC. The applicant must demonstrate how these needs were determined and how the COPC will help resolve these needs.

The applicant should demonstrate a strong familiarity (based on sufficient investigation) with the existing and planned efforts of government agencies, community-based organizations, faith-based institutions, for-profit firms and any other entities to address such needs in the communities to be served, and should demonstrate that the applicant can cost-effectively complement any such efforts to attain measurable impacts.

(4) *(5 points)* The demonstrated ability of the applicant to disseminate results of research and successful strategies developed through outreach activities to other COPCs and communities served through this demonstration program. In rating this factor, HUD will evaluate the past experience of the applicant's staff and the scope and the quality of the applicant's proposal to disseminate information on COPC research results and strategies to: (a) local communities in its area and (b) other communities and COPCs through the OUP Clearinghouse.

(5) *(35 points)* The projects and activities that the applicant proposes to carry out under the grant. This factor has three sub-factors: (a) effectiveness of the research strategy (5 points); (b) effectiveness of the outreach strategy (15 points); and (c) work on specific HUD priority activities (15 points).

(a) In rating the effectiveness of the research strategy, HUD will consider:

(i) The extent to which the applicant's proposal outlines a clear research agenda, based on a thorough familiarity with existing research on the subject, that can be successfully carried out within the grant period. (The applicant should demonstrate that the proposed research builds on existing research in the field and does not duplicate research previously completed, or currently underway, by others.); and

(ii) The extent to which the applicant demonstrates how the research to be undertaken will fit into the outreach strategy and activities. For example, an applicant proposing to study the extent of housing abandonment in a neighborhood and then designing a plan for reusing this housing would be able to demonstrate the link between the proposed research and outreach strategies.

(b) In rating the effectiveness of the outreach strategy factor, HUD will consider the extent to which:

(i) The application identifies a clear outreach agenda related to locally-identified needs that can be successfully carried out within the period of this grant. In assessing this sub-factor, HUD will look at whether the agenda includes specific projects, based on the needs identified in Selection Factor 3, with time lines within the grant period.

(ii) The outreach agenda includes design or strengthening and implementation of a community strategy to resolve community and neighborhood problems. Applicants will be expected to have involved the community in designing the strategy and to identify an agenda that they have already worked with the community to design. Applicants should refer to concepts 1 and 2 of the key concepts of the program, under Section I.C., to understand the kinds of community strategy HUD would fund.

(iii) There is a plan for involving the university in the execution of the outreach strategy; and

(iv) The outreach program provides for on-site or a frequent presence in the communities and neighborhoods to be assisted through outreach activities.

(c) *(15 points)* HUD Priority Areas.

(i) If all of the applicant's research and outreach agenda is to be in an Empowerment Zone or Enterprise Community, five (5) points will be awarded.

(ii) If some of an applicant's research and outreach agenda is related to public housing transformation, HUD-assisted distressed housing, or Campus of Learners/Neighborhood Networks, five (5) points will be awarded. These

programs are described in more detail in the application kit.

In awarding points for these two subfactors, HUD will look for evidence of participation, including letters from the responsible entities describing the relationship and work to be undertaken. The level of work to be devoted to these priority areas will be based on the percentage of the COPC grant and matching funds proposed to be spent on them.

(iii) If some of the applicant's work is on activities that affirmatively further fair housing, for example: (a) overcoming impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services, or lending; (b) promoting fair housing through the expansion of homeownership opportunities and improved quality of city services for minorities, families with children, and persons with disabilities; or (c) providing mobility counseling, five (5) points will be awarded.

(6) *(15 points)* The extent of neighborhood and neighborhood based organization and local government participation in the planning and implementation of the COPC. The points for this factor have been increased from 10 points in last year's NOFA to reflect the addition of subfactor (d). In rating this factor, HUD will consider whether:

(a) One or more community advisory committees, meeting the tests of subfactors (b) and (c) immediately below, comprised of representatives of local institutions and a balance of the race, ethnic, disability status, gender and income of residents of the communities to be served has been or will be formed to participate in identifying local needs to be addressed by the COPC and to form a partnership with the COPC to develop and implement strategies to address those needs. Applicants will be expected to demonstrate that they have already formed such a committee(s) or secured the commitment of the appropriate persons to serve on the committee(s), rather than just describing generally the types of persons whose involvement they will seek.

(b) There is a plan for involving the community advisory committee(s) in the execution of the research and outreach agenda; and

(c) The outreach agenda includes training projects for local community leaders, for example, to increase their capacity to direct their organizations or undertake various kinds of community development projects.

(d) The research and outreach plans show evidence of consultation and collaboration with the appropriate local government. This subfactor has been added in order to ensure that COPC activities are part of the broader plans a city has for the neighborhoods affected by the application.

(7) *(20 points)* The extent to which the proposed COPC will result in the COPC function and activities becoming part of the urban mission of the institution. In reviewing this factor, HUD will consider the extent to which the COPC activities relate to the institution's urban mission, are part of a climate that rewards faculty and student work on these activities, and are reflected in course work. HUD will also look at the extent to which these activities are supported at the highest levels of institutional leadership.

B. Selection Process for New Grantees

Applications for funding under this NOFA will be evaluated competitively and points will be awarded as specified in the Rating Factors section described above. After assigning points based upon the factors all applications will be listed in rank order. Applications will then be funded in rank order until all available funds have been expended. However, in order to be funded, an applicant must receive a minimum score of 70. HUD reserves the right to fund all or portions of the proposed activities identified in each application, based upon the eligibility of the proposed activities.

If two or more applications have the same number of points, the application with the most points for rating factor (7) shall be selected. If there is still a tie, the application with the most points for rating factor (6) shall be selected.

If the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine (based upon the proposed activities) if it is feasible to fund part of the application and offer a smaller grant to the applicant. If HUD determines that given the proposed activities a smaller grant amount would render the activities infeasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application until all applications with scores of at least 70 points or available funds have been exhausted.

C. Geographic Distribution

HUD reserves the right to make selections out of rank order to provide for a geographic distribution of funded COPCs. The approach HUD will use, if it decides to implement this option, will be based on combining two adjacent standard HUD regions (e.g., Southwest and Southeast Regions, Great Plains and Midwest Regions, etc.) If the rank order does not yield at least one fundable COPC within each combined region, then HUD may select the highest ranking application from such a combination, as long as the minimum score of 70 is achieved.

It is HUD's intent to fund at least one eligible applicant (see Section I.D. of this NOFA) that serves the colonias, as defined by Section 916(d) of the Cranston-Gonzalez National Affordable Housing Act, as long as the applicant receives a minimum score of 70.

III. Application Content and Review Process

Applicants must complete and submit applications in accordance with instructions contained in the application kit and must include all certifications, assurances, and budget information requested in the kit. Following the expiration of the application submission deadline, HUD will review and rank applications in a manner consistent with the procedures described in this Notice.

IV. Program and Application Requirements for Institutionalization Grants

(a) General Requirements. All requirements of Parts I and III of this NOFA apply also to this part unless otherwise herein noted. The maximum size of any Institutionalization Grant will be $100,000, and grant requests shall not exceed this amount. The term of the grant will be for one year. If the grantee proposes entirely new activities, it may conduct activities under both grants, until funds from both are fully expended. If the applicant proposes continuation of current activities, it must expend all the funds under the current grant before expending any new funds under an Institutionalization Grant. Current grantees may request a no-cost extension from HUD if necessary to finish expending all their FY 1995 grant funds.

(b) Eligible Applicants. Only institutions awarded COPC grants in FY 1995 are eligible for Institutionalization Grants. These grantees are not eligible for New Grants. Institutionalization Grants to current grantees will be for a one-year period. Current COPC grantees that received grants as consortia must apply again as consortia, with all current member institutions participating in the proposed Institutionalization Grant, and with the same lead applicant as in their current COPC.

(c) Eligible Activities. Instead of proposing a range of activities to be undertaken, applicants should propose activities that will bring their COPC projects to a successful conclusion or could result in securing funding to continue either current or new COPC activities from other sources, such as local governments or foundations.

(d) Rating Factors/Selection Process.

(i) Rating Factors. The selection factors contained in Section II.A. of this NOFA have been modified. Applicants will be required to meet three selection factors (which are simply consolidations of the factors used for new grantees), summarized as ''Past Performance,'' ''Proposed Activities,'' and ''Potential for Institutionalization.'' Each factor and the maximum points assigned to it are described below:

((a)) *(30 points)* The demonstrated past performance of the applicant, as measured by: the research and outreach resources made available to the applicant under the current COPC grant; the ability of the applicant to provide local leadership and disseminate results of the grant; and the effectiveness of the activities undertaken in the grant.

((b)) *(30 points)* The effectiveness of the proposed research and outreach activities, as measured by: need for the activities; involvement of the community in these activities; demonstrated commitment of the application by providing a matching contribution; and likelihood that these activities can be successfully carried out within the grant period.

((c)) *(40 points)* The potential of the proposed outreach strategy to ensure institutionalization of the COPC functions at the college or university, as measured by the extent to which the proposed COPC functions will become an integral part of the teaching, research and urban service mission of the institution and the extent to which the COPC activities are supported by the highest levels of institutional leadership. In reviewing this factor, HUD will consider the extent to which the COPC activities are part of and will enhance a broader set of existing or planned activities and will foster a culture that rewards faculty and student work on these activities.

(ii) Selection Process. An applicant must receive a score of at least 70 points in order to be funded. Applications will be rated but not ranked. There is sufficient funding for all eligible applications. Applications requesting over $100,000 will be ineligible.

V. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD may disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

VI. Findings and Certifications

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

Specifically, the notice solicits participation in an effort to provide assistance to institutions of higher education for establishing and carrying out research and outreach activities addressing the problems of urban areas. The COPCs established under this notice will work with local communities to help resolve urban problems. The notice does not impinge upon the relationships between the Federal government and State or local governments.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The assistance to be provided by the funding under this NOFA is expected to help local residents to become self-sufficient by improving living conditions and standards. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Accountability in the Provision of HUD Assistance.

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any

applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.)

Byrd Amendment

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are subject to this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if payments or agreement to make payments of nonappropriated funds for these purposes have been made, a SF-LLL disclosing such payments should be submitted. The certification and the SF-LLL are included in the application package issued pursuant to this NOFA.

Protection of Human Subjects

45 CFR part 46, Subtitle A on the protection of human subjects does not apply to the COPC program because the research activities to be conducted under the program are only incidentally regulated by the Department solely as part of its broader responsibility to regulate certain types of activities whether research or non-research in nature.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 25 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Environmental Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.511.

Dated: February 10, 1997.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

APPENDIX A—HUD NOFAS PUBLISHED AND EXPECTED TO BE PUBLISHED IN FY 1997

Office	Program
Public and Indian Housing	Indian Emergency Shelter Grants.
Public and Indian Housing	Traditional Indian Housing Development.
Public and Indian Housing	Indian HOME Program.
Public and Indian Housing	Indian Community Devt. Block Grant.
Public and Indian Housing	Family Unification.
Public and Indian Housing	Comprehensive Improvement Assistance Program (CIAP).
Public and Indian Housing	Demo/Revitalization/HOPE VI.
Public and Indian Housing	Public Housing Drug Elimination Grant.
Public and Indian Housing	Tenant Opportunity Program.
Public and Indian Housing	Economic Development and Supportive Services.
Public and Indian Housing	Drug Elimination Technical Assistance.
Public and Indian Housing	Family Self-Sufficiency (FSS) Service Coordinators.
Public and Indian Housing	Section 8/Designated Housing.
Public and Indian Housing	Moving to Work Demonstration.
Housing	Drug Elimination—Housing Programs.
Housing	202 Elderly Housing.
Housing	811 Disabled Housing.
Housing	Single Family Counseling.
Housing	Crime/Security.
Fair Housing and Equal Opportunity	Fair Housing Initiatives Program (FHIP).
Community Planning and Development	Historically Black Colleges.
Community Planning and Development	Continuum of Care Homeless Assistance Including: Section 1403 Supportive Housing. Section 1405 Section 8 SRO. Section 1406 Shelter Plus Care.
Community Planning and Development	Youthbuild.
Community Planning and Development	Housing Opportunities for Persons with AIDS (HOPWA)—competitive.
Policy Development and Research	*Community Development Work Study Published March 4, 1997 (62 FR 9898).
Policy Development and Research	Community Outreach Partnership Centers.
Policy Development and Research	Hispanic Serving Institutions.
Lead-based Paint	Lead-based Paint Hazard Reduction.

[FR Doc. 97–7018 Filed 3–19–97; 8:45 am]

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Federal Register

Thursday
March 20, 1997

Part VIII

Environmental Protection Agency

40 CFR Parts 19 and 27
Civil Monetary Penalty Inflation Adjustment Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–5711–7]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Corrections To final rule.

SUMMARY: This document contains corrections to the Civil Monetary Penalty Inflation Adjustment Rule, final regulations (FRL–5671–1), which were published Tuesday, December 31, 1996, (61 FR 69359). The regulations adjusted the Environmental Protection Agency's (''EPA'') civil monetary penalties (''CMPs'') for inflation as mandated by the Debt Collection Improvement Act of 1996 (''DCIA''). A corrected version of Table 1, from 40 CFR 19.4, which now lists all but one of the EPA's civil monetary penalty authorities, appears near the end of this notice.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: For further information, contact Steven M. Spiegel, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248W, 401 M Street, SW, Washington, D.C. 20460, or at (703) 308–8507. Further information may also be requested by electronic mail (e-mail) to: spiegel.steven@epamail.epa.gov. The December 31, 1996 Final Rule and this Correction are also available on the Office of Enforcement and Compliance Assurance's Web page at http// www.epa.gov/oeca.

SUPPLEMENTARY INFORMATION:

Need For Correction

As published, the preamble and final regulations contain errors which may prove misleading and are in need of clarification. The changes made through these corrections are all technical in nature and can be broken down into three categories. First, there were five instances in which the exact section of a statute was not cited correctly in the preamble (which errors were repeated in the rule). Second, there were two errors in the new maximum penalty figures. Third, there are other minor non-substantive changes, as well as the addition of explanatory information which does not affect the original rule, but provides a more complete and understandable document and rule to the public. The additions concern the August 1996 amendments to the Safe Drinking Water Act, which went into effect on August 6, 1996. For purposes of clarity and providing the public with one table that lists all of EPA's civil penalty authorities, the four new civil penalty provisions from the August 1996 amendments to the Safe Drinking Water Act have been added to Table 1 in Section 19.4 (even though these penalty provisions are not subject to adjustment for inflation pursuant to the DCIA at this time). These additions are identified below. Thus the revised Table 1 of Section 19.4 now provides a list of all but one of the applicable statutory provisions and maximum civil penalties. There is one statutory provision which has not yet been adjusted. EPA anticipates performing a rule-making to adjust 15 U.S.C. 2615, as amended by the Residential Lead-Based Paint Act of 1992, 42 U.S.C. 4852d, and the corresponding regulations in 40 CFR Part 745, which were omitted from the December 31, 1996 rule-making.

Effect of Correction

Since all of the corrections are technical in nature and do not affect the substance of the rule, the original effective date of January 30, 1997, applies to those corrected provisions, as well as to the other original provisions of the final rule which did not require correction. The identified corrections to Table A in the preamble correspond to the corrections and additions to Table 1 in Section 19.4. A corrected version of Table 1, 40 CFR 19.4, which now lists all but one of EPA's civil monetary penalty authorities, appears near the end of this notice.

Correction of Publication

Accordingly, the publication on December 31, 1996 of the preamble and final regulations (FRL–5671–1) which were the subject of F.R. Doc. 96–32972, are corrected and added to as follows:

Preamble [Corrected]

On page 69360, Table A.—Summary of Civil Monetary Penalty Inflation Adjustment Calculations, the first column, is corrected as follows:

7 USC 136l(1) is corrected to read 7 USC 136l.(a)(1)—(the number 136, is followed by the letter ''l'', not the number one).

7 USC 136l(2) is corrected to read 7 USC 136l.(a)(2)—(the number 136, is followed by the letter ''l'', not the number one).

15 USC 2615 is corrected to 15 USC 2615(a).

On page 69361, Table A, is corrected as follows:

33 U.S.C. 1321(b)(7)(A) in the first column is correct, but the fourth column figure of ''10,000'', is corrected to ''25,000''. The seventh column figure of 15,000, is corrected to 30,000. The eighth column figure of ''11,000'' is corrected to ''27,500''.

33 U.S.C. 1321(b)(7)(D) in the first column is correct, but the eighth column figure of ''11,000'' is corrected to ''110,000''.

42 U.S.C. 300i–1(b) is corrected to 42 U.S.C. 300i–1(c) .

On page 69362, for 42 U.S.C. 6934(e), the fourth column, the figure ''25,000'' is corrected to read ''5,000''.

On page 69363, 42 U.S.C. 11045(d)(2)(3) is corrected to 42 U.S.C. 11045(d) (1).

In the first column, first sentence, insert ''will'' so the sentence reads ''Future adjustments also will be made in accordance with the statutory formula.''

Preamble [Additions]

Supplementary Information. On page 69360, in the third column, in the first full sentence, add the phrase '', along with the new penalty amounts set by the 1996 amendments to the Safe Drinking Water Act,'' between the words ''statutory maximum amounts'' and ''are set out in Table 1* * *''

On page 69361, 42 U.S.C. 300g–3(g)(3)(B), in the first column is correct; for the second column, change the word ''penalty'' to ''penalties''; third column, replace ''1986'' with ''1996''; fourth column, replace ''5,000'' with ''5,000/25,000''; replace the figures in the fifth, sixth and seventh columns with ''N/A''; and in the eighth column, replace ''5,500'' with ''5,000/25,000''.

Following 42 U.S.C. 300g–3(g)(3)(B), add a new row starting with 42 U.S.C. 300g–3(g)(3)(C) in the first column; for the second column, insert SAFE DRINKING WATER ACT/ THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC. 1414(g)(3)(B) & (C); third column, insert ''1996''; fourth column, insert ''25,000''; insert ''N/A'' for the figures in the fifth, sixth and seventh columns; and in the eighth column, ''25,000''.

Following 42 U.S.C. 300h–3(c)2, add a new row for 42 U.S.C. 300i(b); for the second column, insert SAFE DRINKING WATER ACT/ FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ADMIN. ORDER ; third column, insert ''1996''; fourth column, insert ''15,000''; insert ''N/A'' for the figures in the fifth, sixth and seventh columns; and in the eighth column, insert ''15,000''.

Following 42 U.S.C. 300j–4(c), add a new row for 42 U.S.C. 300j–6(b)(2); for the second column, insert SAFE DRINKING WATER ACT/ FAILURE TO COMPLY WITH ADMIN. ORDER

ISSUED TO FED. FACILITY ; third column, insert ''1996''; fourth column, insert ''25,000''; insert ''N/A'' for the figures in the fifth, sixth and seventh columns; and in the eighth column, insert ''25,000''.

Procedural Requirements

I. Small Business Regulatory Enforcement Fairness Act

In the December 31, 1996 notice, EPA found good cause, pursuant to 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act (''APA''), that soliciting public comment prior to publication of the rule was not necessary because EPA is carrying out a ministerial, non-discretionary duty per direction of an Act of Congress. EPA finds that good cause continues to apply to this rule, and therefore the effective date provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), do not govern the effective date of today's action as well. Additionally, the fact that these changes are technical and do not affect the substance of the previously issued rule also meets the ''good cause'' exception to the effective date requirements of section 553(d) of the Administrative Procedure Act as well.

Under Executive Order 12866 (58 F.R. 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (PL. 104–4). Because this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A), as added by SBREFA, 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 United States prior to publication of the rule in today's Federal Register. This rule is a not a ''major rule'' as defined by 5 U.S.C. 804(a).

PART 19 [CORRECTED WITH ADDITIONS]

Beginning on page 69364, Table 1 of Section 19.4—Civil Monetary Penalty Inflation Adjustments, is corrected to read as follows:

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
7 U.S.C. 1361.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	$5,500.
7 U.S.C. 1361.(a)(2)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	$550/$1,000.
15 U.S.C. 2615(a)	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY	$27,500.
15 U.S.C. 2647(a)	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY	$5,500.
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	$5,500.
31 U.S.C. 3802(a)(2)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	$5,500.
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY	$27,500.
33 U.S.C. 1319(g)(2)(A)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	$11,000/$27,500.
33 U.S.C. 1319(g)(2)(B)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	$11,000/$137,500.
33 U.S.C. 1321(b)(6)(B)(I) ..	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	$11,000/$27,500.
33 U.S.C. 1321(b)(6)(B)(ii) ..	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	$11,000/$137,500.
33 U.S.C. 1321(b)(7)(A)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	$27,500 or $1,100 per barrel or unit.
33 U.S.C. 1321(b)(7)(B)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	$27,500.
33 U.S.C. 1321(b)(7)(C)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j)	$27,500.
33 U.S.C. 1321(b)(7)(D)	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	$110,000 or $3,300 per barrel or unit.
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d) ...	$660.
33 U.S.C. 1415(a)	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	$55,000/$137,500.
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b)	$27,500.
42 U.S.C. 300g–3(c)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c)	$27,500.
42 U.S.C. 300g–3(g)(3)(A) ..	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a) ..	$27,500.
42 U.S.C. 300g–3(g)(3)(B) ..	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).	$5,000/$25,000.
42 U.S.C. 300g–3(g)(3)(C)	SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).	$25,000.
42 U.S.C. 300h–2(b)(1)	SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	$27,500.
42 U.S.C. 300h–2(c)(1)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	$11,000/$137,500.
42 U.S.C. 300h–2(c)(2)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	$5,500/$137,500.
42 U.S.C. 300h–3(c)(1)	SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL	$5,500.
42 U.S.C. 300h–3(c)(2)	SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	$11,000.

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
42 U.S.C. 300i(b)	SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.	$15,000.
42 U.S.C. 300i–1(c)	SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	$22,000/$55,000.
42 U.S.C. 300j(e)(2)	SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1)	$2,750.
42 U.S.C. 300j–4(c)	SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b)	$27,500.
42 U.S.C. 300j–6(b)(2)	SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.	$25,000.
42 U.S.C. 300j–23(d)	SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE	$5,500/$55,000.
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	$27,500.
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	$27,500.
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C	$27,500.
42 U.S.C. 6928(h)(2)	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER	$27,500.
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER	$5,500.
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER	$5,500.
42 U.S.C. 6991e(a)(3)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.	$27,500.
42 U.S.C. 6991e(d)(1)	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.	$11,000.
42 U.S.C. 6991e(d)(2)	RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS	$11,000.
42 U.S.C. 6992d(a)(2)	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	$27,500.
42 U.S.C. 6992d(a)(4)	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMINISTRATIVE ORDER.	$27,500.
42 U.S.C. 6992d(d)	RCRA/VIOLATIONS OF MEDICAL WASTE TRACKING ACT—JUDICIAL PENALTIES.	$27,500.
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	$27,500.
42 U.S.C. 7413(d)(1)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES-ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	$27,500/$220,000.
42 U.S.C. 7413(d)(3)	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	$5,500.
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	$2,750.
42 U.S.C. 7524(a)	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1),(2), (4),&(5) BY ANYONE.	$27,500.
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	$220,000.
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS	$27,500.
42 U.S.C. 9604(e)(5)(B)	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	$27,500.
42 U.S.C. 9606(b)(1)	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	$27,500.
42 U.S.C. 9609 (a) & (b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	$27,500.
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT	$82,500.
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	$27,500.
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	$82,500.
42 U.S.C. 11045 (a) & (b) (1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	$27,500.
42 U.S.C. 11045(b) (2) & (3).	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	$82,500.
42 U.S.C. 11045(c)(1)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	$27,500.
42 U.S.C. 11045(c)(2)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	$11,000.
42 U.S.C. 11045(d)(1)	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	$27,500.

PART 27—[CORRECTED]

On page 69366, in the first column, the amendatory instruction identified as number ''4'' is corrected to ''3''.

Michael M. Stahl,

Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–7069 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
March 20, 1997

Part IX

Department of Education

34 CFR Part 668

Student Assistance General Provisions, Comment Period Extension; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 20, 1996, the Department of Education published in the Federal Register a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions (34 CFR Part 668) addressing standards of financial responsibility (60 FR 49552–49574). The proposed standards would apply to all institutions that participate in a program authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs).

On December 18, 1996, the Secretary published a notice in the Federal Register (61 FR 66854) reopening the comment period on particular parts of the September 20, 1996 NPRM until February 18, 1997. On February 18, 1997, the Secretary extended the reopened comment period until March 24 to allow commenters to examine and comment upon new information that would be made available through meetings and other avenues (62 FR 7334).

The Secretary is extending the comment period for an additional 21 days. The Secretary is doing so to allow the higher education community to comment on additional information regarding the proposed ratio methodology, and to suggest possible revisions to that methodology.

DATES: Comments must be received on or before April 14, 1997.

ADDRESSES: All comments concerning this notice or the notice of proposed rulemaking should be addressed to Mr. David Lorenzo, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026, or to the following internet address: fin—resp@ed.gov

FOR FURTHER INFORMATION CONTACT: Mr. David Lorenzo or Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045, ROB–3, Washington, D.C. 20202, telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern standard time, Monday through Friday.

The additional information referenced above may be obtained from the financial responsibility section of the Department's web site at the following URL address: (http://www.ed.gov/offices/OPE/PPI).

Dated: March 17, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–7090 Filed 3–19–97; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
March 20, 1997

Part X

Environmental Protection Agency

Rural Communities Hardship Grants Program Implementation Guidelines; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5711–8]

Guidelines for Implementing the Hardship Grants Program for Rural Communities

ACTION: Notice of Availability of the Hardship Grants Program for Rural Communities.

SUMMARY: The Environmental Protection Agency is publishing the final Guidelines for Implementing the Hardship Grants Program for Rural Communities, including the funding allotment. (Catalogue of Domestic Federal Assistance #66.470)

ADDRESSES: Write to Stephanie vonFeck (4204), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, or via Internet at vonfeck.stephanie@epamail.epa.gov for copies of the final Guidelines.

FOR FURTHER INFORMATION CONTACT: Stephanie vonFeck (4204), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202)260–2268.

SUPPLEMENTARY INFORMATION: These Guidelines implement a $50 million grant program contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104–134). The Agency will make grants to States, which in turn can provide assistance to improve wastewater treatment services in poor, rural communities with populations of 3,000 or fewer where such services are currently inadequate. The Hardship Grants Program for Rural Communities will be coordinated with the Clean Water State Revolving Fund (SRF) program and in accordance with the SRF program regulations at 40 CFR part 35, subpart K and existing Agency grant regulations and procedures, including 40 CFR part 31.

The Hardship Grants Program for Rural Communities may be subject to your State's intergovernmental review process under Executive Order 12372, and/or the consultation requirements of Section 204, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334 (the Act). Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out whether Hardship grant applications (CFDA #66.470) are subject to the State's Executive Order 12372 review process and, if so, what material must be submitted to the SPOC for review. If the application is for a community within a ''metropolitan area'' as that term is defined at 42 U.S.C. 3338(4), then the requirements of the Act are applicable. You must notify area-wide metropolitan or regional planning agencies and or general government units authorized to govern planning for the locale of your project of your intended application. SPOCs and other reviewers should send their comments concerning Hardship Grant applications to the appropriate Regional State Revolving Fund Coordinator no later than 60 days after receipt of an application and other required material for review. In accordance with 40 C.F.R. 29.8(c) a 60 day review is mandatory for projects subject to the Act.

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

Dated: March 17, 1997.

Dana Minerva,

Acting Assistant Administrator.

Appendix—Hardship Grants Program for Rural Communities

Background

On May 16, 1995, the House passed the Clean Water Amendments of 1995 (H.R. 961), a bill to reauthorize the Clean Water Act. Section 102(d) of this bill authorizes $50 million for each of Fiscal Years 1996 through 2000 for grants to States, which the States in turn can use to provide assistance for the wastewater needs of poor, rural communities. Although no further action was taken on H.R. 961, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134), which the President signed into law on April 26, 1996, provided $50 million for these grants in FY 1996, stating that they are to be used in accordance with section 102(d) of H.R. 961. This sum is to be taken from the $1.3485 billion reserved for capitalization grants to State Revolving Funds (SRF) under title VI of the Clean Water Act.

Section 102(d) of the House Clean Water Act reauthorization bill (H.R. 961) reads, in pertinent part:

> (T)he Administrator may make grants to States to provide assistance for planning, design, and construction of publicly owned treatment works and alternative wastewater treatment systems to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or wastewater treatment system and are severely economically disadvantaged, as determined by the Administrator.

The relevant clause in the ''State and Tribal Assistance Grants'' language of the Omnibus Appropriations Act reads:

> Provided Further, That of the funds made available under this heading for capitalization grants for State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended, $50,000,000 shall be for wastewater treatment in impoverished communities pursuant to section 102(d) of H.R. 961 as approved by the United States House of Representatives on May 16, 1995 . . .

Although the legislative history to H.R. 961 does offer some instruction on how to define a ''severely economically disadvantaged'' community, additional documented direction from Congress about this new program is scant (Attachment A contains excerpts from both the legislative history to section 102 and the Omnibus Appropriations Act provision). In the absence of detailed guidance from Congress, the Agency plans to administer this program in concert with existing programs and procedures to the maximum extent possible.

Basic Principles for Administering Rural Community Hardship Grants

EPA Regions will be responsible for awarding grants to the States, pursuant to a delegation of authority signed by the Administrator (Attachment B). States will make grant awards to individual communities or projects or will provide technical assistance to qualifying communities. The award of grants or the provision of technical assistance by a State to benefit qualifying communities will be referred to in these guidelines as hardship assistance. The definition of technical assistance is provided under the heading ''Eligible Projects''.

Except as described in the following section, the Agency will administer the rural community hardship grants in conjunction with the Clean Water State Revolving Fund program (CW SRF), because the CW SRF capitalization grant appropriation is the source for these funds and because the program provides an established funding mechanism in each State. By combining CW SRF loans and grants, more qualifying communities will benefit from the limited funding that is available. The communities would also continue to have a stake in their projects, and thereby an incentive to keep project costs low.

In addition to the CW SRF capitalization grant, States will be awarded a separate grant consisting of funds which can be awarded as hardship assistance to qualifying communities. These funds are in addition to the CW SRF capitalization grant awarded to the State. Communities that apply for CW SRF loans and that qualify according to the criteria established in these guidelines and any additional State guidelines would then be able to receive hardship assistance in an amount that would make that CW SRF loan affordable.

The loan amount must account for at least 15 percent of the CW SRF-eligible cost of the project before the Agency will consider it an SRF project. Otherwise, the project will be governed by the guidelines described under the following heading below: ''Projects receiving less than 15 percent in SRF funding or hardship assistance only''. All communities seeking hardship assistance must apply for an SRF loan. The State will then determine the appropriate mix of hardship grant and SRF loan funds.

Administering this program in conjunction with the CW SRF program has a number of other advantages. The approach will encourage communities to move forward with needed project construction, rather than wait to receive grant funding for the entire cost of those projects. Projects in communities that receive hardship assistance will receive public review and approval because they will be listed on the State's CW SRF Intended Use Plan (IUP). These projects will also undergo an environmental review, under State Environmental Review Procedures (SERP) established for the CW SRF program, and will comply with other SRF requirements which are more streamlined than the requirements that apply to projects funded with direct Federal grants. For example, compliance with cross-cutting Federal environmental authorities can be accomplished in conjunction with the SERP. A listing of cross-cutting Federal authorities currently applicable in the CW SRF program is attached (Attachment C).

EPA's general grant regulations at 40 CFR part 31 and other Agency regulations that apply to grant recipients (e.g., 40 CFR part 32, debarment, suspension, and drug-free workplace requirements), will apply to the State as the grant recipient, in the same manner as they apply to the State as the recipient of CW SRF capitalization grants. Because projects receiving hardship assistance will be projects listed on the State's CW SRF IUP and will also be receiving SRF loans, the States must follow the Agency's SRF regulations at 40 CFR part 35, subpart K, with respect to the recipients of that assistance. The CW SRF regulations prescribe rules for drawing cash and for the specific types of assistance CW SRF can provide. The rules for drawing cash for hardship assistance are described under the heading ''Allocation of grant funds'' below.

In addition to hardship assistance for rural communities described in these guidelines, there are a number of other Federal programs that provide loan and grant assistance for the wastewater needs of rural communities. The water and wastewater loan and grant program administered by USDA's Rural Utility Service and the Department of Housing and Urban Development's Community Development Block Grants are just two examples. Often, these other Federal programs can provide assistance for costs that would be ineligible under the statutory provisions being implemented in these guidelines (e.g., indoor plumbing may be funded by CDBG funds in limited circumstances). The Agency expects that State officials will take these other programs' benefits into account in devising the most effective assistance package for a rural community.

Projects Receiving Less Than 15 Percent in SRF Funding or Hardship Assistance Only

If a qualifying community cannot afford a loan for at least 15 percent of a project's CW SRF-eligible cost, the State may elect to provide less than a 15 percent CW SRF loan or hardship assistance alone. In these cases, provisions in the general grant regulations at 40 CFR part 31 and other rules that apply to subrecipients of grants, but not to SRF loan recipients (e.g., 40 CFR part 32; debarment, suspension, and drug-free workplace requirements), will apply to the recipient of the hardship assistance. In addition to the general grant regulations, which prescribe rules on financial management, procurement and record keeping practices of subgrantees, projects receiving hardship assistance alone or less than 15 percent SRF funding must comply with Federal cross-cutting authorities and with Agency regulations implementing the National Environmental Policy Act at 40 CFR part 6. The State will be responsible for ensuring that communities receiving hardship assistance alone or less than 15 percent SRF funding are aware of requirements imposed upon them by Federal statute and regulation. As part of the Hardship Grant agreement, the State and EPA will negotiate their respective roles for ensuring that these projects comply with 40 CFR part 31 and Federal cross-cutting authorities.

Grants to States

The Agency will make hardship rural community program grants to the States separately from CW SRF capitalization grants. Before receiving a grant and no later than one year from the date of publication of funding allotment in the Federal Register, the Governor of the State must submit a Notice of Intent to use the grant for the purposes of the program. If the Governor elects not to submit a Notice, grant funds available to that State will then be allocated among those States that have furnished a Notice. Grant funds will be available for obligation to the State for two years from the date of publication of funding allotment in the Federal Register. Funds not obligated during that period will be reallotted and awarded to States that have received an obligation of all such funds during that period. All reallotted funds will be available for obligation within two years of the date of reallotment.

The State must specify which department of government will receive and administer the grant funds. The department or agency that receives the hardship assistance grant does not need to be the same department that administers the State Revolving Fund. However, close coordination between these programs is necessary to meet the requirements of these guidelines. If an agency other than that which administers the State Revolving Fund will administer the Hardship Grant program, a memorandum of understanding (MOU) or similar agreements between the agencies will be required in the Hardship Grant application to EPA. MOUs should clearly delineate the division of management responsibilities among agencies.

The Hardship Grants Program for Rural Communities may be subject to your State's intergovernmental review process under Executive Order 12372, and/or the consultation requirements of Section 204, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334 (the Act). Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out whether Hardship grant applications (CFDA #66.470) are subject to the State's Executive Order 12372 review process and, if so, what material must be submitted to the SPOC for review. If the application is for a community within a

''metropolitan area'' as that term is defined at 42 U.S.C. 3338(4), then the requirements of the Act are applicable. You must notify area-wide metropolitan or regional planning agencies and/or general government units authorized to govern planning for the locale of your project of your intended application. SPOCs and other reviewers should send their comments concerning Hardship Grant applications to the appropriate Regional State Revolving Fund Coordinator no later than 60 days after receipt of an application and other required material for review. In accordance with 40 CFR 29.8(c) a 60 day review is mandatory for projects subject to the Act.

The costs of administering the program shall not be deducted from the hardship assistance grant. Administration funds must not be from any fees or other charges imposed on the communities likely to be served by the grant. Administering the program does not include the costs of providing technical assistance to benefit qualifying communities.

Allocation of Grant Funds

The $50 million dollars appropriated by the Consolidated Omnibus Appropriations and Rescissions Act of Fiscal Year 1996 (P.L. 104–134) for hardship grants are allotted among the 50 States, Puerto Rico, and the territories as of the date of this Federal Register notice. Attachment D provides the funding allotment. The District of Columbia and the former trust territory of Palau will not receive hardship grant funds. The District of Columbia has no qualifying communities. Palau no longer receives new Federal assistance for infrastructure needs (Pub. L. 99–239; Compact of Free Association Act).

Comments from both Congress and States indicate that the CW SRF formula would not sufficiently target the hardship funds to areas of the country with the most potential need. Two program requirements are included in the formula for allocation. Lack of access to centralized wastewater collection and treatment systems and per capita income are the indicators of hardship need that will help target the funds to areas of the country with the greatest need. The first of these factors is weighted 75 percent and the second 25 percent. More weight is given to households without access to wastewater treatment systems because it represents a stronger indicator of environmental problems.

National data regarding these indicators was obtained from the 1990 Census of Housing and the 1990 Census of Population published by the U.S. Bureau of the Census. The 1990 Census provides the most up-to-date data for rural areas nationwide. The Bureau of the Census provides a data threshold for rural populations of 2,500 or fewer. This population threshold is the closest available from the Bureau of the Census to the 3,000 person population limit of the hardship grants program. Because communities must be rural, both indicators of need used in the allotment formula are narrowed to rural populations within States. For instance, data for households without access to centralized wastewater treatment in each State relates only to households in rural areas of 2,500 or fewer people that do not have access to centralized treatment. Per capita income data in each State is related to rural areas of 2,500 or fewer people where the per capita income is not greater than 80% of national per capita income. Due to lack of consistent household and income data for the Territories, the Territories are allotted funds based on their CW SRF allotment formula. More details on the allotment methodology are available in Attachment E.

The Territory of Guam, Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands do not operate CW SRF programs and instead receive their SRF allotments for use as construction grants under title II of the Clean Water Act (Pub. L. 101–144, as amended by Pub. L. 101–302). These jurisdictions may receive hardship assistance for the entire cost of a project benefiting a qualifying community or to supplement a construction grant that is made for a project benefiting a qualifying community.

Indian Tribes are not treated as States under the hardship grant program. Instead, Tribes receive one-half of one percent of the CW SRF appropriation for use as construction grants (Clean Water Act section 518(c), 33 U.S.C. 1377(c)). Nonetheless, data for Indian Tribe communities that qualify under the criteria described in these guidelines are included in the Census data used to develop the State allocation formula. Indian Tribes may receive hardship assistance from the State, either for the entire cost of a project, to supplement a construction grant, or to supplement a CW SRF loan. States are encouraged to provide due consideration to all qualified applicants, including Indian Tribes, when developing their IUPs and apportioning hardship assistance among qualifying communities.

When the grant is awarded to the State, the Agency will make funds available for cash draws through the Automated Clearinghouse (ACH) process established in each State for EPA grants. The State may then draw cash through the ACH for the expenses involved in providing technical assistance and to reimburse communities as construction proceeds.

Within one year of the end of the period of availability, the State must enter into commitments to provide hardship assistance to benefit qualifying communities in an amount equaling 105 percent of the amount of the grant.

State Match

In order to increase the amount of funds available for the purpose of this program, each State will provide a 5 percent match for the grant. The source of the match must be identified on or before the date the Federal award of the grant is made, with actual cash being required at the time of cash draw from the ACH. Matching funds must not be from any fees or other charges imposed on the communities likely to be served by the grant. The State cannot use SRF assets to acquire the match.

Funding from other Federal assistance programs may be used for matching funds if specifically allowed by the laws and procedures of those programs. Funding from the Environmental Protection Agency may not be used as match for this program.

Obligations of the States as a Grantee

The State must comply with the Agency's general grant regulations at 40 CFR part 31 to the extent that they involve matters that are not addressed by these guidelines for administering the particular requirements of section 102(d) of H.R. 961 and the Omnibus Appropriations Act. The part 31 regulations contain requirements on applying for the grants, maintaining finances in accordance with State rules, and auditing the grants.

Other matters related to the State's operation of the program should be negotiated between the State and the Regional office, and should be specified in the State's CW SRF Operating Agreement (OA) or in the hardship grant agreement itself. The State must also furnish a statement signed by the State's Attorney General certifying that the State has the legal authority to receive and administer the grant in accordance with these guidelines and that the State can legally bind itself to the terms of the grant agreement. This Attorney General's certification can be done in conjunction with the Attorney General's certification required for CW SRF capitalization grants under 40 CFR 35.3110(d)(2).

All projects that the State intends to provide hardship assistance must

appear in the CW SRF IUP, including individual projects and the provision of technical assistance. The State agency that is receiving the grant should consult State community development or rural assistance departments for assistance in identifying qualifying communities. Progress on hardship assistance projects must be described in the State's CW SRF Annual Report. A database being developed for the hardship grants program in conjunction with the SRF Information Management System States are required to provide data to EPA Regional offices for inclusion in the information system.

Qualifying Communities

In consultation with the Regional office, the State may provide hardship assistance, including technical assistance, to benefit any community of more than a single household but no more than 3,000 inhabitants that is identified by the State as a rural community, is not a remote area within the corporate boundaries of a larger city, and satisfies the criteria described below. In cases where the entire State is divided into incorporated areas, the State should propose, as part of its application for Regional approval, a method for delineating rural communities.

In the legislative history to the Clean Water Amendments of 1995, national per capita income and unemployment rates are the criteria recommended by the sponsors of section 102(d) for determining whether a community is ''severely economically disadvantaged'' (House debate, remarks of Mr. Shuster, Cong. Rec. H5008, May 16, 1995). Consequently, a community may qualify for hardship assistance if, on the date the community applies for assistance:

- The community lacks centralized wastewater treatment or collection systems or needs improvements to onsite wastewater treatment systems and the State determines that assistance will improve public health or reduce an environmental risk; and
- Per capita annual income of residents served by the project does not exceed 80 percent of national, per capita income, based on data available as indicated in the following paragraphs; and
- On the date the community applies for assistance, the local unemployment rate exceeds by one percentage point or more the most recently reported, average yearly national unemployment rate.

Due to the shortage of up-to-date income and unemployment information for hardship communities, States will have the flexibility to determine the source of the data and the methodology used to compare communities to these standards. This information should be included in the State's hardship grant application and is subject to Regional approval.

Per Capita Income Data

There are two sources of national per capita income data—the Bureau of the Census and the Bureau of Economic Analysis (BEA). The most recent, comprehensive nationwide survey of per capita income was provided by the Bureau of the Census in 1990. This income data is periodically updated. The Bureau of the Census measures per capita income by cash equivalents. In 1994, the updated national per capita income reported by the Bureau of the Census was $16,555, 80 percent of which is $13,244.

The Bureau of Economic Analysis also measures per capita income. However, their measure includes cash income as well as other income, such as benefits, food stamps, etc. BEA's 1994 national per capita income was $21,696,80 percent of which is $17,357.

Local level data is also available to varying degrees from the Bureau of the Census and the Bureau of Economic Analysis. The 1990 Census has the most recent comprehensive local level data available. In 1994 the Bureau of the Census updated per capita income data for the nation, States, and metropolitan statistical areas. BEA updates their per capita income yearly to the county level. The latest county level BEA data is for 1994. States and communities may also choose to generate local level data by performing a survey of the community. Income survey tools are used for the U.S. Department of Housing and Urban Development's Community Development Block Grant program that can be modified for use in this program.

Options for comparing local data to national data include, but are not limited to:

- Comparing a community's 1990 Census data to national data from the 1990 Census;
- Adjusting 1990 Census data for a community to a more recent year, using State multipliers, so that it is comparable to the latest national Census data;
- Surveying a community to gather up-to-date local data for comparison to either Census or BEA data as appropriate; or
- Using county BEA data to qualify the county as a whole for the income requirement. Small communities within that county that meet the other criteria of size, rural, lack of access to wastewater systems, and unemployment would then qualify for funding.

Unemployment Data

Unemployment data is available from the Bureau of Labor Statistics (BLS). The unemployment rates are updated monthly for the national, State, and county level. Average yearly unemployment is computed by adding the last 12 monthly unemployment rates and dividing by 12 for both the national and county level. States are free to use county BLS data to qualify the county as a whole for the unemployment requirement. Small communities within that county that meet the other criteria of size, rural, lack of access to wastewater systems, and per capita income would then qualify for funding. States and communities may also choose to generate community level unemployment data by performing a survey of the community.

Eligible Projects

A State can provide assistance from the grant for the planning, design and construction of publicly owned treatment works and alternative wastewater systems. Publicly owned treatment works and alternative treatment systems include those defined in section 212 of the Clean Water Act which are commonly funded under the CW SRF program and with construction grants under Title II of the Act. States should consider how projects receiving hardship assistance will best meet the objectives of their watershed plans or the Intended Use Plan, where watershed plans are not available, when selecting projects for funding. Recipients of hardship assistance should consider the cost-effectiveness of alternative means for addressing its wastewater treatment needs.

The sponsors of H.R. 961 viewed the assistance options under section 102(d) broadly, stating in the Committee Report that they include ''training, technical assistance and educational programs relating to the operation and maintenance of such sanitation services.'' (H. Rept. 104–112, p. 101). The decision on the level of funding to provide for planning, design and construction versus training, technical assistance and education programs is at the State's discretion. However, onsite technical assistance may only be provided to qualified communities and the primary purpose of technical seminars and other training must be to train qualified communities.

Obtaining Hardship Rural Community Assistance

Before the State may offer hardship assistance, it must ensure that projects in qualifying communities appear in the CW SRF Intended Use Plan (IUP). The State should explain in its IUP the level of SRF loan and hardship grant assistance that may be available for these communities. Hardship grants should be available only to the extent that an SRF loan is not affordable. In the State's CW SRF Annual Report (section 606(d) of the Clean Water Act), which contains information relating to the goals, objectives, and accomplishments set out in its IUP, the State must also report on the progress of its hardship grant assistance efforts.

Qualifying communities should apply for hardship assistance when applying for CW SRF loans under procedures established for the State's CW SRF program. The State and the community can then decide on the appropriate mix of SRF loan funds and hardship assistance. If a community cannot afford a 15% SRF loan, it may receive more than an 85% grant or hardship assistance only and proceed under the general grant regulations at 40 CFR part 31, as described previously.

Attachment A—Hardship Grants for Rural Communities

From the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134):

State and Tribal Assistance Grants

For environmental programs and infrastructure assistance . . . Provided Further, that of the funds made available under this heading for capitalization grants to State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended, $50,000,000 shall be for wastewater treatment in impoverished communities pursuant to section 102(d) of H.R. 961 as approved by the United States House of Representatives on May 16, 1995 . . .

From H. Rept. 104–384 (Conference Report to accompany H.R. 3019, which would be enacted as the Omnibus Consolidated Rescissions and Appropriations Act of 1996):

From within the amount appropriated for wastewater capitalization grants, $50,000,000 is to be made available for wastewater grants to impoverished communities pursuant to section 102(d) of H.R. 961 as approved by the House of Representatives on May 16, 1995. The Conferees expect the Agency to closely monitor state compliance with this provision to assure that funds are obligated appropriately and in a timely manner. Unused funds allocated for this purpose are to be made available for other wastewater capitalization grants.

From section 102(d) of H.R. 961, the Clean Water Amendments of 1995, adding subsection (5) to section 104(q) of the Federal Water Pollution Control Act:

(5) Small Impoverished Communities—

(A) Grants.—The Administrator may make grants to States to provide assistance for planning, design, and construction of publicly owned treatment works and alternative wastewater treatment systems to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or wastewater treatment system and are severely economically disadvantaged, as determined by the Administrator.

(B) Authorization.—There is authorized to be appropriated to carry out this paragraph $50,000,000 per fiscal year for fiscal years 1996 through 2000.

From H. Rept. 104–112, to accompany H.R. 961, the Clean Water Amendments of 1995:

Wastewater Treatment in Impoverished Communities. Section 102(d) authorizes $50 million per year for fiscal years 1996 through 2000 for EPA to award grants to States for funding the planning, design and construction of POTWs in small, impoverished communities of 3,000 people or less that lack sewage treatment systems and are severely economically disadvantaged.

In communities with these circumstances, the committee believes the award of federal grant monies is justified for the protection of human health and the environment, and as further insurance for the government's investment, grant monies may be used for training, technical assistance and education programs relating to the operations and maintenance of such sanitation services.

Despite enactment of the Federal Water Pollution Control Act of 1972 and the expenditure of billions in federal funds for the construction of POTWs (sic), thousands of small communities still are not served by central wastewater treatment facilities today. Many small impoverished communities lack the resources even to repay low or zero-interest loans under the current SRF structure. Without financial assistance, untreated human sewage will continue to flow from pipes and seep from poorly functioning septic systems and privies, posing human health and environmental risks.

The Committee anticipates working closely with the Administrator to develop appropriate criteria regarding ''severely economically disadvantaged.''

From House debate on H.R. 961 (Congr. Rec. H5008, 104th Congress, 1st session); Remarks of Mr Shuster, Chairman, Transportation and Infrastructure Committee:

Administration of the funding provisions need additional clarification. Section 102(d) of H. R. 961 authorizes the Administrator of EPA to make grants to the States for planning, design, and construction of publicly owned treatment works in rural communities of 3,000 people or less which are severely economically disadvantaged. The committee report states the committee's intention to work closely with the Administrator to develop appropriate criteria regarding severely economically disadvantaged. I wish to clarify that the committee considers eligible communities as those having a per capita income of no more than 80 percent of the national average and an unemployment rate of 1 percent or more above the national average.

Attachment B—Memorandum

SUBJECT: Proposed Delegation of Authority to Approve Grants and Cooperative Agreements for Water Infrastructure Projects for Fiscal Year 1996 and Subsequent Years to the State and Tribal Assistance Grants Account and any Successor Accounts—DECISION MEMORANDUM

FROM:
Robert Thorlakson, Director /s/
Office of Water/Office of Research and Development Human Resources Staff
David R. Alexander, Director /s/
Organization and Management Consulting Services

TO: The Administrator

THRU: AX

Issue: The Office of Water (OW) proposes delegating to Regional Administrators (RAs) the authority to approve grants and cooperative agreements for water infrastructure projects and grants to States for providing assistance to ''severely economically disadvantaged rural communities'' from funds appropriated in Fiscal Year 1996 and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts.

Background

The Fiscal Year 1995 Appropriations Act for VA, HUD, and Independent Agencies (P.L. 103–327) authorized the award of grants for 50 water infrastructure projects identified in the Conference Report (H.R. Report No. 715, 103d Congress, 2d Sess. at 39–43 (1994)). The authority to award these grants was delegated to Regional Administrators by Delegation No. 1–92, 1200 TN 373, dated 10/31/94). All funds available for the 50 projects under this appropriation have been awarded.

The EPA section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104–134) authorizes $306.5 million in grant funding for 22 water infrastructure projects including some for which funds have been provided by P.L. 103–327 and for which additional grants have been awarded from funds provided by

Continuing Resolutions (CRs) enacted prior to the enactment of P.L. 103–134. Close coordination with State and local agencies requires award and administration of these grants and cooperative agreements at the regional level.

Analysis and Review

A new delegation is needed to allow Regional Administrators to award the remaining funds authorized by P.L. 104–134 for Congressionally-designated water infrastructure projects and grants to States for providing assistance to ''severely economically disadvantaged rural communities'' because these grants will be subject to different terms and conditions—for example those concerning local cost-share arrangements—than those awarded with funds provided by P.L. 103–327 and the FY 1996 CRs. Further, the FY 1996 Appropriations Act (P.L. 104–134) is the only statutory authority to award grants to many of the projects, so delegations already issued for other statutes (such as the Clean Water Act) are insufficient to allow Regional Administrators to award the grants. The new delegation of authority has been written so it will cover grants for similar water infrastructure projects authorized by future appropriations to the State and Tribal Assistance Grants Account or successor accounts.

The delegation proposal was distributed under the Directives Clearance Record review process to 15 offices. Three offices and three regions submitted comments. The Office of Grants and Debarment (OGD) and Region 8 submitted comments relating to the appropriate level for redelegation authority. The OGD also proposed adding an additional reference and deleting another reference. The Office of General Counsel had editorial comments and reviewed language changes proposed by other reviewers. Region 2 comments suggested that this delegation provide authority to award grants to States for providing assistance to ''severely economically disadvantaged rural communities.'' No issue resolution was requested by any office or regions and editorial comments submitted were incorporated into the final delegation.

Recommendation

This delegation is needed immediately to respond to the numerous requests from grantee agencies who have already developed applications. We recommend that you approve the proposed delegation by signing below.

Approved: Carol M. Browner.

Dated: June 21, 1996.

Attachment

Delegation of Authority—Grants and Cooperative Agreements for Water Infrastructure Projects from Funds Appropriated for FY 1996 and Subsequent Years to the State and Tribal Assistance Grants Account and Any Successor Accounts.

Delegations Manual

[1200 TN 425]

June 21, 1996.

General, Administrative, and Miscellaneous

1–102. Grants and cooperative agreements for water infrastructure projects from funds appropriated for fiscal year 1996* and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts.

1. Authority: To approve grants and cooperative agreements for water infrastructure projects and grants to States for providing assistance to ''severely economically disadvantaged rural communities'' from funds appropriated for Fiscal Year 1996* and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts and to perform other activities necessary for the effective administration of those grants and cooperative agreements.

2. To Whom Delegated: Regional Administrators.

3. Redelegation Authority: This authority may be redelegated to the Division Director or equivalent level and may not be redelegated further.

4. Limitations: a. This delegation applies only to those grants and cooperative agreements for which there is no authority other than the statute making appropriations to the State and Tribal Assistance Grants Account and any successor accounts in Fiscal Year 1996* and subsequent years.

b. Awards are subject to guidance issued by Office of Wastewater Management and Office of Comptroller.

5. Additional References: a. Authority to execute (sign) these financial assistance agreements is delegated to the Regional Administrators under Delegation 1–14, ''Assistance Agreements'';

b. 40 CFR Part 31,

c. 40 CFR Part 40 for Demonstration grants,

d. 40 CFR Part 35, Subpart K, and

e. EPA Assistance Administration Manual.

* The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104–134).

Attachment C—Cross-Cutting Federal Authorities Applicable as of June 1996

(Note: This list is subject to change. For further information about the applicability of specific requirements, please contact the appropriate Regional Office of EPA.)

Environmental

Archeological and Historic Preservation Act of 1974, PL 93–291
Clean Air Act, 42 USC 7506(c)
Coastal Barrier Resources Act, 16 USC 3501, et seq.
Coastal Zone Management Act of 1972, PL 92–583, as amended
Endangered Species Act, 16 USC 1531, et seq.
Executive Order 11593, Protection and Enhancement of the Cultural Environment
Executive Order 11988, Floodplain Management
Executive Order 11990, Protection of Wetlands
Farmland Protection Policy Act, 7 USC 4201, et seq.
Fish and Wildlife Coordination Act, PL 85–624, as amended
National Historic Preservation Act of 1966, PL 89–665, as amended
Safe Drinking Water Act, section 1424(e), PL 920523, as amended
Wild and Scenic Rivers Act, PL 90–542, as amended

Economic

Demonstration Cities and Metropolitan Development Act of 1966, PL 89–754, as amended
Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including
Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Social

Age Discrimination Act, PL 94–135
Civil Rights Act of 1964, PL 88–352
Section 13 of PL 92–500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
Executive Order 11246, Equal Employment Opportunity
Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
Rehabilitation Act of 1973, PL 93–112 (including Executive Orders 11914 and 11250)

Miscellaneous

Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91–646
Executive Order 12549, Debarment and Suspension

Attachment D—Fiscal Year 1996
Allotment of Hardship Grant
Assistance

State	Households w/o access allocation @$37.5M (75% of $50 M)	Income based allocation @$12.5M (25% of $50 M)	State allocation @$50M
ALABAMA	$1,107,300	$348,500	$1,455,800
ALASKA	132,500	61,600	194,100
ARIZONA	316,200	128,300	444,500
ARKANSAS	670,300	362,000	1,032,300
CALIFORNIA	1,232,500	194,700	1,427,200
COLORADO	310,000	168,400	478,400
CONNECTICUT	448,400	4,200	452,600
DELAWARE	133,200	22,700	155,900
DIST. OF COLUMBIA	0	0	0
FLORIDA	1,303,300	207,400	1,510,700
GEORGIA	1,514,800	378,300	1,893,100
HAWAII	57,400	52,000	109,400
IDAHO	230,600	138,100	368,700
ILLINOIS	784,300	532,900	1,317,200
INDIANA	1,052,400	345,700	1,398,100
IOWA	325,600	511,500	837,100
KANSAS	266,000	385,400	651,400
KENTUCKY	1,051,300	313,100	1,364,400
LOUISIANA	770,900	296,900	1,067,800
MAINE	569,800	74,000	643,800
MARYLAND	513,100	44,900	558,000
MASSACHUSETTS	651,600	10,600	662,200
MICHIGAN	1,879,100	401,600	2,280,700
MINNESOTA	746,200	504,900	1,251,100
MISSISSIPPI	758,500	286,500	1,045,000
MISSOURI	914,400	547,500	1,461,900
MONTANA	214,000	127,200	341,200
NEBRASKA	156,200	316,200	472,400
NEVADA	67,600	27,100	94,700
NEW HAMPSHIRE	425,500	22,800	448,300
NEW JERSEY	396,700	19,200	415,900
NEW MEXICO	258,600	131,100	389,700
NEW YORK	1,894,800	257,200	2,152,000
NORTH CAROLINA	2,326,300	365,800	2,692,100
NORTH DAKOTA	101,800	182,800	284,600
OHIO	1,462,500	522,900	1,985,400
OKLAHOMA	568,100	421,500	989,600
OREGON	506,800	174,500	681,300
PENNSYLVANIA	2,166,900	610,900	2,777,800
RHODE ISLAND	104,200	0	104,200
SOUTH CAROLINA	954,000	210,900	1,164,900
SOUTH DAKOTA	111,500	210,800	322,300
TENNESSEE	1,246,600	309,400	1,556,000
TEXAS	2,050,500	892,100	2,942,600
UTAH	104,200	186,500	290,700
VERMONT	290,500	42,500	333,000
VIRGINIA	1,220,700	155,600	1,376,300
WASHINGTON	774,700	161,800	936,500
WEST VIRGINIA	657,400	260,200	917,600
WISCONSIN	1,034,500	321,300	1,355,800
WYOMING	85,400	54,600	140,000
AMERICA SAMOA	33,600	11,200	44,800
GUAM	24,300	8,100	32,400
N. MARIANAS	15,600	5,200	20,800
PUERTO RICO	487,300	162,400	649,700
TT OF PALAU	0	0	0
VIRGIN ISLANDS	19,500	6,500	26,000
TOTAL	37,500,000	12,500,000	50,000,000

Attachment E—Allotment Methodology for the Hardship Grants Program

The 1990 Census of Housing provides information on the structural characteristics of homes, including the type of sewage disposal. Specifically, Table 13 of the Census of Housing provides the number of housing units in rural areas that are served by public sewers, septic tanks and cesspools, and other means. The State allotment for the households portion of the funding is computed by taking the total number of rural households served by septic tanks and cesspools and other means (excluding sewered households and farms) within each State divided by the national number of rural households served by septic tanks and cesspools and other means. This percentage is multiplied by $37,500,000, which is 75 percent of $50,000,000 appropriated for the program, to provide the dollar amount for the households without access portion of the allotment for each State. Some administrative adjustments were then made to the final States'' allocation to accommodate the use of CW SRF allotment percentages for the Territories.

The 1990 Census of Population provides per capita income (PCI) data. A computer file was generated by the Bureau of the Census to provide the number of communities in each State that have rural populations of 2,500 or less and had a per capita income less than 80 percent of the National per capita income. The per capita allotment percentage was computed by dividing the number of people in each State in communities less than 2,500 that meet the 80 percent PCI criteria by the national population in communities of less than 2,500 that meet the 80 percent PCI criteria. This percentage is multiplied by $12,500,000, which is 25 percent of $50,000,000, to provide the dollar amount for the income portion of the allotment for each State. As with the household formula, CW SRF percentages were used for the Territories and administrative adjustments were made to the final States'' allocation.

The funding level from both parts of the formula are added together to provide the total funding allotment for each State.

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