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Presidential Documents

Title 3—

The President

Proclamation 6514 of December 9, 1992

Religious Freedom Day, 1993

By the President of the United States of America

A Proclamation

We Americans have long cherished our identity as one Nation under God. To this day American law and institutions have been shaped by a view of man that recognizes the inherent rights and dignity of individuals. The Framers of our Government shared this view, and they never forgot the political and religious persecution that had forced their ancestors to flee Europe. Thus, it is not surprising that the first of all freedoms enumerated in our Bill of Rights is freedom of religion. The first amendment to our Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

As we reflect on our Constitution and Bill of Rights, we do well to acknowledge our debt to Thomas Jefferson and James Madison. These two men were instrumental in establishing the American tradition of religious liberty and tolerance. Thomas Jefferson articulated the idea of religious liberty in his 1777 draft Bill for Establishing Religious Freedom in Virginia. In that bill, he wrote:

> . . . all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise . . . affect their civil capacities.

James Madison later introduced and championed this bill in the Virginia House of Delegates, where it passed in 1786. Following the Federal Constitutional Convention of 1787, James Madison led the way in drafting our Bill of Rights.

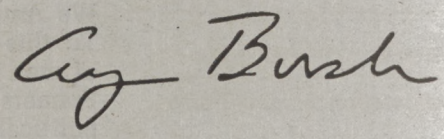
The religious freedom that James Madison and Thomas Jefferson helped to secure for us has been integral to the preservation and development of the United States. Over the years the exercise of our religious freedom has been instrumental in preserving the faith and the traditional values that are this Nation's greatest strengths. Moreover, the free exercise of religion goes hand in hand with the preservation of our other rights. As Thomas Jefferson noted, the first amendment "guard[s] in the same sentence, and under the same words, the freedom of religion, of speech, and of the press; insomuch as that whatever violates either throws down the sanctuary which covers the others." That sanctuary is the spirit of life, liberty, truth, and justice.

In that spirit, the United States has continued to champion religious liberty and tolerance around the world. We decry as reprehensible the persecution of ethnic and religious minorities, and we likewise condemn the resurgence of anti-Semitism and other forms of religious bigotry. The United States calls on all nations to respect the fundamental rights of individuals, in accordance with international human rights agreements and in recognition of the direct and inexorable relationship between freedom and justice and the achievement of lasting peace in the world.

The Congress, by House Joint Resolution 457, has designated January 16, 1993, as "Religious Freedom Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim January 16, 1993, as Religious Freedom Day. I urge all Americans to observe this day with appropriate ceremonies and activities in their homes, schools, and places of worship as an expression of our gratitude for the blessings of liberty and as a sign of our resolve to protect and preserve them.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-30339
Filed 12-9-92; 4:53 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-9]

Alteration of Control Zone, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Orlando, FL Control Zone by adding and deleting arrival area extensions. A VOR/DME standard instrument approach procedure (SIAP) has been developed to serve Runway 7 at the Orlando Executive Airport. The VOR Runway 13 SIAP has been cancelled. This action adds an arrival area extension west of the airport to provide additional controlled airspace for instrument flight rules (IFR) aircraft executing the VOR/DME Runway 7 SIAP. This action eliminates the existing Runway 13 arrival area extension northwest of the airport. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83.

EFFECTIVE DATE: 0901 U.T.C., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On August 14, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the Orlando, FL Control Zone (57 FR 36617). That notice proposed to add an arrival area extension west of the Orlando Executive Airport to provide controlled airspace for IFR aircraft executing a recently developed instrument approach procedure (SIAP) to Runway 7. That notice stated that when the VOR/DME Runway 7 SIAP was established, the Runway 13 VOR/DME SIAP would be cancelled. In the absence of an instrument approach procedure to Runway 13, the arrival area extension north of the airport would no longer be required and would be eliminated. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Aircraft Owners and Pilots Association (AOPA) objected to the proposed cancellation of the VOR Runway 13 SIAP. However, our analysis revealed the VOR Runway 13 SIAP is used primarily by visual flight rules (VFR) aircraft executing practice instrument approaches. The new VOR/DME SIAP to Runway 7 will continue to provide VFR aircraft with an opportunity to practice instrument approaches to lower minimums than presently afforded. This amendment is the same as that proposed in the notice. Control Zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, and November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The coordinates for this airspace docket are based on North American Datum 83. The Control Zone listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the Orlando, FL Control Zone. This action adds an arrival area extension west of the Orlando Executive Airport to provide controlled airspace for IFR aircraft executing a recently developed VOR/DME SIAP to Runway 7. The existing VOR/DME SIAP to Runway 13 has been cancelled, thus eliminating the need for the existing arrival area extension north of the airport. This action eliminates the north arrival area extension.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones, Incorporation by reference.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ASO FL CZ Orlando, FL [Amended]

Orlando Executive Airport, FL (lat. 28°32'44" N, long. 81°19'58" W)
Orlando VORTAC (lat. 28°32'34" N, long. 81°20'06" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4-mile radius of Orlando Executive Airport and within 3.6 miles each side of the Orlando VORTAC 254° radial extending from the 4-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL Terminal Control Area (TCA).

* * * * *

Issued in East Point, Georgia, on October 8, 1992.

Don Cass,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 92-29887 Filed 12-10-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27080; Amdt. No. 1522]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

For Purchase—

Individual SIAP copies may be obtained from:

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

By Subscription—

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

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

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

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 lists separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on December 4, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking

Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
11/24/92	VA	Winchester	Winchester Regional	FDC 2/7100	LOC Rwy 32 Amdt. 3.
11/24/92	VA	Winchester	Winchester Regional	FDC 2/7101	VOR/DME–A Amdt 3.
11/25/92	AR	Harrison	Boone County	FDC 2/7107	VOR–A Amdt 12.
11/25/92	AR	Harrison	Boone County	FDC 2/7108	LOC/DME Rwy 36 Amdt 6.
11/25/92	AR	Harrison	Boone County	FDC 2/7109	NDB Rwy 18 Amdt 5.
11/25/92	AR	Harrison	Boone County	FDC 2/7110	NDB–B Orig.
11/27/92	ME	Sanford	Sanford Muni	FDC 2/7120	NDB Rwy 7 Orig.
11/27/92	ME	Sanford	Sanford Muni	FDC 2/7120	VOR Rwy 7 Amdt 3.
11/30/92	MA	Hyannis	Barnstable Muni-Boardman/Polando Field	FDC 2/7145	IFR Departure Procedure. This Corrects FDC 2/6821 In TL 92–25.
12/01/92	NC	New Bern	Craven County Regional	FDC 2/7177	VOR Rwy 4 Amdt 3.
12/01/92	NC	New Bern	Craven County Regional	FDC 2/7178	VOR Rwy 22 Amdt 1.

NFDC Transmittal Letter Attachment

Harrison

Boone County
Arkansas
VOR–A AMDT 12...
Effective: 11/25/92
FDC 2/7107/HRO/ FI/P Boone County, Harrison, AR. VOR–A AMDT 12...ALTN mins standard. Remove Fayetteville ALSTG mins. remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes VOR–A AMDT 12A.

Harrison

Boone County
Arkansas
LOC/DME RWY 36 AMDT 6...
Effective: 11/25/92
FDC 2/7108/HRO/ FI/P Boone County, Harrison, AR. LOC/DME RWY 36 AMDT 6...ALTN mins standard. Add note... ALTN mins NA when HRO FSS CLSD. Remove Fayetteville ALSTG mins. Remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes LOC/DME RWY 36 AMDT 6A.

Harrison

Boone County
Arkansas
NDB RWY 18 AMDT 5...
Effective: 11/25/92
FDC 2/7109/HRO/ FI/P Boone County, Harrison, AR. NDB RWY 18 AMDT 5...ALTN mins standard. Add note... ALTN mins NA when HRO FSS CLSD. Remove Fayetteville ALSTG mins. Remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes NDB RWY 18 AMDT 5A.

Harrison

Boone County
Arkansas
NDB–B ORIG...
Effective: 11/25/92
FDC 2/7110/HRO/ FI/P Boone County, Harrison, AR. NDB–B ORIG...ALTN mins standard. Add note... ALTN mins NA when HRO FSS CLSD. Remove Fayetteville ALSTG mins. Remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes NDB–B ORIG A.

Hyannis

Barnstable Muni-Boardman/Polando Field
Massachusetts
IFR DEPARTURE PROCEDURE...
THIS CORRECTS FDC 2/6821 IN TL 92–25.
Effective: 11/30/92
FDC 2/7145/HYA/ FI/P Barnstable Muni-Boardman/Polando Field, Hyannis, MA. IFR Departure procedure... RWY 33 climb runway heading to 700 before proceeding on course (departure obstacle... 551 Tower 414120N/0702048W). Delete take off minimums... RWY 33 300–1 or STD with min climb of 240 feet per NM to 300. Reason... the 495' TWR was increased to 551'. This is departure procedures/takeoff minimums AMDT 2A.

Sanford

Sanford Muni
Maine
VOR RWY 7 AMDT 3...
Effective: 11/27/92
FDC 2/7120/SFM/ FI/P Sanford Muni, Sanford, ME. VOR RWY 7 AMDT 3...Delete altimeter setting note. This is VOR RWY 7 AMDT 3A.

Sanford

Sanford Muni
Maine
NDB RWY 7 ORIG...
Effective: 11/27/92
FDC 2/7120/SFM/ FI/P Sanford Muni, Sanford, ME. NDB RWY 7 Orig...Delete altimeter setting note. This is NDB RWY 7 ORIG–A.

New Bern

Craven County Regional
North Carolina
VOR RWY 4 AMDT 3...
Effective: 12/01/92
FDC 2/7177/EWN/ FI/P Craven County Regional, New Bern, NC. VOR RWY 4 ADMT 3...MSA 25 NM EWN VOR/DME 3100. This becomes VOR RWY 4 ADMT 3A.

New Bern

Craven County Regional
North Carolina
VOR RWY 22 AMDT 1...
Effective: 12/01/92

FDC 2/7178/EWN/ FI/P Craven County Regional, New Bern, NC. VOR RWY 22 AMDT 1...MSA 25 NM EWN VOR/DME 3100. This becomes VOR RWY 22 AMDT 1A.

Winchester

Winchester Regional
Virginia
LOC RWY 32 AMDT 3...
Effective: 11/24/92

FDC 2/7100/W16/ FI/P Winchester Regional, Winchester, VA. LOC RWY 32 AMDT 3...CIRCLING... CAT A HAA 433, B MDA/HAA 1260/533 VIS 1½, C HAA 533. APRT EL 727'. This becomes LOC RWY 32 AMDT 3A.

Winchester

Winchester Regional
Virginia
VOR/DME–A AMDT 3...
Effective: 11/24/92

FDC 2/7101/W16/ FI/P Winchester Regional, Winchester, VA. VOR/DME–A AMDT 3...CIRCLING... CAT A HAA 473, B MDA/HAA 1260/533 VIS 1½, C HAA 533. APRT EL 727. This becomes VOR/DME–A AMDT 3A.

[FR Doc. 92–30121 Filed 12–10–92; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27079; Amdt. No. 1521]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 4, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

** * * Effective February 4, 1993*

Nome, AK, Nome VOR/DME RWY 9, Orig.
Tucson, AZ, Tucson Intl, VOR/DME or TACAN RWY 11L, Amdt. 1, CANCELLED
Tucson, AZ, Tucson Intl, VOR or TACAN RWY 11L, Orig.
Tucson, AZ, Tucson Intl, VOR/DME or TACAN RWY 29R, Amdt. 2
Tucson, AZ, Tucson Intl, LOC/DME BC RWY 29R, Amdt. 7
Tucson, AZ, Tucson Intl, ILS RWY 11L, Amdt. 11
Brawley, CA Brawley Muni, VOR/DME–B, Amdt. 1
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt. 8
Los Angeles, CA, Los Angeles Intl, ILS RWY 24L, Amdt. 21
South Bend, IN, Michiana Regional, ILS RWY 9, Amdt. 8
Mason, MI, Mason Jewett Field, VOR–A, Amdt. 2
Sturgis, MI, Kirsch Muni, NDB RWY 18, Amdt. 4
Sturgis, MI, Kirsch Muni, NDB RWY 24, Amdt. 9
Shelby, MT, Shelby, NDB RWY 23, Amdt. 6
Woodward, OK, West Woodward, VOR/DME–A, Amdt. 6
Woodward, OK, West Woodward, NDB RWY 17, Amdt. 3
Omak, WA, Omak, NDB, Amdt. 1, CANCELLED
Renton, WA, Renton Muni, RNAV RWY 33, Amdt. 4, CANCELLED

** * * Effective January 7, 1993*

Venice, LA, Garden Island Bay Seaplane Base, NDB–A, Amdt. 3, CANCELLED
Venice, LA, Tiger Pass Seaplane Base, NDG–A, Orig.
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS RWY 22, Amdt. 3

** * * Effective November 19, 1992*

Rock Hill, SC, Rock Hill Municipal/Bryant Field, VOR/DME–B, Amdt. 5

[FR Doc. 92–30122 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Rule Amendments Concerning Delegated Authority of Commission Staff to Approve Contract Market Rule Proposals on Behalf of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule amendments.

SUMMARY: The Commodity Futures Trading Commission is amending its Regulation to delegate to its staff broader authority to approve contract market rule proposals on behalf of the Commission. The regulation, as amended, provides designated Commission staff with the authority to approve on the Commisssion's behalf proposed rule amendments that relate to, but do not materially change, Exchange rules of certain specified types. The regulation further delegates authority to designated Commission staff to approve Exchange proposals submitted under Commission Regulation 5.2 to recommence trading in a dormant contract. The regulation, as amended also expands slightly several other existing areas of delegated authority.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Patterson, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12), the Commission must approve all contract market rules that relate to contract terms and conditions. The Commission has delegated certain aspects of its rule approval authority to the Directors of its Divisions of Economic Analysis ("EA") and Trading and Markets ("T&M"). This delegated authority is set forth in existing Regulation 1.41b. Paragraph (a) of Regulation 1.41b currently permits the Directors of EA and T&M, or their delegees, to approve, with the concurrence of the General Counsel, contract market rules that relate to terms and conditions and that:

(1) Do not materially change the quantity, quality, or other delivery specifications, procedures or obligations under a contract designated for trading by the Commission * * *; or

(2) Reflect routine modifications that are expressly required or anticipated by the specific terms of a contract market rule * * *; or

(4) Are substantially identical to a rule of another contract market which has been approved previously by the Commission pursuant to section 5a(12) of the Act; or

(5) Are consistent with a specific, stated policy, or interpretation of the Commission.[1]

Prior to the promulgation of Regulation 1.41b, the Commission directly approved each contract market rule related to terms and conditions, no matter how minor the rule change. The Commission found this procedure to be unnecessarily inflexible. Accordingly, in 1983, the Commission adopted Regulation 1.41b, which initially delegated to the Division Directors the authority to approve rules falling into categories (1) and (2) of current Regulation 1.41b. 48 FR 49003 (October 24, 1983). Because the Commission had good experience with the use of this initial, limited delegated authority, in July of 1985, it extended the Directors' authority to encompass rule changes falling within categories (4) and (5) of the current regulation. The Commission's experience with this expanded delegation, too, has been positive. The delegation of authority had benefitted the exchanges through more expeditious review of those rule proposals that meet the requirements of the regulation.

The categories of rules permitted to be handled under delegated authority have proved to be fairly narrow, however, and sometimes have necessitated direct

[1] A fifth category, paragraph (3) of the rule, which related to option expirations under the Commission's option pilot program, was deleted in 1987, concurrent with termination of the pilot program. 52 FR 777 (January 9, 1987).

Commission action on minor and/or non-controversial rule proposals. For example, existing category (2) permits delegated authority treatment only for rule changes reflecting routine modifications that are expressly required or anticipated by the specific terms of a contract market rule. This language would require direct Commission approval of rule amendments anticipated by, but not explicitly provided for in, the terms of an exchange rule. Similarly, because the delegation of authority is limited to approval of rules related to contract terms and conditions, any rule change submitted pursuant to Regulation 1.41(b) that does not relate to contract terms and conditions must be sent to the Commission for its approval.[2]

After nearly a decade's experience with Regulation 1.41b, the Commission has come to believe that it is appropriate to expand its staff's delegated authority. The Commission believes that broadening the scope of Commission staff delegated authority will promote timely processing of exchange rule proposals.

Revised Paragraph (a)

Accordingly, the Commission is adopting a number of amendments to paragraph (a) of Regulation 1.41b. In particular, the Commission is deleting from paragraph (a) the phrase "terms and conditions" in order to permit certain rules that do not affect contract terms and conditions, but that are submitted by an exchange pursuant to Regulation 1.41(b), to be handled pursuant to delegated authority. Further, the Commission is revising certain of the delegated authority categories, as detailed below. Thus, under the amended paragraph, the Director of EA and the Director of T&M have delegated authority to approve, with the concurrence of the General Counsel, any contract market rule falling within one of the stated categories, whether or not it concerns contract terms and conditions.[3]

Revised Subparagraph (1)

The Commission has identified a number of rule types that generally do not fall within the existing Regulation 1.41b categories, but that the Commission believes would be appropriately handled under delegated authority. In order to expedite processing of such types of rules, the Commission is amending subparagraph (1) of paragraph (a) of Regulation 1.41b. Subparagraph (1) currently allows for delegated approval of certain rule changes that "do not materially change" certain contract terms and conditions. The Commission is now amending this subparagraph by applying the subparagraph (1) "materiality" test to additional types of rules. The revised regulation would encompass rules that relate to daily settlement prices, clearing position limits, procedures for contract market governance, procedures for transfer trades, trading hours, minimum price fluctuations, and maximum price limit and trading suspension provisions.[4] Thus, any rule of a type listed in revised subparagraph (1) could be approved by the Director of T&M or EA if it did not constitute a material change to the rule.

Revised Subparagraph (2)

As noted above, existing subparagraph (2) permits delegated authority treatment only for rule changes reflecting routine modifications expressly required or anticipated by the specific terms of a contract market rule. The Commission believes that the language of this subparagraph is unnecessarily narrow, so that, for example, the Commission is required to approve directly proposed rule amendments anticipated by, but not explicitly provided for in, the terms of an exchange rule. Accordingly, the Commission is deleting from subparagraph (2) the modifiers "expressly" and "specific" to permit a somewhat broader range of rule changes to be handled pursuant to this provision. The Commission also is deleting from the existing text the parenthetical examples, as the types of rule changes listed in the parenthetical could be handled pursuant to revised subparagraph (1) or the Commission's expedited procedures under paragraphs (k) and (l) of Commission Regulation 1.41.

Revised Subparagraph (4)

Subparagraph (4) currently permits delegated authority treatment for rules that are substantially identical to a rule of another contract market previously approved by the Commission. The Commission notes that the language of this subparagraph may be read quite narrowly. For example, existing subparagraph (4), read strictly, would not permit the use of this category for a rule that was in substance the same as, but contained no language identical to, another contract market rule. The existing language also may be read to foreclose delegated authority treatment for rules substantially identical to a previously-approved rule of the same contract market. The Commission did not intend that the provision be so narrowly read. In adopting subparagraph (4), the Commission stated that the category "includes rules submitted by various contract markets which may be similar because of Commission requirements or because of the similarity between certain contracts." 50 FR 30140. In order to make clearer the intended application of subparagraph (4), the Commission is amending the provision to encompass rules that are in substance the same as a rule of the same or another contract market previously approved by the Commission. The Commission believes that these revisions more accurately reflect its intentions in drafting the subparagraph.

New Paragraph (b)

In addition to the foregoing amendments to Regulation 1.41b, the Commission is creating a new paragraph (b) delegating to the Director of EA the authority to approve under the procedure set out in Commission Regulation 5.2, with the concurrence of the General Counsel, all proposals to list additional trading months or expirations or otherwise recommence trading in a contract that is dormant within the meaning of Commission Regulation 5.2.[5] The Commission's experience with Regulation 5.2 proposals to recommence trading in dormant contracts indicates that, in most instances, they are routine in nature. The proposals generally have no substantive effect on economic or

[2] On occasion, exchanges submit rules pursuant to Regulation 1.41(b) that do not affect contract terms and conditions, even though such rules do not require prior Commission approval and could therefore be handled under Regulation 1.41(c).

[3] Of course, the relevant Director would retain the option of sending to the Commission for its review any exchange rule proposal eligible for handling under delegated authority, but which the Director believed would more appropriately be considered by the Commission. (See existing paragraph (b) of Regulation 1.41b.) In addition, the Commission would retain the right to exercise directly the authority delegated to its staff under the revised regulation. (See existing paragraph (c) of Regulation 1.41b.)

[4] Not all of these rule types would be considered "terms and conditions" within the meaning of Regulation 1.41(a)(2). As noted above, the Commission is deleting the reference to "terms and conditions" in order to permit these and other types of rules that are not "terms and conditions" to be handled pursuant to delegated authority.

[5] Commission Regulation 5.2 defines a dormant contract as any commodity futures or option contract market (1) in which no trading has occurred in any futures or option expiration for a period of six complete calendar months or (2) which has been certified by a board of trade as a dormant contract market. Regulation 5.2 provides further that a contract market may not be considered dormant until the end of 60 calendar months following designation or Commission approval of a proposal to recommence trading pursuant to Commission Regulation 5.2.

other characteristics. Of course, if in connection with a proposal to recommence trading in a contract, an Exchange sought to alter substantially the economic characteristics of the contract, the proposal would be sent to the full Commission for its consideration.[6]

The Commission believes that broadening the scope of the Commission staff's delegated authority in this manner will avoid inefficient use of the Commission's time and resources. This revision also will allow for more timely processing of Exchange proposals to reactivate trading in dormant contracts.

Related Amendments

The revision of existing paragraph (a) and the creation of new paragraph (b) necessitate two additional amendments to Regulation 1.41b. First, the Commission is renumbering existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively. Second, the Commission is amending new paragraph (c), pursuant to which the Division Directors retain the right to send any matter appropriate for handling under delegated authority to the Commission, to reflect the creation of new paragraph (b).

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. The rule amendments to Regulation 1.41b relate only to internal procedures of the Commission and will have no impact on small businesses. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. The amendments to Regulation 1.41b do not involve a collection of information as defined by the PRA, 44 U.S.C. 3502(4).

[6] As with rule proposals handled under paragraph (a) of Regulation 1.41b, the Director of EA would retain the option of sending any Regulation 5.2 submission to the Commission.

C. Notice and Comment

Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The Commission has determined that, because these amendments delegate the Commission's authority to approve certain proposed contract market rules, they relate to Commission procedure and, therefore, notice and comment is not required.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract market rules, Delegated authority, Rule review procedures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5a and 8a thereof, 7 U.S.C. 7a and 12a, the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 19, 21, 23, and 24.

2. Regulation 1.41b is revised to read as follows:

§ 1.41b Delegation of authority to the Director of the Division of Trading and Markets and Director of the Division of Economic Analysis.

(a) The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or his or her delegee, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors, the authority to approve, pursuant to section 5a(12) of the Act and § 1.41(b), contract market rules that:

(1) Relate to, but do not materially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under a contract designated for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for contract market governance; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of a contract market rule;

(3) [Reserved]

(4) Are in substance the same as a rule of the same or another contract market which has been approved previously by the Commission pursuant to section 5a(12) of the Act; or

(5) Are consistent with a specific, stated policy or interpretation of the Commission.

(b) The Commission hereby delegates, until the Commission orders otherwise, the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or his or her delegee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director, the authority to approve, pursuant to sections 5a(12) of the Act and § 1.41(b), contract market proposals, submitted pursuant to § 5.2, to list additional trading months or expirations for, or to otherwise recommence trading in, a contract that is dormant within the meaning of § 5.2.

(c) The Director of the Division of Trading and Markets or the Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) or (b) of this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis under this section.

Issued in Washington, DC on December 7, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30072 Filed 12–10–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 92–115]

Rulings concerning marking of Toy, Imitation, and Look-Alike Firearms

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Administrative ruling; General Notice.

SUMMARY: Notice is hereby given that Customs will no longer issue prospective ruling letters concerning the Department of Commerce's marking requirements applicable to toy, imitation, and look-alike firearms imported into the U.S., as decisions regarding this subject matter fall under the jurisdiction of the Department of Commerce.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Timothy P. Trainer, Intellectual Property Rights Branch (202) 482–6960.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Federal Energy Management Improvement Act of 1988 (Pub. L. 100–615, codified at 15 U.S.C. 5001), provides, in part, that it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce. Thus, the Department of Commerce is the agency charged with promulgating certain marking requirements applicable to toy, imitation, and look-alike firearms. See, *Wagner Seed Company, Inc.*, v *Bush*, 946 F.2d 918 (D.C.C. 1991), *cert. denied*. Part 1150 of the Commerce and Foreign Trade Regulations (15 CFR part 1150) implements the Department of Commerce's marking requirements and exceptions under 15 U.S.C. 5001.

The U.S. Customs Service serves as the principle border enforcement agency of the U.S. Government regarding the entry of merchandise into the United States, with responsibilities including insuring that merchandise entered is properly marked as required by other government administrative agencies charged with marking responsibilities. However, this enforcement function does not include the issuance of prospective ruling letters concerning other agency's regulations, under the provisions of part 177, Customs Regulations (19 CFR part 177), which provides for the issuance of certain administrative rulings. Although some rulings have been issued in the past pursuant to importer's requests, it is Customs' position that the appropriate authority to interpret Commerce's regulations concerning acceptable markings on this merchandise is the Department of Commerce. Thus, although Customs responsibilities include preventing the entry into the United States of any imported toy, look-alike, or imitation firearm that is not marked in accordance with the Secretary of Commerce's marking requirements, Customs does not believe that its responsibilities include interpreting the meaning of the Department of Commerce's statutory authority to determine what constitutes acceptable marking regarding toy, imitation, and look-alike firearms.

Accordingly, since the Department of Commerce is the proper administrative agency to interpret its own regulations, Customs will no longer issue prospective rulings under part 177 of its regulations concerning the Department of Commerce's marking requirements applicable to imported toy, imitation, and look-alike firearms.

Approved: December 3, 1992.

Samuel H. Banks,

Assistant Commissioner Commercial Operations.

[FR Doc. 92–30061 Filed 12–10–92; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 8450]

RIN 1545–AN92

Certain Publicly Traded Partnerships Treated as Corporations—Transition Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations describing when a publicly traded partnership adds a "substantial new line of business," thus forfeiting the partnership status preserved for "existing partnerships" by the transition rule applicable to section 7704 of the Internal Revenue Code (Code). Section 10211 of the Revenue Act of 1987 added section 7704 of the Code. These regulations provide the public with guidance needed to comply with the transition rules of section 7704.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ann Veninga at 202–622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1991, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (56 FR 67557) amending the Income Tax Regulations (26 CFR parts 1 and 301) under section 7704 of the Internal Revenue Code (Code). These amendments were intended to implement section 7704 as added by section 10211 of the Revenue Act of 1987, Public Law No. 100–203, 101 Stat. 1330–382, 1330–403 *et seq.* (the 1987 Act). Section 7704 generally treats publicly traded partnerships as corporations for Federal tax purposes and is generally effective for taxable years beginning after December 31, 1987. Section 10211(c)(2) of the 1987 Act, however, exempts "existing partnerships" from the effect of section 7704 until partnership taxable years beginning after December 31, 1997.

Under section 10211(c)(2)(B) of the 1987 Act, a partnership otherwise qualifying as an existing partnership will cease to be an existing partnership as of the first day after December 17, 1987, on which there has been an addition of a "substantial new line of business" with respect to the partnership. Notice 88–75, 1988–2 C.B. 386, addressed this provision in part.

On December 31, 1991, the Internal Revenue Service issued a notice of proposed rulemaking that provides rules defining "existing partnership," "substantial," and "new line of business." Comments responding to the notice of proposed rulemaking were received, but a public hearing on the notice of proposed rulemaking was not requested and was not held. After analyzing the comments, the Service adopts the proposed regulations as revised by this Treasury decision. The Internal Revenue invites requests for rulings on the question of when a new activity is a "new line of business".

Explanation of Provisions

General Rules

The final regulations provide that the term "existing partnership" means any partnership if the partnership was a publicly traded partnership (within the meaning of section 7704(b)) on December 17, 1987, or a registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission (SEC) with respect to the partnership on

or before December 17, 1987, or with respect to the partnership, an application was filed with a state regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership.

The final regulations provide that a partnership will not qualify as an existing partnership after a new line of business is substantial. A new line of business is substantial as of the earlier of the taxable year in which the partnership derives more than 15 percent of its gross income from that line of business or the taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets. If a substantial new line of business is added during the taxable year (*e.g.*, by acquisition), the line of business is treated as substantial as of the date it is added; otherwise a substantial new line of business is treated as substantial as of the first day of the taxable year in which it becomes substantial.

The final regulations treat a new line of business as any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than qualifying income within the meaning of section 7704 and the regulations thereunder. A business activity is a pre-existing business of the partnership if the partnership was actively engaged in the activity on or before December 17, 1987, or if the partnership is actively engaged in the business activity that was specifically described as a proposed business activity of the partnership in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987.

Definition of Closely Related

The final regulations emphasize that facts and circumstances will determine whether a new business activity is closely related to a pre-existing business of the partnership. Some of the factors that establish that a new business activity is closely related to a pre-existing business of the partnership are similarities between the businesses' products, class of customers, location, operating assets, licensing authorities and inclusion under the same four-digit SIC Codes.

Comments suggested that the four-digit SIC Codes be used as a safe harbor for determining whether a business activity is a new line of business. Under this approach, any new activity by a pre-existing business that would fall within the same four-digit SIC Code of the pre-existing business could be presumptively considered an expansion of the prior business rather than a new line of business.

The final regulations do not adopt this suggestion because some four-digit SIC Codes contain businesses that do not appear to be closely related. On the other hand, a review of SIC Codes has identified certain four-digit SIC Codes in which all businesses do appear to be closely related. The Service intends to issue a revenue procedure providing that all businesses under certain four-digit SIC Codes will be considered closely related lines of business under the regulations. No safe harbor will exist for lines of business within SIC Codes not identified by the revenue procedure. The closely related standard for these businesses will be subject to the general facts and circumstances test.

Activities Conducted Through Other Entities

The proposed regulations state generally that an activity conducted by a corporation controlled by an existing partnership is not deemed to be an activity of the existing partnership for purposes of determining when an existing partnership has added a new line of business. However, such an activity will be deemed to be an activity of the existing partnership if more than 10 percent of the gross income that the existing partnership derives from the corporation during the taxable year is section 7704(d) of the Code qualifying income that is recharacterized as nonqualifying income under these regulations. Such income will be recharacterized as nonqualifying income if it is deductible by the controlled corporation.

Comments advise that the 10 percent test is overly restrictive because, in a particular year, an existing partnership might receive little or no dividend income from its subsidiary due to either the cash flow needs of the subsidiary or a lack of earnings and profits in the subsidiary. In such a case, the payment of even a nominal amount of interest by the subsidiary could cause an existing partnership to fail the 10 percent test.

In response to the problem of unanticipated shifts in dividend income, a facts and circumstances test will replace the 10 percent test for determining when an activity conducted by a corporation controlled by an existing partnership is deemed to be an activity of the existing partnership for purposes of determining when an existing partnership has added a new line of business. The 10 percent test, which first appeared as a safe harbor in Notice 88–75, 1988–2 C.B. 386, but was made a general rule in the proposed regulation, will again be a safe harbor.

The proposed regulations provide, as discussed above, that an existing partnership may be deemed engaged in the activities of a corporation controlled by the existing partnership under certain circumstances. Section 304(c) of the Code applies to determine whether an existing partnership controls a corporation. The stock attribution rules of section 318 are used in determining whether control exists within the meaning of section 304(c). These rules attribute ownership of stock from a partner to an existing partnership without regard to the percentage interest of the partner in the existing partnership. As a result, under the proposed regulations an existing partnership is deemed to be in control of every corporation in which any partner holds a 50 percent or greater interest.

Comments suggested that applying section 304(c) of the Code without modification is inappropriate because it applies to all partners of an existing partnership, no matter how small their interests in the partnership. An existing partnership may not be able to identify the names or the holdings of its minor partners and, therefore, might unwittingly trigger the provision.

In response to this suggestion, the final regulations adopt a *de minimis* rule that attributes stock ownership from a partner to an existing partnership only if the partner owns by value, directly or indirectly, five percent or more of the partnership interests of the existing partnership. The *de minimis* rule will not apply if a principal purpose of the arrangement is to avoid tax at the corporate level.

The proposed and final regulations state that an activity conducted by a partnership in which an existing partnership holds an interest (directly or through another partnership) will be considered an activity of the existing partnership.

The proposed and final regulations provide that section 7704(a) does not apply to existing partnerships if these partnerships meet the gross income requirements of paragraphs (c) (1) and (2) of section 7704.

Exceptions to the General Rule

The proposed and final regulations provide that in determining whether a partnership is an existing partnership for purposes of section 7704, the termination of the partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits, the issuance of additional

partnership units, and dropping a line of business are not events that in themselves terminate the status of existing partnerships.

Dates

These regulations are effective for taxable years beginning after December 31, 1991. Section 7704 and the rules under Notice 88–75 generally apply to taxable years beginning after December 31, 1987. No inference is intended concerning the interpretation of Section 10211(c)(2) of the 1987 Act prior to the effective date of these regulations. Taxpayers may rely on these regulations prior to the effective date.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ann Veninga, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participation in their development.

List of Subjects

26 CFR Part 1, §§ 1.7001–1 Through 1.7704–2

Bonds, Closing agreement, Compromises, Crimes, Definitions, Discovery of liability, Employment taxes, Enforcement of title, Estate taxes, Excise taxes, Forfeiture, Gift taxes, Income taxes, Judicial proceedings, Licensing and registration, Miscellaneous provisions, Other offenses, Penalties, Publicly traded partnerships, Taxes.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

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

Par. 2. Section 1.7704–2 is added to read as follows:

§ 1.7704–2 Transition provisions.

(a) *Transition rule.*—(1) *Statutory dates.* Section 7704 generally applies to taxable years beginning after December 31, 1987. In the case of an existing partnership, however, section 7704 and the regulations thereunder apply to taxable years beginning after December 31, 1997.

(2) *Effective date of regulations.* These regulations are effective for taxable years beginning after December 31, 1991.

(b) *Existing partnership*—(1) *In general.* For purposes of § 1.7704–2, the term "existing partnership" means any partnership if—

(i) The partnership was a publicly traded partnership (within the meaning of section 7704(b)) on December 17, 1987;

(ii) A registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission (SEC) with respect to the partnership on or before December 17, 1987; or

(iii) With respect to the partnership, an application was filed with a state regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership.

(2) *Changed status of an existing partnership.* A partnership will not qualify as an existing partnership after a new line of business is substantial.

(c) *Substantial*—(1) *In general.* A new line of business is substantial as of the earlier of—

(i) The taxable year in which the partnership derives more than 15 percent of its gross income from that line of business; or

(ii) The taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets.

(2) *Timing rule.* If a substantial new line of business is added during the taxable year (*e.g.*, by acquisition), the line of business is treated as substantial as of the date it is added; otherwise a substantial new line of business is treated as substantial as of the first day of the taxable year in which it becomes substantial.

(d) *New line of business*—(1) *In general.* A new line of business is any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than "qualifying income" within the meaning of section 7704 and the regulations thereunder.

(2) *Pre-existing business.* A business activity is a pre-existing business of the partnership if—

(i) The partnership was actively engaged in the activity on or before December 17, 1987; or

(ii) The partnership is actively engaged in the business activity that was specifically described as a proposed business activity of the partnership in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987. For this purpose, a specific description does not include a general grant of authority to conduct any business.

(3) *Closely related.* All of the facts and circumstances will determine whether a new business activity is closely related to a pre-existing business of the partnership. The following factors, among others, will help to establish that a new business activity is closely related to a pre-existing business of the partnership and therefore is not a new line of business:

(i) The activity provides products or services very similar to the products or services provided by the pre-existing business.

(ii) The activity markets products and services to the same class of customers as that of the pre-existing business.

(iii) The activity is of a type that is normally conducted in the same business location as the pre-existing business.

(iv) The activity requires the use of similar operating assets as those used in the pre-existing business.

(v) The activity's economic success depends on the success of the pre-existing business.

(vi) The activity is of a type that would normally be treated as a unit with the pre-existing business in the business' accounting records.

(vii) If the activity and the pre-existing business are regulated or licensed, they are regulated or licensed

by the same or similar governmental authority.

(viii) The United States Bureau of the Census assigns the activity the same four-digit Industry Number Standard Identification Code (Industry SIC Code) as the pre-existing business. Such codes are set forth in the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, prepared, and from time to time revised, by the Statistical Policy Division of the United States Office of Management and Budget. For example, if a partnership's pre-existing business is manufacturing steam turbines and then the partnership begins an activity manufacturing hydraulic turbines, both activities would be assigned the same Industry SIC Code, 3511—Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units. In the case of a pre-existing business or activity that is listed under the Industry SIC Code, 9999—Nonclassifiable Establishments—or under a miscellaneous category (e.g., most Industry SIC Codes ending in a "9" are miscellaneous categories), the similarity of the SIC Codes is ignored as a factor in determining whether the activity is closely related to the pre-existing business. The dissimilarity of the SIC Codes is considered in determining whether the business activity is closely related to the pre-existing line of business.

(e) *Activities conducted through controlled corporations*—(1) *In general.* An activity conducted by a corporation controlled by an existing partnership may be treated as an activity of the existing partnership if the effect of the arrangement is to permit the partnership to engage in an activity the income from which is not subject to a corporate-level tax and which would be a new line of business if conducted directly by the partnership. This determination is based upon all facts and circumstances.

(2) *Safe harbor*—(i) *In general.* This paragraph (e)(2) provides a safe harbor for activities of a corporation controlled by an existing partnership. An activity conducted by a corporation controlled by an existing partnership is not deemed to be an activity of the partnership for purposes of determining whether an existing partnership has added a new line of business if no more than 10% of the gross income that the partnership derives from the corporation during the taxable year is section 7704(d) qualifying income that is recharacterized as nonqualifying income under paragraphs (e)(2) (ii) and (iii) of this section. The Internal Revenue Service will not presume that an activity conducted through a corporation controlled by an existing partnership is an activity of the partnership solely because the partnership fails to satisfy the requirements of this paragraph (e)(2)(i).

(ii) *Recharacterization of qualifying income.* Gross income received by a partnership from a controlled corporation that would be qualifying income under section 7704(d) is subject to recharacterization as nonqualifying income if the amount is deductible in computing the income of the controlled corporation.

(iii) *Extent of recharacterization.* The amount of income described in paragraph (e)(2)(ii) of this section that is recharacterized as nonqualifying income is—

(A) The amount described in paragraph (e)(2)(ii) of this section; multiplied by

(B) The controlled corporation's taxable income (determined without regard to deductions for amounts paid to the partnership) that would not be qualifying income within the meaning of section 7704(d) if earned directly by the partnership; divided by

(C) The controlled corporation's taxable income (determined without regard to deductions for amounts paid to the partnership).

(3) *Control.* For purposes of paragraphs (e) (1) and (2) of this section, control of a corporation is determined generally under the rules of section 304(c). However, the application of section 304(c) is modified to apply only to partners who own five percent or more by value (directly or indirectly) of the existing partnership unless a principal purpose of the arrangement is to avoid tax at the corporate level.

(4) *Example.* The following example illustrates the application of the this paragraph (e):

Example. (i) PTP, an existing partnership, acquired all the stock of X corporation on January 1, 1993. During PTP's 1993 taxable year it received $185,000 of dividends and $15,000 of interest from X. Determined without regard to interest paid to PTP, X's taxable income during that period was $500,000 none of which was "qualifying income" within the meaning of section 7704 and the regulations thereunder. In computing the income of X, the $15,000 of interest paid to PTP is deductible.

(ii) Under paragraph (e)(2)(ii) of section, all $15,000 of PTP's interest income was nonqualifying income ($15,000 x 500,000/500,000). Under paragraph (e)(2) of this section, however, the activities of X will not be considered to be activities of PTP for the 1993 taxable year because no more than 10 percent of the gross income that PTP derived from X would be treated as other than qualifying income (15,000/200,000=7.5%).

(f) *Activities conducted through tiered partnerships.* An activity conducted by a partnership in which an existing partnership holds an interest (directly or through another partnership) will be considered an activity of the existing partnership.

(g) *Exceptions*—(1) *Coordination with gross income requirements of section 7704(c)(2).* A partnership that is either an existing partnership as of December 31, 1997, or an existing partnership that ceases to qualify as an existing partnership is subject to section 7704 and the regulations thereunder. Section 7704(a) does not apply to these partnerships, however, if these partnerships meet the gross income requirements of paragraphs (c) (1) and (2) of section 7704. For purposes of applying section 7704(c) (1) and (2) to these partnerships, the only taxable years that must be tested are those beginning on and after the earlier of—

(i) January 1, 1998; or

(ii) The day on which the partnership ceases to qualify as an existing partnership because of the addition of a new line of business; or

(iii) The first day of the first taxable year in which a new line of business becomes substantial (if the new line of business becomes substantial after the year in which it is added).

(2) *Specific exceptions.* In determining whether a partnership is an existing partnership for purposes of section 7704, the following events do not in themselves terminate the status of existing partnerships—

(i) Termination of the partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits;

(ii) Issuance of additional partnership units; and

(iii) Dropping a line of business. This event, however, could affect an existing partnership's status indirectly. For example, dropping one line of business could change the composition of the partnership's gross income. The change in composition could make a new line of business "substantial," under paragraph (c) of this section, and terminate the partnership's status. See paragraph (b)(2) of this section.

(h) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated citrus groves. On March 1, 1993, PTP purchased a processing business involving frozen citrus products. In the partnership's 1993 taxable year, the partnership directly used in the processing business more than 15 percent (by value) of its total assets.

(ii) The citrus grove activities provide different products from the processing

activities, are marketed to customers different from the customers of the processing activities, require different types of operating assets, are not commonly conducted at the same location, are not commonly treated as a unit in accounting records, do not depend upon one another for economic success, and do not have the same Industry SIC Code. Under the facts and circumstances, the processing business is not closely related to the citrus grove operation and is a new line of business under paragraph (d)(1) of this section.

(iii) The assets of the partnership used in the new line of business are substantial under paragraph (c)(2) of this section. Because PTP added a substantial new line of business after December 17, 1987, paragraph (b)(2) of this section terminates PTP's status as an existing partnership on March 1, 1993.

Example 2. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated retirement centers that serve the elderly. Each center contains three sections—

(A) A residential section, which includes suites of rooms, dining facilities, lounges, and gamerooms;

(B) An assisted-living section, which provides laundry and housekeeping services, health monitoring, and emergency care; and

(C) A nursing section, which provides private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy.

(ii) The business activities of each section constitute pre-existing businesses of PTP under paragraph (d)(2) of this section, because PTP was actively engaged in the activities on or before December 17, 1987.

(iii) The nursing sections primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may change certain costs to government programs like Medicare and Medicaid.

(iv) In 1993, PTP acquired new nursing homes that treat inpatient adults of all ages. The nursing homes provide private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy. The nursing homes primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may charge certain costs to government programs like Medicare and Medicaid.

(v) PTP's new nursing homes and old nursing sections provide very similar services, market to very similar customers, use similar types of property and personnel, and are licensed by the same regulatory agencies. The nursing homes and old nursing sections have the same Industry SIC Code. Under these facts and circumstances, the new nursing homes are closely related to a pre-existing business of the partnership. Accordingly, under paragraph (d)(1) of this section, the acquisition of the new nursing homes is not the addition of a new line of business.

(vi) PTP was a publicly traded partnership on December 17 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. Because PTP has added no substantial new line of business after December 17, 1987, paragraph (b)(2) of this section does not terminate PTP's status as an existing partnership.

Example 3. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated cable television systems in the northeastern United States. PTP's registration statement described as its proposed business activities the ownership and operation of cable television systems, any ancillary operations, and any business permitted by the laws of the state in which PTP was formed.

(ii) PTP's cable systems include cables strung along telephone lines, converter boxes in subscribers' homes, other types of cable equipment, satellite dishes that receive programs broadcast by various television networks, and channels that carry public service announcements of local interest. Subscribers pay the systems a fee for the right to receive both the local announcements and the network signals relayed through the cables. Those fees constitute PTP's primary revenue. The systems operate under franchise agreements negotiated with each municipality in which they do business.

(iii) On September 1, 1993, PTP purchased a television station in the northwestern United States. The station owns broadcasting facilities, satellite dishes that receive programs broadcast by the station's network, and a studio that produces programs of interest to the area that receives the station's broadcasts. Fees from advertisers constitute the station's primary revenue. The station operates under a license from the Federal Communications Commission.

(iv) In the partnership's 1993 taxable year, the station generated less than 15 percent of PTP's gross income and constituted less than 15 percent of its total assets (by value). In PTP's 1994 taxable year, the station generated more than 15 percent of PTP's gross income.

(v) The cable systems relay signals through cables to subscribers and earn revenue from subscriber fees; the station broadcasts signals to the general public and earns revenue by selling air time for commercials. Despite certain similarities, the two types of activities generally require different operating assets and earn income from different sources. They are regulated by different agencies. They are not commonly conducted at the same location and do not generally depend upon one another for their economic success. They have different Industry SIC Codes. Under the facts and circumstances, the television station activities are not closely related to PTP's pre-existing business, the cable system activities.

(vi) As of December 17, 1987, PTP did not own and operate any television station. PTP's registration statement specifically described as its proposed business activities only the ownership and operation of cable television systems and any ancillary operations. For purposes of paragraph (d)(2) of this section, a specific description does not include PTP's general authority to carry on any business permitted by the state of its formation. Therefore, the television station line of business was not specifically described as a proposed business activity of PTP in its registration statement. PTP's acquisition of the television station business activity constitutes a new line of business under paragraph (d)(1) of this section.

(vii) PTP was a publicly traded partnership on December 17, 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. PTP added a new line of business in 1993, but that line of business was not substantial under paragraph (c) of this section, and thus PTP remained an existing partnership for its 1993 taxable year. In 1994, the new line of business became substantial because it generated more than 15 percent of PTP's gross income. Paragraph (b)(2) of this section therefore terminates PTP's existing partnership status as of January 1, 1994, the first day of the first taxable year beginning after December 31, 1987, in which PTP's new line of business became substantial.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part:

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

Par. 4. A new § 301.7704–2 is added to read as follows:

§ 301.7704–2 Transition provisions.

See the regulations under section 7704 contained in part 1 of this chapter for a definition of the "substantial new line of business" that an "existing" publicly traded partnership cannot enter without forfeiting its partnership status under the transition provisions applicable to section 7704.

Dated: October 21, 1992.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR 92–29483 Filed 12–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–74]

Drawbridge Operation Regulations; Matlacha Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Lee County, the bridge owner, the Coast Guard is changing the regulations of the SR78 drawbridge over Matlacha Pass, mile 6.0, between the mainland and Little Pine Island, Fort Myers, Lee County, Florida, by permitting the number of openings to be limited during certain periods.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On August 31, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92–20749). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal from 8 a.m. to 7 p.m. From 7 p.m. to 8 a.m., the draw need not be opened for the passage of vessels. Lee County has requested that the bridge open only on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m., Monday through Saturday and on Sundays, from 7 a.m. to 12 noon and from 3 p.m. to 7 p.m. The purpose of this proposal is to ease the financial burden on Lee county for a full time tender at the drawbridge. In view of the low number of openings of this drawbridge, the reduced periods of operation would still meet the reasonable needs of navigation.

Discussion of Comments and Changes

One letter was received from the National Marine Fisheries Service stating they had no objection to the proposed change in operating regulations.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule is written to accommodate the schedules of local commercial fishing vessels that normally transit the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.303 is revised to read as follows:

§ 117.303 Matlacha Pass.

The draw of the SR78 bridge, mile 6.0 at Fort Myers, shall open on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. Monday through Saturday. On Sundays the draw shall open on signal from 7 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. At all other times, the draw need not be opened for the passage of vessels.

Dated: December 2, 1992.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92–30155 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Golden Gate National Recreation Area Designated Bicycle Routes

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking designates certain routes within the undeveloped area of Golden Gate as open to bicycle use, and regulates bicycle use in these areas. This designation is necessary because bicycle use has been determined by the Superintendent to be a desirable recreational use of certain areas of the park and because such use is consistent with the protection of the park's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Gil Soper, Chief Ranger, Golden Gate National Recreation Area, San Francisco, CA 94123, Telephone: (415) 556–4283.

SUPPLEMENTARY INFORMATION:

Background

The purpose of these special regulations is to designate certain trails within Golden Gate as open for bicycle use, pursuant to 36 CFR 4.30. On April 2, 1987, the National Park Service published revised regulations in the **Federal Register** amending 36 CFR part 4 which, among other things, prohibits bicycle use except on park roads, in parking areas and on routes designated for bicycle use (52 FR 10670). These regulations, at 36 CFR 4.30, require that such designation be made only after "a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources" (36 CFR 4.30(a)). The regulations further require that, except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations. The National Park Service proposed a rule in the **Federal**

Register on January 29, 1992 (57 FR 3392).

Prior to the development and publication of the proposed rules, extensive consultation was initiated with bicyclists, equestrians, hikers, and environmental groups. As a result, a "Marin Trail Use Designation Environmental Assessment," "Staff Report", and "Supplemental Environmental Assessment and Finding of No Significant Impact" were prepared to consider four alternatives for bicycle use of park trails. The result was the development of a "Trail Use Designation Plan" (Plan). In developing the Plan, the park held four public hearings over a three year period through the Golden Gate Advisory Commission, as well as three user group workshops and numerous consultations with interested groups and individuals, and considered over 700 written and verbal comments. The final Plan recommends that certain trails be designated for hiker use only; certain other trails for equestrian and hiker use; certain other trails for bicycle and hiker use; and certain trails for multiple use. Consideration was given to environmental factors, safety, visitor use patterns, management considerations, and special park values.

Based on these actions, 46.9 miles of park trails are currently designated for bicycle use. All have adequate width and visibility for passing, or can be improved and/or adequately maintained for bicycle use. The following listed trails or sections of trails are designated as open to bicycle use:

—Kirby Cove Road, between Conzelman Road and Kirby Cove Campground.
—Coastal/Slacker Road between McCullogh Road and Slacker Hill.
—Coastal Trail between Conzelman Road at McCullogh Road and the Fort Barry Rifle Range at Bunker Road.
—Coastal Trail between Rodeo Beach parking area and Hill 88.
—Coastal Trail between Tennessee Valley Trail and Coyote Ridge Trail.
—Coyote Ridge Trail between the Coastal Trail and Miwok Trail.
—Coyote Ridge Trail between Fox Trail and the Coastal Trail at the Hack Site.
—Coastal Trail between Coyote Ridge Trail at the Hack Site and Muir Beach.
—Miwok Trail between Rodeo Lagoon and Old Springs Trail.
—Old Springs Trail between Miwok Trail and Miwok Stable.
—Miwok Trail between Miwok Stable and Highway 1.
—Tennessee Valley Trail between Tennessee Beach and Tennessee Valley Road parking area.
—Bobcat Trail between Miwok Trail and Marincello Road.
—Alta Avenue between Wolf Back Ridge Road and Marin City.
—Hawk Camp Trail between Bobcat Trail and Hawk Camp.
—Rodeo Avenue between US Highway 101 and Alta Avenue.
—Marincello Road between Tennessee Valley Parking Area and Bobcat Trail.
—Haypress Road between Tennessee Valley Road and Haypress campground.
—Smith Road between Marinview and Miwok Trail.
—Bay Trail between Golden Gate Bridge and Sausalito.
—Oakwood Valley Road between Tennessee Valley Road and Oakwood Valley Pond. (Does not include Oakwood Valley Trail between Pond and Alta Avenue)
—Diaz Ridge Trail between Mt. Tamalpais State Park boundary and Highway 1 near Muir Beach.
—Deer Park Fire Road between Frank's Valley Road and Coastal Trail near Pan Toll (Major portion is in Mt. Tamalpais State Park.)
—Willow Camp Fire Road between Stinson Beach and Ridgecrest Boulevard. (Major Portion is in Mt. Tamalpais State Park.)
—Bolinas Ridge Trail between Bolinas-Fairfax Road and Sir Francis Drake Highway near Olema.
—McCurdy Trail between Highway 1 and Bolinas Ridge Trail.
—Randall Trail between Highway 1 and Bolinas Ridge Trail.
—Shafter Trail between Bolinas Ridge Trail and Shafter Bridge. (Portion is in Samuel P. Taylor State Park.)

The Trail Use Designation Plan requires the monitoring and management of these trails in such manner as to ensure that designation for bicycle use will not adversely impact other park users or the environment. An erosion assessment survey prepared in concert with the Plan will guide the reconstruction, maintenance and use of this trail system over the next several years.

Because the plan is dynamic and subject to change as trails maintenance and construction activities occur, specific trails or routes are not listed in the regulation text. Any additional trails other than those mentioned in this preamble may be designated by the Superintendent in writing after holding public meetings through the Golden Gate Advisory Commission, by marking on maps which will be available in the office of the Superintendent and other places convenient to the public, and through the posting of trails which are open to bicycle use. Further, the authority of the Superintendent to "impose public use limits, or close all or a portion" of a designated trail according to the criteria in 36 CFR 1.5 is not restricted by this final regulation.

The Superintendent has made a determination in writing that these routes proposed for designation as bicycle routes are consistent with the protection of Golden Gate's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources, as required in § 4.30(b) of title 36, Code of Federal Regulations.

Summary of Public Comments and Responses

During the sixty day public comment period provided with the proposed regulations, a total of 301 written comments were received, including 14 from organizations. In support of the regulation, were 147 letters, including 7 advocating stricter controls on bicycle use of park trails. Advocating greater access for bicycles on park trails, and not in support of the regulation were 154 letters, including 27 photocopied responses. A summary of these comments and responses follows.

General Comments

Summary of Comments in Favor of the Regulation

Approximately 49% (147) of the respondents expressed support of the proposed regulation. Of these, 40 commenters specifically identified themselves as hikers. Ten of these indicated that they were cyclists as well as hikers. Seven of the commenters identified themselves as equestrians. Seven letters (including 2 from organizations—The Marin Horse Council and the Tamalpais Conservation Club) indicated a strong preference for more strict limitations for bicycle use than the regulation provides, but voiced a willingness to accept the compromise. Four respondents complained that no bicycle-free loops were provided under the proposal and 2 letters advocated a total ban on bicycles on all park trails.

Thirty-five of the support letters specifically noted the inappropriateness of bicycles on single-track trails. Twenty complained that bicycles detracted from the quality of their park experience. Fourteen reported having had close calls or accidents with bicycles. Fifteen letters attributed observed erosion problems and creation of social trails to bicycles. Thirteen made a strong plea for strict enforcement of bicycle regulations.

Summary of Comments Opposed to the Regulation

Comments generally opposed to the regulation and supportive of more access for bicycles were received from 154 respondents. The main areas of concern are specifically addressed below:

Comment: Bicycles do not create any unacceptable impact to part resources. Approximately 13 letters asserted that bicyclists should have greater access to park trails than is proposed under the regulation because studies to date have not found that bicycles create more damage to park resources than other users.

Response: The decision to allow bicycles on 64% of Golden Gate's Marin trails acknowledges that their impact in most cases is acceptable or can be mitigated. Trail improvements to correct drainage and erosion problems are proposed to reduce the impact of bicycles in wet conditions and on trails with preexisting drainage and/or erosion problems. Golden Gate has included mitigation for continued bicycle use on problem trails in the Trail Use Designation Environmental documents, consisting of trail closures during wet conditions and an ongoing program of trail improvements to eliminate the underlying problems and improve trails where they are not in a condition appropriate for year round bicycle use. The decision to exclude bicycles from certain trails is based on a number of considerations, including the need for hikers and equestrians to have bicycle free trails.

Comment: The Bay Area Ridge Trail will be closed to bicycles under the proposed regulation. Sixteen letters included comments regarding the closure of segments of the Bay Area Ridge Trail to bicycle use.

Response: This issue was addressed in the Trail Use Designation EA/FONSI, which noted that although a single alignment is preferred for the Bay Area Ridge Trail, Ridge Trail guidelines acknowledge that there will be cases where different routes within a 1-mile corridor are designated for different users. All user groups will be accommodated on a Ridge Trail alignment through Golden Gate. In some cases it will be a shared multiuse trail, and in others it will consist of separate routes for bicyclists and/or equestrians. This approach is acceptable to the Bay Area Ridge Trail Council.

Comment: The environmental assessment didn't consider the impact of trail closures on bicycles.

Response: The closure of park trails to bicycles is the result of a federal regulation which required an evaluation of bicycle use and a written determination prior to allowing bicycle use of park trails. The Trail Use Designation Environmental Assessment, Staff Report and Supplemental Environmental Assessment/Finding of No Significant Impact did acknowledge that there would be fewer trails available to bicyclists under each alternative and discussed impacts which would occur. Specifically addressed were the loss of single track trail experience, the reduced trail mileage available to bicyclists, the loss of certain views and loop trails and the increased use of park roads and multiple use trails which remain open to bicycles. Trail mileage available to bicyclists is clearly identified in the documents. Allowing continued use of trails during the evaluation process was a good faith effort by the National Park Service to respond to bicyclists' concerns, and clearly did not promise long term use of these trails.

Comment: Golden Gate is a recreation area and should maximize recreational uses. Approximately 54 letters included comments regarding the responsibility of Golden Gate to provide for the recreational demands of its users. Emphasizing the term "recreation" in the park name and legislation, many of these commenters stressed that bicycle use should be provided to the maximum extent.

Response: Golden Gate is an important National Park resource with outstanding significance, and as such is managed as a unit of the National Park System according to 16 U.S.C. 1a–1. Its inclusion in the Central California Coast International Biosphere Reserve, the 12 federally listed endangered species of plants and animals present in the park and the numerous historic structures and landscapes confirm this significance. In 1991 there were more than 17 million visitors to Golden Gate. More than 4 million visitors were in the Marin portions of the park. Providing for the recreational needs of this number of different users requires a balancing of preservation and enjoyment just as in any unit of the National Park System. Many recreational uses are excluded from Golden Gate (for example off-road vehicles and R.V. camping), or restricted to particular locations where they do not have unacceptable impacts (hangliding and boardsailing). The 147 letters in support of the regulation or preferring more restrictive regulations demonstrates that some restrictions to bicycle use of park trails are needed to preserve the recreation experience of other users.

Comment: The impact of the closure of "social" trails was not considered. Four letters objected to the closure of social trails or undesignated routes to bicycle use.

Response: The Trail Use Designation Supplemental Environmental Assessment included a discussion of trails which are not part of the designated trail system. This document noted that the process or evaluating trails for bicycle use has been limited to the existing designated trail system, with few exceptions. Other trails are either abandoned roads or social trails (trails which are casually developed by users as shortcuts or detours). Undesignated trails are not signed, mapped, or maintained for use. Golden Gate has an ongoing program to close undesignated trails through signing, barriers and restoration of vegetation. These trails are closed to all users. Allowing social trails to proliferate and become permanent features of the landscape would result in a permanent loss of park resources.

Comment: No scientific or factual studies were used in the trail designation process. Seventeen letters criticized the process for not including scientific studies on which to base decisions.

Response: Throughout the process of evaluating the trails for bicycle use, the park staff has been in a dialogue with other land managers and organized bicycle groups. Existing literature and pertinent studies were solicited and utilized to assist in decision making. Existing studies of the social and environmental impact of bicycles, and alternative management techniques were consulted in making the designations. A trail data base for Golden Gate was compiled in 1987, and an Erosion Rehabilitation Plan was completed by the National Park Service in 1990 to determine impacts of use and corrective measures required to accommodate year round trail use. The adopted mitigation measures incorporated information from these studies, including a commitment to improved and modified trail maintenance and construction to accommodate bicycles and to education efforts to reduce conflicts between trail users.

Comment: Additional trails should be designated for bicycles. Several letters advocated adding key trails for bicycle use, most citing the following trails: New Coastal/SCA Trail, Wolf Ridge Trail, Green Gulch Trail and Oakwood Valley Trail.

Response: These trails are discussed in greater detail in the Marin Trail Use Designation Environmental Assessment,

Staff Report and Supplemental Environmental Assessment and Finding of No Significant Impact. Of the 73.1 miles of trail considered in this process, only 26.8 will be off-limits to bicycles. A summary of the considerations for each of the above-mentioned trails is included here.

New Coastal/SCA: This link includes 1.8 miles of narrow trail crossing steep hillsides. Trail width varies from 18–36". The steep hillside above and below the trail, the narrowness of the trail, and the presence of poison oak in places make passing difficult. Several switchbacks on the New Coastal Trail are difficult to safely negotiate with a bicycle. The New Coastal Trail was constructed in 1989 following an environmental document which included a condition that it would be for hikers only, in order to minimize width and impact of the construction. The trail crosses through endangered species habitat, containing the host plant for the endangered Mission Blue butterfly. Both are found along the trail. Due to trampling of the host plant for this endangered species along these trails, they have been closed since January, 1991. A condition of their reopening, which resulted from formal consultation with U.S. Fish and Wildlife Service Endangered Species Office, is that horses and bicyclists be excluded, to eliminate the potential for off trail travel and trampling of vegetation. The SCA Trail was constructed in 1986, and was intended for hikers only due to its narrow width. These trails provide a bicycle-free alternative for hikers and avoid potential conflicts of multiple use on narrow trails.

Oakwood Valley Trail: (0.3 mile) This segment is extremely steep, requiring a series of stair step retaining structures which the average cyclist cannot negotiate. Trail tread is narrow and wet in places and subject to erosion which would be aggravated by bicycle use. The narrow box canyon which this trail traverses offers few options for trail improvements to accommodate bicyclists. This segment provides a bicycle-free experience for hikers.

Wolf Ridge Trail: (0.7 mile) This trail is steep and narrow in places, especially where native vegetation has grown over the former road bed on which the trail was constructed. Trail widening is not recommended due to the impact on the adjacent native plant community. This trail is part of the only bicycle free loop for hikers in the Marin Headlands.

Green Gulch Trail: (2 miles) The lower portion of this trail is on private property. The owner of the property does not agree to bicycle access on the present alignment due to safety and privacy concerns. Park staff is working with the land owner to reroute the trail to avoid conflicts and allow for future bicycle access. As presently designated, this trail provides the only bicycle free alternative for equestrians and hikers between Coyote Ridge and Muir Beach. Alternative access for cyclists in this area is provided on two other trails.

Comment: Cyclists are the largest user group. Sixty of the respondents opined that cyclists represent the most numerous user group in the park and that the planning process was deficient in the lack of a user survey to confirm their contention.

Response: NPS staff have acknowledged the high and increasing numbers of cyclists in the park. The regulation as written represents a balanced response to all users, offering a significant opportunity to cyclists while respecting the documented need for separation from cyclists expressed by hikers and equestrians, especially on narrow trails, regardless of whether bicyclists equal or surpass other trail users in number.

Comment: The variety and quality of cyclists' experience will be diminished as a result of the proposed regulation. Many respondents writing in opposition to the regulation commented specifically on its negative effect on the bicycling experience in the area. Fifteen letters mentioned the importance of the "single-track experience" and its loss as a result of prohibiting bicycle use on the 1.8 mile stretch of the SCA/New Coastal Trail. Supplemental material attached to the formal response to the regulation by the Bicycle Trail Council of Marin included descriptions of this special aspect of mountain biking.

Response: Compared with the present unrestricted bicycle use of the park, the proposed regulation will certainly diminish the options of cyclists accustomed to this freedom. However, with access to over 64% of the park's designated trail system, experiences that will remain available to cyclists are numerous and varied. With the exception of the SCA/New Coastal trail, few distinct "places" in the park will be rendered inaccessible to bicyclists. As the most significant stretch of single-track trail in the park, the SCA/New Coastal segment clearly represents a major functional and aesthetic loss to cyclists. Although an alternate route providing through access in the Headlands will still be available, its use requires riding one mile of paved road. Loss of this route as well as several others of lesser importance also eliminates several popular loop rides, a fact also noted by fifteen respondents.

The Bicycle Trails Council of Marin recently defined single track trails as those not shared with management vehicles. Single track trails also include "foot paths" which can be as narrow as 18". Non-cyclists feel strongly that the narrow trails cannot safely accommodate bicycles. However, the desire of cyclists to use trails not shared with management vehicles is a legitimate one which is accommodated in the current regulation. There are more than 2 miles of trail designated for bicycle use which are not management roads. These include the Old Springs Trail (1.1 miles), a segment of the Miwok Trail north of Tennessee Valley (0.8 mile) and a portion of the Coastal Trail which bypasses a slide (0.3 mile). These trails are either wide enough presently to accommodate multiple use, or will be improved to accommodate such use. Other wider trails not needed for management use will be "downgraded" to provide a more aesthetic trail experience, while providing a width adequate for multiple use. Small scale trail maintenance machinery will allow for the maintenance of these trails at a narrower width.

Eleven respondents complained that the regulation would limit their access to ridge tops in the park. This comment refers primarily to the SCA trail but would also apply to a 0.6 mile stretch of the Wolf Ridge Trail, and a portion of the Miwok Trail. The majority of park trails that traverse ridgetops would be open to bicycles under the proposed regulation.

Comment: The proposed regulation will increase congestion on park trails. Twenty-three respondents complained that restricting bicyclists to certain trails would increase congestion on these routes.

Response: We agree that this will be a result of the proposed regulation. However, compared to the bicycle traffic on trails that occurs as a result of the increasing popularity of mountain bike riding, this is not expected to be significant. According to statistics compiled by the Bicycle Institute of America, mountain bike riders have increased nationwide from 200,000 in 1983 to 20 million in 1991. A 25% increase in mountain bike riders was estimated between 1991 and 1992 alone. Although there is no evidence to suggest that resulting bicycle traffic loads on park trails will have unacceptable impacts, other management actions may be necessary in the future to mitigate against multi-user conflicts.

Comment: Bicycles/bicyclists do not create conflicts or safety problems on park trails. Many respondents

expressing opposition to the regulation firmly denied that bicycles pose any user conflicts or safety problems on park trails. Apparently drawing from their own experiences and behavior as considerate and responsible riders, these individuals point out that there are no documented safety problems, that hikers and equestrians consistently react to them in a cordial manner.

Response: Notwithstanding the responsible user, bicycles are often perceived by other users as a disruptive influence on park trails. Although most of the few reported bicycle accidents in the park involve only single individuals, letters and reports from hikers and equestrians tell of many close calls and confrontational and unsettling experiences. The amount of bicycle-free trails provided under the regulation seems a modest and reasonable response to these concerns.

Comment: Allowing all trails to remain open to bicycles will reduce safety problems that result from use of roads open to motor vehicles. The Bicycle Trails Council of Marin and several other individuals raised this issue, maintaining that closure of trails to bicycles would require bicycles to use roads shared with motor vehicles and create a potential safety problem.

Response: Most accidents involving bicycles result in injury to the cyclist only, and do not generally affect other users. Since 1985 there have been 46 reported bicycle accidents on Marin Headlands public roads, and 52 on trails. Although most of the road accidents occurred on Conzelman Road, a route which provides access to Marin Headlands trails for bicycles, very few of these accidents were identified on the segment of road that leads to the nearest multiuse trail. This segment was recently widened to provide a safer shoulder to accommodate bicycles in the uphill direction. Many bicyclists on this segment of road have traveled over busy city streets, the Golden Gate Bridge, or other public roads to reach this point. An additional 1 mile of paved road travel is required before entering the trail system, as a result of the closure of the New Coastal Trail to bicycles. This narrow trail has been closed to all users since January 1991 with no detectable increase in bicycle accidents as a result.

Comment: Bicycling is a historic use of park trails that has been occurring for 20 years. Several commenters, including the Bicycle Trails Council of Marin, maintained that cycling has been a use of Golden Gate trails for 20 years, and as a "historic" use of the park should not be restricted.

Response: Golden Gate was established in 1972. There is no data to accurately account for the increasing numbers of bicycles on the park's trails and a response relies primarily on observations of park staff and other trail users. Bicycling on park trails in any noticeable numbers is a fairly recent occurrence. Although mountain bikes were invented in Marin County and used on State and National Park trails in this area for many years, mountain bikes were first mass produced in 1982–83. Prior to 1985, bicycles were rarely seen on park trails, with the exception of those that are paved. Since 1985, the number of bicycles observed on park trails has increased dramatically, with the increased availability and popularity of mountain bikes. This final regulation is a reasonable management action for bicycle and other trail uses.

Comment: The National Park Service can't enforce the regulation. Several commenters maintained that it will not be possible for the NPS to enforce the regulation.

Response: The regulation is fully enforceable. Just as with other rules, regulations and laws that are enforced by the National Park Service, a procedure will be developed to identify personnel and equipment as well as strategies on when, where and how the enforcement will be carried out. We are confident that the large majority of the users will abide by these regulations as they do with others.

Comment: Use other techniques to manage mountain bike use of the trails (education, uphill only, alternative days, better trail maintenance, temporary closures, permit system.)

Response: Golden Gate has adopted or plans to test some of these techniques. Interpretive/educational signs, maps and brochures are being developed to encourage user cooperation, safety and trail etiquette. Problem trails will be temporarily closed during wet conditions. Two new trail maintenance crews have been established to rehabilitate and better maintain trails. Allowing bicycles in the uphill-only direction is being considered for one trail. Other management techniques were considered in the Marin Trail Use Designation Environmental Assessment, but received little public support or would add substantially to the administrative responsibilities of staff without reducing the enforcement workload. This final regulation does not prohibit the use of these or other management tools.

Comment: Lights should be required only when needed. Two commenters objected to the requirement for a positive light source on bicycles, and to the requirement that it be visible from a certain distance.

Response: The requirement for lighting is only "during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise . . .". A bicycle falls under the vehicle code for light requirements which applies on NPS lands. This requirement is included in 36 CFR 4.30(d)(2) for which the Superintendent has no discretion.

Comment: Use unsafe operation rather than speed limits. Three commenters maintained that at times 15 mph is too fast for a given situation, and 5 mph can be too slow to safely ride.

Response: These are maximum limits. The regulation gives clear direction to the user regarding the maximum allowed speeds but does not relieve him/her from the responsibility for operating at lower speeds if conditions require. It also does not restrict the officer from issuing citations for unsafe operation.

Comment: The possession restriction is unfair because it keeps bicyclists from riding to picnic spots or overlooks. Five commenters objected to the restriction on possession of bicycles on trails closed to bicycle use.

Response: This restriction applies to "routes" and is intended to prevent bicyclists from using trails closed to bikes by carrying or walking their bikes on these trails. It does not restrict bicyclists from picnicking along trails open to them or from enjoying overlooks on trails open to bicycles.

Section Analysis

This final rule adds a new paragraph (c) to the existing regulations at 36 CFR 7.97, "Designated bicycle routes", specific to the use of bicycles. This new paragraph permits the use of bicycles in accordance with existing regulations at 36 CFR 4.30 and specifies specific regulations for bicycle use on designated routes in non-developed areas of Golden Gate National Recreation Area.

Paragraph (c)(1) designates, pursuant to 36 CFR 4.30(b), certain routes as open to bicycle use. These routes may include former military and ranch roads, and existing fire management roads as mentioned in the proposed rule. Such designated routes shall be identified by the posting of signs and by the identification on maps made available to the public.

Paragraph (c)(2) identifies maximum speed limits for bicycles on designated routes. These trails are not for the exclusive use of bicyclists, and are open to hikers and, in some areas, to horses.

Speed limits will assist in preventing conflicts with these users.

Paragraph (c)(3) prohibits the possession of a bicycle in all non-developed areas not designated as open to bicycle use. This prohibition is to discourage the pushing or carrying of bicycles into non-designated areas, thus facilitating the fair enforcement of these proposed regulations. This paragraph also requires the use of an activated white headlight between sunset and sunrise instead of only a white reflector, which is currently prescribed by section 4.30(d). Forward reflectors alone would not be safe on trails in non-developed areas where there is a lack of activated lights that make reflectors useful.

Drafting Information

The workgroup that developed this rule making is composed of Gil Soper, Chief Ranger Activities; Doug Nadeau, Chief, Resource Management and Planning; and Nancy Hornor, Environmental Specialist of Golden Gate National Recreation Area.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effort on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

In compliance with the National Environmental Policy Act (NEPA) an Environmental Assessment was prepared to review the impacts of this action. A Finding of No Significant Impact was signed on May 14, 1991.

In accordance with section 7 of the Endangered Species Act of 1973 formal consultation with the U.S. Fish and Wildlife Service was initiated for trails where use was impacting endangered species habitat. Bicycle use is not proposed for these trails.

The NPS has reviewed this rule as directed by Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights", to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have takings implications because the regulations apply only to park lands, and open certain lands to bicycle users.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460bb–3, 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.97 is amended by adding paragraph (c) to read as follows:

§ 7.97 Golden Gate National Recreation Area.

* * * * *

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this chapter and, in non-developed areas, as follows:

(1) Bicycle use is permitted on routes which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the superintendent and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes in Golden Gate National Recreation Area.

(ii) 5 miles per hour: On blind curves and when passing other trail users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle or on the operator an activated white light that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

Dated: November 13, 1992.

Jennifer A. Salisbury,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92–29916 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 406

[BPD–767–F]

Medicare Program; Technical Corrections to Hospital Insurance Eligibility and Entitlement Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule redesignates several sections of 42 CFR part 406, Hospital Insurance Eligibility and Entitlement. These redesignations were inadvertently omitted from amendments published on August 12, 1991, at 56 FR 38078.

EFFECTIVE DATE: These amendments are effective as of December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690–6383.

SUPPLEMENTARY INFORMATION: On August 12, 1991, we published amendments to part 406 of the HCFA regulations. We amended the table of contents to redesignate several sections but failed to make the corresponding changes in the text. This rule corrects those omissions and makes the section numbers in the test consistent with the table of contents published on August 12, 1991. It also revises the table of contents to reflect changes that were included in the August 12 publication but do not appear in the October 1991 edition of the Code of Federal Regulations (CFR).

I. Information Collection Requirements

This rule contains no information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 381 et seq.)

II. Waiver of Proposed Rulemaking

This final rule makes purely technical corrections that preclude confusion but have no effect on the substance of the amended sections. Accordingly, we find that there is good cause to waive notice and opportunity for public comment as unnecessary. For the same reason, we waive the usual 30-day delay in the effective date.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rule that is likely to have an annual impact of $100 million or more, cause a major increase in costs

or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for this rule because it will have no economic impact.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR part 406 is amended as set forth below:

PART 406—[AMENDED]

A. The authority citation for part 406 continues to read as follows:

Authority: Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 402(t), 402(u), 426, 426–1, 1302, 1395i–2, and 1395hh) and 3103 of Pub. L. 89–97 (42 U.S.C. 426a) unless otherwise noted.

B. The text of part 406 is amended as set forth below:

§ 406.24 [Redesignated as § 406.34]

1. Section 406.24 is redesignated as § 406.34.

§ 406.30 [Redesignated as § 406.50]

2. Section 406.30 is redesignated as § 406.50 in subpart D.

§ 406.31 [Redesignated as § 406.52]

3. Section 406.31 is redesignated as § 406.52 in subpart D.

§ 406.32 [Transferred and amended]

4. Section 406.32 is transferred to subpart C and paragraph (c) is amended to revise "§§ 406.23 and 406.24" to read "§§ 406.33 and 406.34".

§ 406.34 [Amended]

5. In redesignated § 406.34, in paragraph (a)(1), "§ 406.23(a) or (b)" is revised to read "§ 406.33 (a) or (b)", and in paragraph (b)(1), "§ 406.23(a)" is revised to read "§ 406.33(a)".

§ 406.38 [Transferred]

6. Section 406.38 is transferred to subpart C.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance.)

Dated: September 24, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 9, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–29561 Filed 12–10–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–156; RM–8021]

Radio Broadcasting Services; Knob Noster, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C2 for Channel 289C3 at Knob Noster, Missouri, and modifies the construction permit for Station KXKX (FM) to specify operation on Channel 289C2 in response to a petition filed by Bick Broadcasting Company. See 57 FR 34092, August 3, 1992. The coordinates for Channel 289C3 are 38–46–28 and 93–37–34. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–156, adopted October 5, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 289C3 and adding Channel 289C2 at Knob Noster.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30065 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 803 and 852

RIN 2900–AF68

VA Acquisition Regulation: Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is converting the proposed rule published in the **Federal Register** on August 20, 1992, at 57 FR 37759 to a final rule without further changes. The proposed rule established a requirement for the posting of the VA Inspector General (IG) Waste, Fraud, and Abuse Hotline poster in contractor facilities. Additionally, the coverage pertaining to the Procurement Integrity Act was deleted to eliminate coverage that is redundant or in conflict with coverage contained in the Federal Acquisition Regulation.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Sherry Patton, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–5001.

SUPPLEMENTARY INFORMATION:

I. Background

These revisions will require contractors to display the VA Inspector General (IG) Hotline Poster and encourage contractors to establish internal reporting mechanisms or programs that will encourage their employees to report instances of fraud or mismanagement. The requirement will apply to contractors who do not have a system already established for reporting improper business practices.

As a result of the changes enacted in the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101–189, VA regulatory coverage pertaining to Procurement Integrity Act is redundant and in conflict with the coverage contained in the Federal Acquisition Regulation. VA regulatory coverage has been removed to eliminate the contradictory and redundant guidance. No comments were received from the public.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

This final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Parts 803 and 852

Government procurement.

Approved: November 30, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

Proposed Rule Adopted as Final Rule Without Change

Accordingly, the proposed rule amending 48 CFR parts 803 and 852, which was published at 57 FR 37759 on August 20, 1992, is adopted as a final rule without change.

For the reasons set forth in the preamble, 48 CFR parts 803 and 852 are amended as set forth below:

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

803.104 [Removed]

2. Section 803.104 is removed.

3. Subpart 803.70, consisting of sections 803.7000, 803.7001, and 803.7002, is added to read as follows:

Subpart 803.70—Contractor Responsibility to Avoid Improper Business Practices

803.7000 Policy.

It is the Department of Veterans Affairs (VA) policy to contract with companies that conduct business with the highest degree of integrity and honesty. To demonstrate this commitment to integrity and honesty, contractors should have standards of conduct and internal control systems that are designed to promote such standards, to facilitate the timely discovery and disclosure of improper conduct in connection with Government contracts, and to assure that corrective measures are promptly instituted and carried out. For example, a contractor's system of management controls should provide for—

(a) A written code of business ethics and standards of conduct and an ethics training program for all employees;

(b) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(c) Disciplinary action for improper conduct;

(d) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(e) Internal and/or external audits as appropriate;

(f) Timely reporting to appropriate Government officials of any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

803.7001 Display of VA hotline poster.

Contractors who are awarded a VA contract of—

(a) $500,000 or more for supplies or services, or

(b) $3 million or more for construction, and who have not established an internal reporting mechanism and program, as described in 803.7000(b), shall be required to display prominently in common work areas within business segments performing work under VA contracts, the VA hotline poster prepared by the VA Office of Inspector General.

803.7002 Contract clause.

The contracting officer shall insert the clause at 852.203–71, Display of VA hotline poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7001.

PART 852—[AMENDED]

4. The authority citation for part 852 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. Section 852.203–71 is added to read as follows:

852.203–71 Display of VA hotline poster.

As prescribed in 803.7002, insert the following clause:

Display of VA Hotline Poster

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently in common work areas within business segments performing work under VA contracts, VA Hotline posters prepared by the VA Office of the Inspector General.

(b) VA Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043–4647.

(c) The Contractor need not comply with paragraph (a) above, if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of Clause)

[FR Doc. 92–30076 Filed 12–10–92; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1805, 1806, 1807, 1809, 1815, 1817, 1827, 1828, 1833, 1835, 1837, 1839, 1842, 1845, 1849, 1852, 1853, and 1870

RIN 2700–AB25

[NASA FAR Supplement Directive 89–12]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Synopsis of Unsolicited Proposals; (2)

Phase III, SBIR Contracting; (3) Validity of Corporate Sureties, Treasury Circular 570; (4) Submission of Reports of Work by NASA Contractors; (5) Bonds and Bond-Related Forms—Nonconstruction Contractors; (6) Procurement Under the Training Act; (7) Acquisition of Federal Information Processing Resources; (8) Providing Government Facilities to Contractors; (9) Clarification of Draft RFP Policy; and (10) Revision of Clause at 1852.204–70, Report on NASA Subcontracts.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Whelan, Deputy Director, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 358–0475.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700–0042.

List of Subjects in 48 CFR Parts 1801, 1804, 1805, 1806, 1807, 1809, 1815, 1817, 1827, 1828, 1833, 1835, 1837, 1839, 1842, 1845, 1849, 1852, 1853, and 1870

Government procurement.

Don G. Bush,

Assistant Administration for Procurement.

1. The authority citation for 48 CFR parts 1801, 1804, 1805, 1806, 1807, 1809, 1815, 1817, 1827, 1828, 1833, 1835, 1837, 1839, 1842, 1845, 1849, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended as set forth below:

§ 1801.104–370 [Amended]

a. In section 1801.104–370, paragraph (e) and paragraph (f), the telephone number "453–1000" is revised to read "358–0000."

1801.370 [Amended]

b. In section 1801.370, paragraph (a)(1)(ii), the name "Nelson" is removed and the name "LaBeau" is added in its place in both occurrences.

c. In section 1801.370, paragraph (b), Consolidated Contact List, the name "LaBeau" is added and the name "Nelson" is removed.

PART 1804—ADMINISTRATIVE MATTERS

3. Part 1804 is amended as set forth below:

1804.170 [Amended]

a. In section 1804.170, paragraph (b), the citation "1832.705–270(b)" is revised to read "1831.205–70."

1804.202 [Amended]

b. In section 1804.202, paragraph (a), the zip code "21090" is revised to read "21090–2934."

1804.671–4 [Amended]

c. Section 1804.671–4, paragraph (ss) is revised to read as follows:

* * * * *

(ss) Item 40—SBIR award (1 position). Enter Code "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97–219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program. Enter Code "3" for Phase III SBIR contracts.

* * * * *

1804.671–6 [Amended]

d. In section 1804.671–6, paragraph (d) is revised to read as follows:

* * * * *

(d) All NASA funded Phase I and Phase II awards under the Small Business Innovation Research (SBIR) Program shall be coded with PPC "HS". All Phase III SBIR awards and SBIR awards funded by Agencies other than NASA shall be coded with PPC "GF".

* * * * *

1804.671–7 [Amended]

e. In the introductory text of section 1804.671–7, the phrase "(located at the end of this subpart)" is added following the phrase "Table 180–4–1" and before the phrase "is the PPC matrix."

PART 1805—PUBLICIZING CONTRACT ACTIONS

4. Section 1805.202 is revised to read as follows:

§ 1805.202 Exceptions.

The phrase "proprietary information," as used at FAR 5.202(a)(8), means information (data) that constitutes a trade secret and/or information that is commercial or financial and confidential or privileged.

PART 1806—COMPETITION REQUIREMENTS

5. Section 1806.203 is added to read as follows:

§ 1806.203 Contracting under the SBIR program.

No separate justification or determination and finding is required under this part to limit competition to eligible contractors in connection with procurement conducted under any of the three phases of the Small Business Innovation Research (SBIR) program (see 15 U.S.C. 638(e)(4)).

PART 1807—ACQUISITION PLANNING

6. Part 1807 is amended as set forth below:

§ 1807.103 [Amended]

a. Section 1807.103, paragraphs (a)(1)(ii) (C) thru (G) are redesignated as (a)(1)(ii) (D) thru (H). Paragraph (a)(1)(i)(B) is redesignated as new paragraph (a)(1)(ii)(C) and a new paragraph (a)(1)(i)(B) is added and reserved.

b. Section 1807.103, paragraphs (b)(1)(ii)(B) (*3*) thru (*7*) are redesignated as (b)(1)(ii)(B) (*4*) thru (*8*). Paragraph (b)(1)(ii)(A)(*2*) is redesignated as new paragraph (b)(1)(ii)(B)(*3*) and a new paragraph (b)(1)(ii)(A)(*2*) is added and reserved.

§ 1807.7102 [Amended]

c. Section 1807.7102, paragraphs (b)(2) (iii) thru (vii) are redesignated as paragraphs (b)(2) (iv) thru (viii). Paragraph (b)(1)(ii) is redesignated as new paragraph (b)(2)(iii) and a new paragraph (b)(1)(ii) is added and reserved.

PART 1809—CONTRACTOR QUALIFICATIONS

7. Part 1809 is amended as set forth below:

a. Sections 1809.105 and 1809.105–1 are added to read as follows:

1809.105 Procedures.

1809.105–1 Obtaining information.

When a performance or payment security requirement is included in the solicitation and the offeror proposes a corporate surety, the contracting officer shall satisfy the requirements of FAR 28.202 by obtaining the most current information from the Department of Treasury *Circular 570 Bulletin Board*, FTS (202) 874–7214. Use communications software specifications:

Baud rate: 2400
Parity: None
No. of Data Bits: 8
No. of Stop Bits: 1
Duplex: Full

1809.507 [Amended]

b. Section 1809.507, is redesignated as section 1809.506.

c. In the newly redesignated section 1809.506, paragraph (a), the citation "FAR 9.507(a)" is revised to read "FAR 9.507–2(a)."

d. In the newly redesignated section 1809.506, paragraph (b), the citation "FAR 9.507 (c)(4)" is revised to read "FAR 9.506(c)."

1809.508–2 [Amended]

e. In section 1809.508–2, the citation "FAR 9.508" is revised to read "FAR 9.507–2."

PART 1815—CONTRACTING BY NEGOTIATION

1815.507 [Removed]

8. Section 1815.507 is removed in its entirety.

PART 1817—SPECIAL CONTRACTING METHODS

9. Part 1817 is amended as set forth below:

1817.7002–2 [Amended]

a. In section 1817.7002–2, "Block 9" is revised to read "Block 7."

1817.7002–3 [Amended]

b. In section 1817.7002–3, "Block 11" is revised to read "Block 9."

PART 1827—PATENTS, DATA, AND COPYRIGHTS

10. Part 1827 is amended as set forth below:

1827.406 [Amended]

a. In section 1827.406, paragraph (b)(1)(v) is revised to read as follows:

* * * * *

(v) Submission. The required numbers of copies of the reports specified in subdivisions (i) through (iii) shall, as defined in the clause at 1852.235–70, be submitted to the contracting officer technical representative (COTR) of the contract in the absence of other instructions from the requesting activity. In addition, a reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

* * * * *

1827.409 [Amended]

b. In section 1827.409, paragraph (i) is added to read as follows:

* * * * *

(i) In accordance with 1827.406(b)(1)(v), the contracting officer shall insert the clause 1852.235–70, Center for AeroSpace Information (November 1992), in all research and development contracts and in cost-reimbursement supply contracts involving research and development work which require the delivery of reports or data to CASI.

PART 1828—BONDS AND INSURANCE

11.–12. Part 1828 is amended as set forth below:

a. Section 1828.106–1 is revised to read as follows:

1828.106–1 Bonds and bond related forms.

When the contracting officer determines that performance or payment bonds are required from construction subcontractors under any non-construction contract (see 1828.102–1), the bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

b. Subpart 1828.2 is added to read as follows:

Subpart 1828.2 Sureties

1828.202 Acceptability of corporate sureties.

When the solicitation requires the submission of a performance or payment security and the offeror proposes a corporate surety, verification procedures required by FAR 28.202 shall be supplemented by following the procedures in 1809.105–1, Obtaining information.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1831.205–70 [Amended]

12. In section 1831.205–70, the word "Incur-rence" is revised to read "Incurrence."

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.214 [Amended]

13. Section 1833.214 is redesignated as section 1833.215.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

14. Part 1835 is amended as set forth below:

1835.003–70 [Amended]

a. In section 1835.003–70, the section heading "Scientific and Technical Information Service" is revised to read "Center for AeroSpace Information."

b. In the last sentence of section 1835.003–70, "Scientific and Technical Information Service" is revised to read "Center for AeroSpace Information."

1835.070 [Amended]

c. In section 1835.070, paragraph (a), "Scientific and Technical Information Service" is revised to read "Center for AeroSpace Information."

PART 1837—SERVICE CONTRACTING

15. Subpart 1837.70 is added to read as follows:

Subpart 1837.70—Procurement of Training

Sec.
1837.7000 Scope of part.
1837.7001 General.
1837.7001–1 Purpose.
1837.7001–2 Training Act of 1958.
1837.7001–3 Competition in Contracting Act (CICA) of 1984.
1837.7001–4 Procedures.

Subpart 1837.70—Procurement of Training

1837.7000 Scope of part.

This part contains NASA-unique regulations, which have no clearly identifiable FAR counterpart, on the procurement of training.

1837.7001 General.

1837.7001–1 Purpose.

This subpart provides policy guidance on the appropriate balance between the use of CICA and the Training Act for the procurement of NASA's training requirements.

1837.7001–2 Training Act of 1958.

The Training Act of 1958 (5 U.S.C. 4101 et seq.) may be used for training

of NASA employees by, in, or through non-Government off-the-shelf training courses which are available to the public. These include established university catalog courses or commercial course offerings that are offered to the general public at catalog or market prices.

1837.7001–3 Competition in Contracting Act (CICA) of 1984.

The procurement of a new training course that must be developed to fulfill a specific NASA need should be conducted in accordance with CICA under the applicable provisions of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS).

1837.7001–4 Procedures.

(a) Installation training and procurement offices are encouraged to collaborate in selecting the type of instrument (see FAR and NFS parts 13 and 16) which is most efficient in effective procurement of training.

(b) Installations should develop internal procedures in consonance with the guidance contained herein.

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

16. Subpart 1839 is revised to read as follows:

Subpart 1839.70—NASA Procedures

Sec.

1839.7000 Scope of subpart.
1839.7001 Policy.
1839.7002 Applicability.
1839.7003 APRs from installations.
1839.7003–1 Responsibility.
1839.7003–2 FIRMR applicability and procurement authority certification.
1839.7003–3 GSA nonmandatory MAS contracts.
1839.7003–4 APR format.
1839.7003–5 APR submission.
1839.7003–6 DPA amendments.
1839.7004 FIP Resources Decision Document.
1839.7005 Coordination.
1839.7006 DPA transmittal.
1839.7007 Numbering provisions and clauses.

Subpart 1839.70—NASA Procedures

1839.7000 Scope of subpart.

This subpart prescribes the internal NASA procedures to be used by installations in obtaining General Services Administration (GSA) authorization to contract for Federal information processing (FIP) resources.

1839.7001 Policy.

(a) NASA policies and procedures on the acquisition of FIP resources are prescribed in NASA Handbook (NHB) 2410.1E, NASA Information Resources Management Handbook. See NFS 1804.470 regarding NASA policy on automated information security.

(b) The Designated Senior Official (DSO), the Associate Administrator for Management Systems and Facilities (Code J), has responsibility and accountability for interpreting, applying, and overseeing the implementation of the Federal Information Resources Management Regulations (FIRMR) within NASA. The DSO, with the concurrence of the Assistant Administrator for Procurement (Code H) and cognizant Institutional Program Office (IPO), has the responsibility for submitting agency procurement requests (APRs) to GSA to obtain delegations of procurement authority (DPAs) for FIP resources.

1839.7002 Applicability.

This subpart is applicable to all procurements of FIP resources.

1839.7003 APRs from installations.

1839.7003–1 Responsibility.

The acquisition of FIP resources is a shared responsibility of the requiring activity, the procurement officer, and the information resources management (IRM) organization.

(a) The installation's procurement officer is responsible for ensuring that the following actions are taken:

(1) Required documentation is uniquely identifiable, complete, adequate, severable, and readily available in files controlled by the contracting office.

(2) Timely submission of non-Trail Boss APRs to the cognizant IPO in accordance with 1839.7003–5.

(3) Initiating an APR for a revised DPA if events invalidate the existing DPA or require additional or modified authorization from GSA in accordance with 1839.7003–6.

(b) The contracting officer is responsible for the following actions:

(1) Determining FIRMR applicability in accordance with 1839.7003–2;

(2) Determining whether an APR should be initiated in accordance with 1839.7003–2;

(3) Ensuring that installation prescribed approvals have been obtained to allow initiation of the acquisition; and

(4) Conducting the acquisition in compliance with the DPA. This includes ensuring that solicitations are released, and contracts are executed and performed, consistent with the DPA.

(c) The Senior Installation IRM Official (SIIO) is responsible for submitting APRs to the cognizant IPO for acquisitions under the Trail Boss Program.

1839.7003–2 FIRMR applicability and procurement authority certification.

The contracting officer shall:

(a) Review the requirements and determine how the requirements will be satisfied, if FIP resources will be involved, and the categories and values of the FIP resources to be acquired or used. Each category of FIP resources (FIP equipment, FIP software, FIP services, FIP support services, and FIP related supplies) must be individually identified as accurately as possible (see FIRMR 201–4.001). FIP maintenance is considered a subset of FIP support services.

(b) Determine if the agency has authority to acquire the FIP resources by virtue of a specific agency or regulatory delegation, or if a specific acquisition delegation must be obtained. This requires comparing the requirements and individual FIP resources to the criteria and thresholds specified in FIRMR 201–20.305. NASA may contract for FIP resources without obtaining a specific acquisition delegation when the dollar value of any single category of FIP resources, including all optional quantities and periods over the life of the contract, does not exceed $2.5 million; except that the dollar value for a specific make and model specification or for requirements available from only one responsible source may not exceed $250,000.

(1) The term "FIP System" is not a separate category of FIP resources for purposes of making these determinations. If a FIP system is being acquired, its component resource categories (for example, FIP equipment, software, and so on) must be individually valued and compared to the appropriate thresholds to make the determination.

(2) If the dollar value of any individual type of FIP resource included in the basic contract, and in all modifications and optional quantities and periods over the life of the contract, exceeds the applicable dollar threshold for the regulatory or agency delegation authority, then a specific DPA is required and an APR must be prepared.

(3) If no category of FIP resources being acquired exceeds the dollar threshold, an APR is not required.

(4) FIP related supplies have an unlimited regulatory authority, without any dollar limitation, but a specific acquisition delegation may still be required for the acquisition if other categories of FIP resources are acquired which exceed the applicable thresholds.

(5) Assessments and determinations for acquisitions greater than $50,000 will be documented in the contract file with the following certification format:

(Format)

FIRMR Applicability and Procurement Authority Certification

Procurement Title: _____
Procurement Request Number: _____

The acquisition requirements have been reviewed and an assessment of the resources to be delivered or used in satisfying these requirements has been made. These resources have been characterized as either FIP or non-FIP resources. Based on FIRMR 201–1.002, including FIRMR bulletin A–1 and NHB 2410.1E, I determine that the subject procurement is_____/is not_____ subject to the FIRMR.

[Note: If the contract will involve information technologies determined to be not subject to the FIRMR (see FIRMR 201–1.002–2), explain the rationale in a separate attachment.]

If the acquisition is subject to the FIRMR, I certify that the thresholds in NFS 1839.7003–2(b) have been reviewed and that this procurement does_____/does not _____require a specific acquisition Delegation of Procurement Authority.

FIP Resources:

Equipment $ _____
Software _____
Services _____
Support Services _____
Related Supplies _____
Total FIP Resources $ _____
Non-FIP Resources $ _____
(Include incidental and embedded FIP Resources)
Total of All Resources $ _____
Contracting Officer: _____
Concurrence (if required) _____
(SIIO if $25 million or more)
(SIIO or designee if less than $25 million and required by Installation procedures)
_____Attachment: Rationale for Non-Applicability of FIRMR to FIP Resources.

(End of format)

(6) The contracting officer shall provide an information copy of the FIRMR Applicability and Procurement Authority Certification through the cognizant IPO to Code JT for acquisitions $25 million or more.

(7) Assessments and determinations for acquisitions $50,000 or less will be documented in the contract file in accordance with local procedures.

(c) Although the contracting officer has authority to make decisions concerning the applicability of the FIRMR to NASA solicitations and contracts or modifications, in the event of a disagreement within the Installation as to the applicability of the FIRMR to a NASA solicitation or contract or modification, the SIIO has the authority to make final decisions.

1839.7003–3 GSA nonmandatory MAS contracts.

(a) Use of GSA nonmandatory multiple award schedule (MAS) contracts is a competitive procedure relative to FAR Part 6 when:

(1) The contracting officer has complied with FIRMR 201–39.803–3(a)(2) to consider a reasonable number of nonmandatory MAS contractors that can satisfy the functional requirements;

(2) The contracting officer has fully complied with FIRMR 201–39.803–3(b) regarding responses to any required synopsis; and

(3) The contract file is adequately documented that the delivery order placed to the selected nonmandatory MAS contractor represents the lowest overall cost to the Government.

(b) If the procedures in paragraph (a) are followed, even though the resultant order may be issued for a specific manufacturer's product by name and model number, this is not a procurement for a specific make or model requiring a Justification For Other Than Full and Open Competition (JOFOC); the exception in FIRMR 201–39.601–2 applies.

(c) Generally a "reasonable number" means consideration of at least two compliant nonmandatory MAS contractors. Prudence would suggest considering three or more compliant nonmandatory MAS contractors.

(d) A specification that attempts to describe salient characteristics is not in itself conclusive evidence of a full and open competitive environment. The decisive factor is whether a product other than a specific make or model can satisfy the requirements expressed in such a specification. For example, if the salient characteristics were repeated off of or were derived directly from a product specification, a new product release issuance, or similar data sheet of a specific make or model or brand name, the requirements are probably not described in other than specific make or model specifications. Salient characteristics so derived are likely to be product-specific performance characteristics or proprietary design specifications. This specification, although it includes salient functional or performance characteristics, does not provide for full and open competition.

(e) Use the $2 million threshold for obtaining a DPA when use of a GSA nonmandatory MAS contract is a competitive procedure relative to FAR part 6. Use the $200,000 threshold when use of a GSA nonmandatory MAS contract is a noncompetitive procedure relative to FAR part 6.

(f) A brand name specification is a specific make or model specification and if an acquisition requires a contractor to comply with either such specifications, the acquisition must be justified and approved in accordance with FAR 6.303 and 6.304.

1839.7003–4 APR format.

(a) FIRMR 201–20.305–3 requires NASA to prepare APRs as indicated by instructions in the FIRMR Bulletin series. APRs under the Trail Boss Program will be submitted in the format provided in FIRMR Bulletin C–7, entitled "Trail Boss Program," as modified by Enclosure C–5A of NHB 2410.1E. APRs for all other FIP resources, will be submitted in the format provided in FIRMR Bulletin C–5, entitled "Instructions for Preparing an Agency Procurement Request (APR)," as modified by Enclosure C–4B of NHB 2410.1E. Installations will augment these APRs with the following additional information:

(1) Include in "FIP Resources to be acquired" the maximum contract value that includes (i) all contract options and (ii) maximum quantities under indefinite-delivery types of contracts.

(2) Describe the non-FIP resources in APRs for requirements that include non-FIP resources.

(3) Include the APR attachments required by FIRMR Bulletin C–5 and a copy of the JOFOC, if applicable.

(4) Include, as required, the documentation listed in FIRMR Bulletin C–5, paragraph 7, Regulatory Compliance; the FIP Resources Decision Document (FRDD); and the procurement plan or minutes of the acquisition strategy meeting (ASM). (If Headquarters approval of the procurement plan or minutes of the ASM is not required, indicate in the APR transmittal letter the date installation approval was given and do not include the document in the APR transmission.)

(5) Identify the NASA point of contact for GSA.

(b) The following matrix is provided to help in deciding if a document is required by the APR under Regulatory Compliance:

Type of requirement	Documentation Items										
	1	2	3	4	5	6	7	8	9	10	11
FIP equipment	R	R	A	S	P	P	P	C	C	C	T
FIP software	R	R	A	S	P	P	P	C	C	C	T
FIP services	R	R	A	S	P	N	P	C	C	C	T

Type of requirement	Documentation items										
	1	2	3	4	5	6	7	8	9	10	11
FIP support services ...	R	R	N	N	P	N	P	N	N	N	T
FIP related supplies ...	R	R	N	N	P	P	P	N	N	N	T

Documentation Items Legend

1. Requirements analysis (FRDD part 2).
2. Analysis of alternatives (FRDD part 3).
3. Determination to support hardware compatibility-limited requirements.
4. Conversion study (FRDD part 3).
5. Certified data to support a requirement available from only one responsible source (the JOFOC).
6. Certified data to support use of a specific make and model specification (the JOFOC).
7. Description of planned actions necessary to foster competition for subsequent acquisitions (the JOFOC).
8. Justification for more than one agency to provide switching facilities or services at building locations (FIRMR 201–20.305–1(a)(1)(i)).
9. Exception to the use of the FTS2000 mandatory network services (FIRMR 201–20.305–1(a)(1)(ii) and 201–24.101–1(b)).
10. Exception to the use of GSA mandatory local telecommunications services (FIRMR 201–20.305–1(a)(1)(ii) and 201–24.102(c)).
11. Trail Boss Charter and Statement of Qualification.

R=Required.
A=Required if there are compatibility limited requirements.
N=Not required.
P=Required unless full and open competition.
C=Required if telecommunications exceptions are sought.
S=Required if a conversion study must be performed for equipment, software, or services.
T=Required for a Trail Boss Acquisition.

1839.7003–5 APR submission.

(a) For non-Trail Boss acquisitions, the contracting officer shall forward the original of the APR submittal (the APR and all required documentation) to the cognizant IPO, with a transmittal letter (see NHB 2410.1E, Enclosure C–4A) signed by the procurement officer. Include a 3½" diskette, formatted for use on a DOS 3.3, or higher compatible, personal computer, that contains a WordPerfect 5.0 or 5.1 format of the APR.

(1) The transmittal letter should indicate the approval status of the JOFOC, and either when the procurement plan was approved or when the ASM was conducted and the minutes approved. The SIIO or designee will concur on the transmittal letter.

(2) The cognizant IPOs for this purpose are: The Office of Space Flight (Attn: Code MV) for Johnson Space Center, Kennedy Space Center, Marshall Space Flight Center, Stennis Space Center, and the Space Station Freedom Program Office; the Office of Aeronautics and Space Technology (Attn: Code RI) for Ames Research Center, Langley Research Center, and Lewis Research Center; and the Office of Space Science and Applications (Attn: Code SP) for Goddard Space Flight Center. For Headquarters acquisitions the Director, Headquarters Acquisition Division (Code HW), shall submit APR's directly to the Office of Management Systems and Facilities (Attn: Code JT) after concurrence by the SIIO in Code J.

(3) Concurrently, the contracting officer shall provide copies of the APR submission, including the transmittal letter, the APR, and all required documentation, to the Assistant Administrator for Procurement (Attn: Code HS) and the Associate Administrator for Management Systems and Facilities (Attn: Code JT).

(4) APR's should be submitted as soon as, but not before, the FRDD and other documentation (waivers, JOFOCs, procurement plans, or ASM minutes, as appropriate) have been completed and approved in final form within the Agency.

(b) For acquisitions under the Trail Boss Program, the SIIO shall forward the original of the APR submittal (the APR and all required documentation) to the cognizant IPO, with a diskette of the APR as specified in paragraph (a) of this section. The IPO is responsible for preparing the transmittal letter (see NHB 2410.1E, Enclosure C–4C) and forwarding the APR to Code JTD.

(c) Following receipt of the original APR from the IPO, Code JTD will further augment the APR to include the APR control number and the agency-authorized signature.

(d) The Chief, IRM Policy and Acquisition Management Office (Code JTD) signs APRs, including amendments, of less than $10 million; the Director, IRM Division (Code JT) signs APRs between $10 million and $100 million; and the Associate Administrator for Management Systems and Facilities (Code J) signs APRs $100 million or greater and all APRs for Trail Boss delegations. Code JTD is responsible for transmitting APRs to GSA.

(e) Allow a minimum of seven weeks for processing the APR and obtaining the DPA.

1839.7003–6 DPA amendments.

(a) The maximum possible cumulative dollar value of the contract(s) entered into by authority of a DPA may not exceed the value of the DPA granted by GSA. A DPA is granted on the basis of information contained in the APR. An amendment to a DPA must be obtained whenever any material change is expected from the basis on which the DPA was granted. This applies to any specific acquisition DPA, including a Trail Boss DPA. An APR shall be used to accomplish this.

(b) Amendments to a previously submitted or approved specific acquisition DPA should follow the same procedures and employ the same format as that required by the current FIRMR and NFS part 1839. For such an APR, provide only that information necessary to update the original APR and only such other information as needed to support the amendment. Explain why the amendment is necessary. The existing documentation supporting the acquisition should be reviewed and certified by the procurement officer as to its timeliness. If this documentation is either not current or affected by the amendment, the documentation shall be revised. If an original document was submitted or requested by Headquarters or GSA, its revision shall be resubmitted with the APR.

(c) The following are reasons for submitting an APR to seek an amended DPA:

(1) Any substantial change in acquisition strategy.

(2) Slippages in the solicitation schedule that exceed 12 months and affect specifically the dates to release the solicitation, to receive bids or proposals, to complete the evaluations and select, and to make an award. Slippages less than 12 months should be identified to GSA during routine status reporting.

(3) Changes affecting the non-FIP resources that occur during the solicitation period or contract term if those changes will affect the FIP resources to such an extent that the DPA will require modification.

(4) Any increase in the total FIP resources, exceeding the delegated authority. This includes any in-scope changes that cause the total contract value to exceed the APR estimate upon which the DPA was granted, and also includes all new work modifications.

(d) Contracting officers should inform Code JTD of any expected decreases greater than 25 percent in the total FIP resources to be acquired on a DPA. Code JTD will determine whether GSA should be informed of such decreases.

1839.7004 FIP Resources Decision Document.

When NHB 2410.1E provides for approval of a FIP Resources Decision Document (FRDD) at the local level, the approved FRDD, including its enclosures and attachments, must be an enclosure to the APR. Unless the FRDD has previously been sent to Headquarters, the FRDD is submitted to Headquarters along with the APR.

1839.7005 Coordination.

(a) APRs are subject to comparison with acquisition plans and general review by Code HS, Code JTD, and the cognizant IPO before submission to GSA.

(b) Communications with GSA regarding APRs shall be through Code JTD, unless that office directs otherwise. Installations should refer any direct inquiries from GSA, with the exception of acquisitions under the Trail Boss Program, without comment, to Code JTD.

(c) NASA will not normally make presentations to GSA regarding APRs unless requested by GSA. Any exceptions are subject to coordination by Code HS, Code JTD, and the cognizant IPO.

1839.7006 DPA transmittal.

(a) GSA delegates its procurement authority to the DSO. The DSO must explicitly redelegate specific acquisition DPAs to the contracting organization, before the contracting officer has authority to either issue solicitations or obligate NASA. Delegation of regulatory and specific agency procurement authority will be handled in accordance with the Associate Administrator for Management Systems and Facilities (Code J) procedures.

(b) GSA's delegations of specific acquisition authority to NASA, with the exception of acquisitions under the Trail Boss Program, are transmitted to Code J or designee (Code JTD), and are redelegated to the appropriate procurement officer by transmitting the approved APR and the signed DPA with a cover letter containing additional instructions and guidance. A copy of this entire package shall be retained in the contract file.

(c) GSA's delegations of specific acquisition authority to NASA, for acquisitions under the Trail Boss Program, are transmitted to the Trail Boss, and are redelegated to the appropriate procurement officer by transmitting the approved APR and the signed DPA with a cover letter containing additional instructions and guidance. A copy of this entire package shall be retained in the contract file.

(d) DPAs may be contingent upon the contracting officer submitting supplementary information.

(1) Post delegation review activities that may be required include:

(i) Solicitation evaluation;

(ii) Semi-annual progress report;

(iii) Post-bid briefing;

(iv) Pre-award briefing;

(v) Report of contract information;

(vi) Annual review of contract status; and

(vii) Annual review of the complete information system.

(2) Pre-award and post-award reports, when required, shall be forwarded to Code JT, through the SIIO to the Senior Program IBM Official (SPIO), within 30 days of contract award or contract modification. Code JT will review the reports and obtain Code HS concurrence prior to submission to GSA.

(e) Pre-award and post-award reports include 6-Month Status Reports and Contract Award Reports.

(1) GSA requires a 6-Month Status Report on all specific acquisition DPA's for which a contract or modification has not been awarded. The contracting officer shall submit status reports to Code JT not later than May 15 and November 15 of each year. The contents of these reports are specified in the DPA.

(2) GSA requires a Contract Award Report within 30 days after award of a contract or modification issued pursuant to a specific acquisition DPA. The contracting officer shall submit Contract Award Reports to Code JT not later than 25 days after the award of a contract or modification. These reports include:

(i) the contract or modification number;

(ii) contract or modification award date; contracting officer's name and telephone number;

(iii) anticipated contract life (number of months or years);

(iv) estimated contract dollar value of each FIP resource category to be acquired under the contract during the life of the contract;

(v) start and completion dates for the following acquisition phases: Determination of Need and Requirements Analysis, Analysis of Alternatives, Solicitation Preparation and Issuance, Proposal Evaluation and Award.

(f) Code JTD requires an Annual Status Report on all extant contracts with specific acquisition DPA's. The contracting officer shall submit an Annual Status Report to Code JT not later than November 15 of each year. If a DPA was received, or a Contract Award Report filed during the reporting period, report only the status between the receipt of the DPA or submission of the Contract Award Report through the end of the reporting period. Subsequent Annual Status Reports shall be submitted throughout the life of the contract until contract closeout.

(1) The Annual Status Report includes:

(i) the contract number:

(ii) date the contract was terminated or completed;

(iii) information on the progress made in accomplishing mission program objectives and whether they are being achieved within projected milestones or schedule and costs—address objectives, milestones or schedule, and costs established in the baseline (see paragraph (f)(2) of this section) for the information system initiative;

(iv) information on whether it is necessary to make changes to baseline, program directives, program milestones and schedule, and program costs—address specific changes and the reasons for making the changes;

(v) a signed and dated copy of the revised baseline for the information system initiative to include the total dollar value of FIP resources acquired under the contract covered by this DPA.

(2) Baseline information required in the Annual Status Report includes:

(i) Baseline Date—"as of" date when the baseline is defined.

(ii) Brief Description—the name and brief description of complete major information system initiative and appropriate mission program(s).

(iii) Program Objectives—brief description of mission program objectives that depend on successful implementation of major information system initiative, in terms of specific benefits or improvements to mission effectiveness and service delivery.

(iv) Program Milestones/Schedule—brief description of major milestones and schedule for acquisition, operation, maintenance of complete major information system initiative for accomplishing program objectives. Milestone/schedule should be organized by life-cycle phases (Definition/ Analysis, Design, Development, Operation/ Maintenance) and within phases by fiscal year quarter.

(v) Program Costs—projected in-house and contract costs for complete major information system initiative through Operation/Maintenance, presented by fiscal year quarter. Actual costs for quarters ending before baseline date. Dollar value, by contract, of FIP resources sought under contract(s) covered by requested or related DPA supporting the information system initiative.

(vi) Agency Official's Signature—signature of agency official responsible for major information system initiative.

(3) In the event a baseline is not required by the DPA, use the APR and FRDD.

(g) Questions from either GSA or the installation regarding the DPA shall be referred to Code JTD.

1839.7007 Numbering provisions and clauses.

When adherence to the FIRMR results in the use of provisions or clauses not prescribed in the FAR or NFS, use the FIRMR number and FIRMR provision or clause title.

PART 1842—CONTRACT ADMINISTRATION

1842.202–70 [Amended]

17. In section 1842.202–70, paragraph (a)(6)(iii), the word "it" is revised to read "if."

PART 1845—GOVERNMENT PROPERTY

18. Part 1845 is amended as set forth below:

a. Section 1845.302–1, paragraph (a), is revised to read as follows:

1845.302–1 Policy.

(a) The procurement officer is designated to make determinations required under FAR 45.302–1(a)(4) on authorizing the use of Government facilities.

* * * * *

b. Section 1845.302–73 is added to read as follows:

1845.302–73 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302–1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval of the D&F by the procurement officer, concurrence must be obtained from the Director of Administration or equivalent, to ensure that the requiring activity and the installation supply and equipment management officer agree to the use of the Government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity. A separate D&F is also required before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

(Format)

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [*insert the name of the contractor*] pursuant to the authority of FAR 45.302–1(a)(4).

Findings

1. The *[insert the name of the contracting activity]* and the contractor (have entered)/(proposed to enter) into Contract No. *[insert the contract number]*. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor has certified inability to acquire the facilities; or, even though the contractor is willing and financially able to acquire these facilities for its own account, the contractor has stated that time will not permit making arrangements to obtain timely delivery to meet NASA requirements. If timely delivery is the problem, state when the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Give a general description of the types of facilities to be provided and indicate the variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under $10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.)

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer

Date

(End of format)

PART 1849—TERMINATION OF CONTRACTS

1849.110 [Amended]

19. In section 1849.110, the section heading "Negotiation memorandum" is revised to read "Settlement negotiation memorandum."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Part 1852 is amended as set forth below:

1852.204–70 [Amended]

a. In the title of the clause, the date "AUG 1992" is revised to read "NOV 1992."

b. In paragraph (c) of the clause, the phrase "for performing this contract," is revised to read "for performing this contract (including facility leases),".

c. Section 1852.235–70 is revised to read as follows:

1852.235–70 Center for AeroSpace Information.

As prescribed in 1827.409(i) and 1835.070(a), insert the following clause:

Center for Aerospace Information (November 1992)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither

CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) When the contract otherwise requires the submission of monthly progress, quarterly progress, or final reports, as defined at 1827.406(b), the last page of such reports shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

(End of clause)

PART 1853—FORMS

1853.204–70 [Amended]

22. The section heading for section 1853.204–70 is revised to read "Section 1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1612, 1651 and DD Form 1593).

PART 1870—NASA SUPPLEMENTARY REGULATIONS

23. In section 1870.303, Appendix I, Chapter 4, paragraph 401, 2.f. is revised to read as follows:

1870.303 Source Evaluation Board Procedures.

* * * * *

f. A draft RFP is an effective method of obtaining industry comment on our requirements and engendering industry goodwill. A draft RFP should be used whenever it is expected to be beneficial. The draft RFP should be complete and include all applicable sections, including Sections L and M. Where appropriate, the Statement of Work or specifications may be released in advanced of the draft RFP;

* * * * *

[FR Doc. 92–29657 Filed 12–10–92; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for pollock by vessels using non-pelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 secondary bycatch allowance of Pacific halibut for the pollock/Atka mackerel/"other species" fishery in the BSAI has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), December 8, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce 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 Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 secondary bycatch allowance of Pacific halibut to the pollock/Atka mackerel/"other species" fishery, which is defined at § 675.21(b)(4)(vi), was set at 1,692 metric tons (57 FR 43926, September 23, 1992).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that U.S. fishing vessels have caught the 1992 secondary bycatch allowance of Pacific halibut for the pollock/Atka mackerel/"other species" fishery. Therefore, NMFS is closing directed fishing for pollock by trawl vessels using non-pelagic trawl gear in the BSAI from 12 noon, A.l.t., December 8, 1992, until 12 midnight, A.l.t., December 31, 1992. Non-pelagic trawl gear is any trawl other than a pelagic trawl as defined in 50 CFR 675.2.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: December 8, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30156 Filed 12–8–92; 3:30 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

NRC Program for Elimination of Requirements Marginal to Safety; Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Rescheduling of Public Workshop.

SUMMARY: On November 24, 1992, a notice was published (57 FR 55156) announcing a public workshop on January 26–27, 1993 for the NRC Program for Elimination of Requirements Marginal to Safety. This workshop is being rescheduled to expand the scope and include other aspects of the staff plans to improve the efficiency of the regulatory process. A notice providing further details will be published in the near future.

DATES: The rescheduled dates of the public workshop will be published in the near future.

ADDRESSES: The location of the public workshop will be published in the near future.

FOR FURTHER INFORMATION CONTACT: Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Phone (301) 492–3730.

Dated at Rockville, Maryland, this 4th day of December 1992.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 92–30127 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Workshops

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshops.

SUMMARY: The Nuclear Regulatory Commission (NRC) is preparing to initiate an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission intends to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff develops the draft proposed rule. The Commission plans to conduct a series of workshops to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing the radiological criteria for decommissioning. The workshops will be held in various locations throughout the United States beginning in January, 1993 and will be open to the public.

DATES: The schedule for the workshops is as follows:

January 27 and 28, 1993—Chicago, IL
February 23 and 24, 1993—San Francisco, CA
March 12 and 13, 1993—Boston, MA
March 23 and 24, 1993—Dallas, TX
April 13 and 14, 1993—Philadelphia, PA
April 29 and 30, 1993—Atlanta, GA
May 6 and 7, 1993—Washington, DC (National Workshop)

As discussed later in this notice, the workshop discussions will focus on the issues and approaches identified in a Rulemaking Issues Paper prepared by the NRC staff. The Commission will accept written comments on the Rulemaking Issues Paper from the public, as well as from workshop participants. Written comments should be submitted by May 28, 1993.

ADDRESSES: Send written comments on the Rulemaking Issues Paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The Rulemaking Issues Paper is available from Francis X. Cameron (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, Washington, DC 20555, Telephone: 301–504–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to ensure the safe and timely decommissioning of nuclear facilities which it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Once licensed activities have ceased, licensees are required to decommission their facilities so that their licenses may be terminated. This requires that the radioactivity in land, groundwater, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then demonstrate that all facilities have been properly decontaminated and that radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

The types of nuclear fuel cycle facilities that will require decommissioning include nuclear power plants; non-power (research and test) reactors; fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. In addition there are currently about 24,000 materials licensees. About one third of these are NRC licensees, while the remainder are licensed by Agreement States acting under the authority of the Atomic Energy Act, section 274. These licensees include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 50% of NRC's 7,500 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities should be relatively simple because there is usually little or no residual radioactive contamination. Of the remaining 50%, a small number (e.g. radioactive source manufacturers radiopharmaceutical producers, and

radioactive ore processors) conduct operations that could produce substantial radioactive contamination in portions of the facility. These facilities, like the fuel cycle facilities identified above, must be decontaminated before they can be safely released for unrestricted use.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and be decommissioned. Therefore, both the number and complexity of facilities that will require decommissioning is expected to increase.

The Commission believes that there is a need to incorporate into its regulations radiological criteria for termination of licenses and release of land and structures for unrestricted use. The intent of this action would be to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be decontaminated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. A rulemaking effort would also provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

The new criteria would apply to the decommissioning of power reactors, non-power reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and materials licenses. The criteria would apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. The proposed criteria would not apply to uranium (other than source material) mines and mill tailings, high-level waste repositories, or low-level waste disposal facilities.

Until the new criteria are in place, the Commission intends to proceed with the decommissioning of nuclear facilities on a site-specific basis as the need arises considering existing criteria. Case and activity-specific risk decisions will continue to be made as necessary during the pendency of this process.

The Enhanced Participatory Rulemaking

The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning. Accordingly, the Commission is initiating an enhanced participatory rulemaking to establish these criteria. The objective of the rulemaking is to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the NRC staff develops the draft proposed rule. The NRC staff will consider this commentary in the development of the draft proposed rule, as well as document how these comments were considered in arriving at a regulatory approach. The Commission believes that this will be an effective method for illuminating the decisionmaking process on complex and controversial public health and safety issues. This approach will ensure that the important issues have been identified; will assist in identifying potential information gaps or implementation problems; and will facilitate the development of potential solutions to address the concerns that affected interests may have in regard to the rulemaking.

The early involvement of affected interests in the development of the draft proposed rule will be accomplished through a series of workshops. A workshop format was selected because it will provide representatives of the affected interests with an opportunity to discuss the rulemaking issues with one another and to question one another about their respective positions and concerns. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement and disagreement, it is not the intent of the workshop process to attempt to develop a consensus agreement on the rulemaking issues. In addition to the commentary from the workshop participants, the workshops will be open to the public and the public will be provided with the opportunity to comment on the rulemaking issues and the workshop discussions at discrete intervals during the workshops.

The normal process for conducting Commission rulemakings is NRC staff development of a draft proposed rule for Commission review and approval, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, and preparation of a draft final rule for Commission approval. In the enhanced participatory rulemaking, not only will comments be solicited before the NRC staff prepares a draft proposed rule, but the mechanism for soliciting these early comments will also provide an opportunity for the affected interests and the NRC staff to discuss the issues with each other, rather than relying on the traditional one-to-one written correspondence with the NRC staff. After Commission review and approval of the draft proposed rule that is developed using the workshop commentary, the general process of issuing the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

Participants

In order to have a manageable discussion among the workshop participants, the number of participants in each workshop must be limited. Based on discussions with experts on workshop facilitation, the NRC staff believes that the optimum size of the workshop group is fifteen to twenty participants. Due to differing levels of interest in each region, the actual number of participants in any one workshop, as well as the number of participants that represent a particular interest in any one workshop, may vary. Invitations to attend the workshops will be extended by the NRC staff using several selection criteria. First, to ensure that the Commission has the benefit of the spectrum of viewpoints on the issues, the NRC staff is attempting to achieve the participation of the full range of interests that may be affected by the rulemaking. The NRC staff has identified several general interests that will be used to select specific workshop participants—state governments, local governments, tribal governments, Federal agencies, citizens groups, nuclear utilities, fuel cycle facilities, and non-fuel cycle facilities. In addition to these interests, the staff also plans to invite representatives from the contracting industry that performs decommissioning work and representatives from professional societies, such as the Health Physics Society and the American Nuclear Society. The NRC anticipates that most of the participants will be

representatives of organizations. However, it is also possible that there may be a few participants who, because of their expertise and influence, will participate without any organizational affiliation.

The second selection criterion is the ability of the participant to knowledgeably discuss the full range of rulemaking issues. The NRC staff wishes to ensure that the workshops will elicit informed discussions of options and approaches, and the rationale for those options and approaches, rather than simple statements of opinion. The NRC staff's identification of potential participants has been based on an evaluation of such factors as the extent of a potential participant's experience with a broad range of radiation protection issues and types of nuclear facilities, specific experience with the decommissioning issue, and the extent of a potential participant's substantive comment and participation on previous Commission regulatory or licensing actions.

The third criterion emphasizes participation from organizations within the region encompassed by the workshop. As much as practicable, those organizations that primarily operate within the region, as opposed to regional units of national organizations, will have priority in terms of participating in the corresponding regional workshops. Organizations with a national standing will be part of the "national" workshop to be held in Washington, DC.

Wherever possible, the NRC staff plans to arrange the participation of individual organizations in the workshops through national organizations such as the Organization of Agreement States, and the Conference of Radiation Control Program Directors (CRCPD). There will also be some flexibility to later include organizations who were not originally identified in the staff survey of potential participants. In order to provide the public with information on the types of organizations that may eventually participate in the workshops, the Commission has provided the following summary:

• State governments. The Organization of Agreement States and the CRCPD are willing to coordinate the participation of individual states in the regional workshops. The NRC staff has also notified the National Governor's Association, the Western Governors Association, the National Conference of State Legislatures, and the National Association of Attorneys General of the upcoming workshops.

• Local governments. The NRC staff has contacted the National Association of Counties and the county associations in each state to identify potential local government participants.

• Tribal governments. The NRC staff has contacted three national tribal organizations—Native Americans for a Clean Environment, the National Congress of American Indians, and the Council of Energy Resource Tribes—in regard to the participation of tribal Governments in the regional workshops.

• Citizens groups. The NRC staff has contacted several citizens groups at the national level in regard to their general interest in participating in the national workshop. The groups contacted include the Sierra Club, the Natural Resources Defense Council, the Nuclear Information Resource Service, Public Citizen, U.S. Public Interest Research Group, the League of Women Voters, the National Aububon Society, the Union of Concerned Scientists, and Physicians for Social Responsibility.

In regard to local and regional citizens groups, the NRC staff has had extensive discussions with the NRC regional personnel, state radiation protection control officials, and others, on potential citizen group participation at the regional level. Based on these discussions, the NRC staff has contacted a number of citizens groups about their potential interest in the enhanced participatory rulemaking.

• Nuclear utilities. The Nuclear Management and Resources Council (NUMARC) will coordinate the participation of utilities in the workshops.

• Fuel cycle facilities. The United States Council on Energy Awareness (USCEA) and the Fuel Cycle Facilities Forum will coordinate the participation of fuel cycle companies in the workshops.

• Non-fuel cycle facilities. The NRC staff has contacted a number of organizations in this category about potential participation in the workshops, including regional radioisotope users groups. The USCEA Committee on Radionuclides and Radiopharmaceuticals assisted in coordinating the participation of the members of these and other non-fuel cycle entities in the workshops. Participants will be drawn from radiopharmaceutical manufacturers, biomedical research radionuclide manufacturers, the medical profession, sealed source manufacturers, and the university research community.

• Decommissioning contractors. In order to ensure that information on decommissioning costs and methods are presented in the workshops, the NRC staff has contacted several of the companies that perform decommissioning work in regard to workshop participation.

• Federal agencies. The NRC staff has contacted several Federal agencies about participation in the workshops. The Environmental Protection Agency (EPA), because of its expertise and responsibilities, will not only participate in the workshops, but also has been consulted by the NRC staff on the development of the Rulemaking Issues Paper and will be consulted in the evaluation of the workshop comments. EPA has been very supportive of the Commission's enhanced participatory rulemaking and has already provided the NRC staff with assistance on this effort. EPA will be fully involved in the workshops and in providing comments to the NRC staff on the rulemaking issues. It is anticipated that the EPA will also later use the workshop commentary in the development of its regulatory approach for decommissioning. The Commission believes that this consultative approach with EPA will be an efficient way to utilize Federal resources in developing an effective and consistent federal approach to decommissioning standards.

The NRC staff has also had several discussions with the Department of Energy (DOE) about the enhanced participatory rulemaking process and potential DOE participation in the workshops. DOE has indicated a preliminary interest in participating in the national workshop. Although the Commission's decommissioning standards will generally not be directly applicable to DOE facilities, DOE possesses substantial expertise in the decommissioning area that will be a useful source of information in the national workshop. It should be noted that under the Formerly Utilized Site Remedial Action Program (FUSRAP), and in some other circumstances, DOE may take title to a licensee's or former licensee's site for cleanup and long term care, including monitoring. The NRC staff has also discussed the new rulemaking initiative with several other Federal agencies and interagency coordinating committees. The NRC staff anticipates that Federal agency participation will occur in the national workshop.

• Professional societies. The NRC staff has contacted the Health Physics Society, the American Nuclear Society, and other professional societies in regard to their potential interest in participating in the national workshop.

Workshop Location, Schedule, and Format

The Commission intends to conduct the workshops on a regional basis. Although, there will be one national workshop in Washington, DC, for organizations with a national focus, the rest of the workshops will be held at various locations throughout the United States. The national workshop is not intended to be a summary of the other workshops, and the NRC staff does not intend to give any greater weight to comments made during that workshop than to any other workshop. The regional framework will allow the Commission to hear from as many knowledgeable organizations at the local level as possible. These local organizations will bring a unique perspective to the discussion of the rulemaking issues, and the regional workshops will also give the NRC an opportunity to interact with organizations with which it has not previously had the opportunity to do so.

The existing NRC regional framework was used to select the workshop locations, with slight adjustments made to accommodate areas with a heightened interest in decommissioning activities, as well as to maximize participation in the workshops. Notification of the specific meeting locations in each of the cities that have been selected as a workshop site will be announced through publication in the **Federal Register** and letters to individual participants.

To assure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused on the Rulemaking Issues Paper discussed below. However, the workshop format will be sufficiently flexible to allow for the introduction of any additional issues that the participants may want to raise. At each workshop, the NRC staff will begin each discussion period with a brief overview of the rulemaking issues to be discussed and the remainder of the workshop will be devoted to a discussion of the issues by the participants. The workshop commentary will be transcribed and made available to participants and to the public.

Personnel from The Keystone Center, a nonprofit organization located in Keystone, Colorado, will serve as neutral facilitators for each workshop. The facilitators will chair the workshop sessions and ensure the participants are given an opportunity to express their viewpoints, assist participants in articulating their interests, ensure that participants are given the opportunity to question each other about their respective viewpoints, and assist in keeping the discussion moving at a pace that will allow all major issue areas to be addressed.

Rulemaking Issues Paper

The NRC staff has prepared a Rulemaking Issues Paper to be used as a focal point for the workshop discussions. This paper, which will be distributed to participants in advance of the workshop, sets forth in neutral terms the issues that must be addressed in the rulemaking, as well as background information on the nature and extent of the problem to be addressed. In framing the issues and approaches discussed in the Rulemaking Issues Paper, the NRC staff has attempted to anticipate the variety of views that exist on these approaches and issues. The paper will provide assistance to the participants as they prepare for the workshops, suggest the workshop agenda, and establish the level of technical discussion that can be expected at the workshops. The workshop discussions are intended to be used by the staff in developing the draft proposed rule. Prior to the workshops, no staff positions will be taken on the rulemaking approaches and issues identified in the Rulemaking Issues Paper. As noted earlier, to the extent the Rulemaking Issues Paper fails to identify a pertinent issue, this may be corrected at the workshop sessions.

The discussion of issues is divided into two parts. First are two primary issues dealing with: (1) The objectives for developing radiological criteria; and (2) application of practicality considerations. The objectives constitute the fundamental approach to the establishment of the radiological criteria, and the NRC staff has identified four distinct possibilities including: (1) Risk Limits, which is the establishment of limiting values about which the risks to the public are deemed unacceptable, but allows for criteria to be set below the limit using practicality considerations; (2) Risk Goals, where a goal is selected and practicality considerations are used to establish criteria as close to the goal as practical; (3) Best Effort, where the technology for decontamination considered to be the best available is applied; and (4) Return to Preexisting Background, where the decontamination would continue until the radiological conditions were the same as existed prior to the licensed activities.

Following the primary issues are several secondary issues that are related to the discussions of the primary issues, but which the NRC staff believe warrant separate presentations and discussions. These secondary issues include the time frame for dose calculation, the individuals or groups to be protected, the use of separate criteria for specific exposure pathways such as groundwater, the treatment of radon, and the treatment of previously buried materials.

The Rulemaking Issues Paper will be provided to each potential workshop participant. Additional copies will be available to members of the public in attendance at the workshop. Copies will also be available from the NRC staff contact identified above. In addition to the comments on the Rulemaking Issues Paper provided to the workshops, the Commission is also receptive to the submittal of written comments on the rulemaking issues, as noted under the heading "**DATES**".

Dated at Rockville, MD, this 2nd day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–29710 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 54

Standard Design Certification Rulemaking Procedures; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available to the public a paper, SECY 92–381 (November 10, 1992), prepared by the Office of the General Counsel (OGC) which provides final recommendations to the Commission on design certification rulemaking procedures for the initial design certification rulemaking.

ADDRESSES: Requests for copies of SECY 92–381 should be sent to Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of SECY 92–381 may be examined, along with comments received on the draft OGC paper (SECY–92–170), and the transcript of a July 20, 1992 workshop on design certification procedures, at the NRC Public Document Room at 2120 L Street, NW, (Lower Level), Washington, DC between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, telephone: (301) 504–1639.

SUPPLEMENTARY INFORMATION: Under 10 CFR part 52, designs for nuclear power plants are to be certified through rulemaking, in which the public has an opportunity to submit written comments on the proposed design certification rule, as required by the Administrative Procedure Act (APA). However, part 52 goes beyond the requirements of the APA by providing the public an opportunity to request a hearing before an Atomic Safety and Licensing Board (Licensing Board) in the design certification rulemaking. Although hearings in NRC rulemakings are not unprecedented, *e.g.*, the rulemaking associated with proposed adoption of the Generic Environmental Statement on Mixed Oxide Fuel (GESMO), they have been extremely rare and *sui generis*, and therefore provide no compelling precedent on what procedures should be followed here.

To assist the Commission in preparing for the first design certification rulemaking proceeding, OGC prepared a draft paper, SECY 92–170 (May 8, 1992) which identified and analyzed issues relevant to establishing procedures to govern design certification rulemaking. SECY 92–170 was made public by the Commission (57 FR 24394; June 9, 1992), and a Commission meeting on the paper was held on June 1, 1992. Thereafter, in SECY 92–185 (May 19, 1992), OGC proposed holding a public workshop for the purpose of facilitating public discussion on the issues raised in SECY 92–170, and to obtain the comments of the public on those issues. Notice of the workshop was published in the **Federal Register** (57 FR 24394; June 9, 1992). A 30-day period following the workshop was provided for the public to submit written comments on SECY 92–170. The workshop was held on July 20, 1992. A transcript was kept of the workshop proceedings and placed in the Public Document Room. Approximately 46 persons outside of the NRC attended the workshop; an additional 8 persons requested copies of the SECY paper and workshop materials, but did not attend. Eleven written comments were received following the workshop.

After consideration of the panel discussions at the public workshop and the written comments received after the workshop, OGC has prepared SECY 92–381 which identifies and analyzes the issues relevant to design certification rulemaking procedures, and provides final recommendations to the Commission. Five principal issues on design certification rulemaking procedures were identified in SECY–92–170. SECY 92–381 now provides final recommendations on each of these issues, as described below.

The first issue is the scope of the Atomic Safety and Licensing Board's responsibilities in a design certification rulemaking hearing. OGC recommended preliminarily that the Licensing Board act as "limited magistrate" to compile a record on controverted issues and certify the record to the Commission for resolution. After consideration of written public comments and the discussions at the public workshop, OGC now recommends an approach similar to that of a "full magistrate." Under this approach, the Licensing Board would have the option of, but not be required to, prepare recommendations on controverted hearing issues.

The second issue is whether the Commission should apply *ex parte* and/or separation of function limitations to the Commission (and Licensing Board, as applicable) in the design certification rulemaking proceeding. OGC recommended preliminarily that where hearings are held in design certification rulemakings, that the Commission apply limited separation of functions. This would allow the Commission to obtain the advice and assistance of the staff members who participated in the review of the design certification application and any hearing, but that such communications would occur in a public process, *e.g.*, preparation of SECY papers in response to Commission SRMs, and public meetings between the Commission and the staff. In the absence of a hearing, the Commission could obtain the advice and assistance of the staff the same as in any ordinary rulemaking. In SECY 92–381, OGC continues to recommend this approach. OGC also recommends in SECY 92–381 that regardless of whether hearing requests are received, that *ex parte* limitations be followed from the time that an NPR is published, so that all Staff and Commission communications with persons outside the NRC on all substantive rulemaking matters (not just controverted issues) be docketed.

Third, SECY 92–170 discussed whether a threshold should be adopted by the Commission for a hearing request submitted by an interested member of the public in a design certification. OGC recommended preliminarily that a person requesting an informal hearing be required to: (a) Submit written comments in the written comment period; (b) submit the written presentations proposed to be included in the informal hearing; and (c) demonstrate that they, or persons they intend to retain to represent them in the informal hearing, have the qualifications to contribute significantly to the development of the hearing record on the controverted issues. OGC now recommends in SECY 92–381 that a person requesting an informal hearing need only: (a) Submit the written presentations proposed to be included in the informal hearing; and (b) demonstrate that they, or persons they intend to retain to represent them in the informal hearing, have the qualifications to contribute significantly to the development of the hearing record on the controverted issues. OGC no longer recommends the proposed third requirement for submission of written comments, since it is largely duplicative of the requirements to submit the written presentations. OGC also recommends that the Commission make clear that a person need not meet the test of an "expert witness" in order to satisfy the qualifications requirement. Rather, the person must demonstrate that, because of knowledge, experience, education or training, he or she can contribute significantly to the development of the record on the controverted issue.

The structure and timing of the hearing, including the time for filing informal hearing requests and requests for additional procedures, is the fourth area requiring Commission guidance. OGC recommended preliminarily that informal hearing requests be filed concurrently with the time for submitting written comments, which OGC preliminarily recommends be set normally at 90 days. If the Commission grants the informal hearing requests, OGC recommended preliminarily that parties be provided the opportunity to make oral presentations before the Licensing Board, and that the Licensing Board be permitted to ask questions at the oral hearing without any special finding by the Licensing Board. Requests for additional procedures or full formal hearings under 10 CFR part 2, subpart G, would normally be submitted at the time the outlines of the oral presentations are due, which OGC preliminarily recommended should be filed 30 days before the oral hearing. Thereafter, a special showing would have to be made for an untimely request for additional hearing procedures or a full formal hearing. As a result of additional consideration following the public comments, OGC now recommends that a 120-day period be provided for submitting written comments and requests for informal hearings. OGC also has changed its recommendation with respect to the

timing of requests for additional procedures or full formal hearing. OGC now recommends that parties should file their requests for additional procedures or a formal hearing at the conclusion of the oral phase of the hearing, with the exception of requests for discovery. Discovery requests would be filed with the Licensing Board within 15 days of the Commission's grant of an informal hearing. The Licensing Board would refer meritorious request to the Commission for final determination.

Finally, the use of, and access to, proprietary information in the design certification rulemaking was discussed in SECY 92–170. OGC recommended preliminarily that both "Tier 1" and "Tier 2" design certification information should not contain any proprietary information. In addition, OGC recommended preliminarily that access to proprietary information be provided following docketing of the design certification application, and that non-disclosure agreements be used in order to obtain access to proprietary information from the NRC's public document room (PDR). In SECY 92–381 OGC now proposes two alternatives for addressing the incorporation of proprietary information into a design certification rulemaking. The first alternative is that all important design information in Tiers 1 and 2 be non-proprietary, although proprietary information could be referenced as a basis for both tiers. The second alternative is to seek a formal opinion from the Office of the Federal Register on incorporation by reference of proprietary information into Tier 2. With respect to public access to proprietary information, OGC proposes three alternatives for Commission consideration. The first alternative would require potential commenters and parties in design certification hearing to seek access to proprietary information directly from the design certification applicant. Disputes over access would be resolved by the Commission or the Licensing Board, as appropriate. Access to proprietary information would await the initiation of the formal rulemaking proceeding (publication of an NPR). Access would be provided to all persons who would sign a non-disclosure statement. The second alternative would be the same as the first, except that the persons seeking access would have to provide an affidavit explaining why access to proprietary information is necessary to provide comments and shows that the person has the necessary expertise to use the information and contribute significantly to the rulemaking record. The final alternative would grant access only to parties in any rulemaking hearing which the commission authorizes. Access would be granted only to parties who can show that the proprietary information is relevant to the issues at the hearing, the non-proprietary information is insufficient to adequately address the issues in the hearing, and that the party seeking access has the necessary expertise to use the information and contribute significantly to the rulemaking record.

The Commission is making SECY 92–381 available to the public to enhance public awareness of the design certification rulemaking process. The Commission will establish the procedures to be followed in the first design certification rulemaking proceeding (excepted to be for the General Electric (GE) Advanced Boiling Water Reactor (ABWR)) in the notice of proposed rulemaking for that design certification.

Dated at Rockville, MD this 7th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–30124 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932 and 933

[No. 92–741]

Members of the Banks

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board (Finance Board) proposes to revise in its entirety its current regulations concerning membership in the Federal Home Loan Bank System (FHLBank System) in response to changes made to the Federal Home Loan Bank Act (Bank Act) by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The proposed membership regulation clarifies membership eligibility requirements and procedures for applicants for membership in the FHLBank System. In addition, it clarifies access to noncredit services provided by the FHLBanks. The Finance Board also proposes to include in the revised regulations several sections of its existing regulations concerning the transfer of Federal Home Loan Bank (FHLBank) stock in consolidations and reorganizations of member institutions.

DATES: Comments must be submitted to the Finance Board by February 9, 1993.

ADDRESSES: Send comments to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, (202) 408–2930, Attorney-Advisor, Jon E. Boustany, (202) 408–2932, Attorney-Advisor, or Bruce W. McDougal, (202) 408–2505, Attorney-Advisor, Office of Legal and External Affairs, or Amy R. Maxwell, (202) 408–2882, Assistant Director, District Banks Directorate, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Pre-FIRREA Membership Procedures

Prior to the enactment of FIRREA (Pub. L. 101–73, 103 Stat. 183 (Aug. 9, 1989)), the FHLBank System was regulated by the former Federal Home Loan Bank Board (Bank Board). Because of the multiple roles of the Bank Board, the review and approval of FHLBank membership applications for Federally and state chartered savings associations was done simultaneously with the review and approval of applications for deposit insurance and applications for Federal charters. As a condition to obtaining deposit insurance from the Federal Savings and Loan Insurance Corporation (FSLIC) (now the Savings Association Insurance Fund (SAIF)), Federally and state chartered savings associations were required to become members of the FHLBank System. In addition, all Federally chartered savings associations were and are required to be members of the FHLBank System. Consequently, the former Bank Board concurrently approved an applicant's membership in the FHLBank System at the time it approved its FSLIC deposit insurance, and in the case of applicants for a Federal charter, its charter.

Insurance companies and state chartered savings banks insured by the Federal Deposit Insurance Corporation (FDIC) also were eligible but not required to join the FHLBank System. In contrast to FLSIC-insured savings associations, these voluntary members were subject to a different application process. The Bank Board delegated the authority to approve membership applications of eligible voluntary members to the Principal Supervisory Agents (PSAs) of the Bank Board, who were generally the FHLBank Presidents. See 12 U.S.C. 1437 (1989); see also 12 CFR 523.3–3 and 541.18 (1989). This

practice continued until the enactment of FIRREA.

B. Changes Made To Bank Act By FIRREA

FIRREA made several changes to the Bank Act, which resulted in changes to FHLBank membership rules and procedures. Section 702(a) of FIRREA created the Finance Board and transferred from the former Bank Board to the Finance Board the responsibility for the supervision and regulation of the twelve FHLBanks. 12 U.S.C. 1422a(a) (Supp. I 1989). The Bank Board's authority to charter Federal savings associations was transferred to the Office of Thrift Supervision (OTS). The Bank Board's authority to administer deposit insurance for savings associations was transferred to the FDIC.

Section 702 of FIRREA also amended the Bank Act to limit the Finance Board's ability to delegate its authority to the FHLBanks. *Id.* at 1422b. Specifically, section 2B(b)(1) of the Bank Act provides, in pertinent part, that in no event shall the Board delegate any function to any employee, administrative unit of any FHLBank, or joint office of the FHLBank System. The prohibition does not apply to the delegation of ministerial functions including issuing consolidated obligations pursuant to 12 U.S.C. 1431(b).

Accordingly, the Finance Board may delegate only ministerial, as opposed to discretionary, functions to the FHLBanks. A ministerial function of an agency is an action based on mandatory directives that leave no room for discretionary decisions. See *Berkovitz* v. *United States*, 486 U.S. 531 (1988). Since the current process of reviewing membership applications involves discretionary decisions by a reviewer, all membership applications since the enactment of FIRREA have been subject to approval by the Finance Board.

FIRREA also made significant changes to the membership eligibility criteria in section 4 of the Bank Act. 12 U.S.C. 1424. First, FIRREA permitted commercial banks and credit unions to become members for the first time. *Id.* at 1424(a). This change was in recognition of the fact that such institutions have demonstrated substantial commitment to providing credit for the purchase or construction of residential housing. See 135 Cong. Rec. S. 10206 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle).

Second, FIRREA added the requirement that an insured depository institution have at least 10 percent of its total assets in residential mortgage loans in order to be eligible to become a member of an FHLBank. 12 U.S.C. 1424(a)(2)(A) (Supp. I 1989) (the "10 percent" requirement). This requirement was added to ensure that only applicants that demonstrate a significant commitment to residential mortgage lending acquire access to FHLBank System benefits. Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424–25 (1989) (FIRREA Conference Report).

Section 2B(a)(1) of the Bank Act empowers the Finance Board, *inter alia*, to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of the Bank Act, including regulations on membership in the FHLBank System. 12 U.S.C. 1422b(a)(1) (Supp. I 1989). The Finance Board's current regulations on membership in the FHLBank System were originally promulgated by the former Bank Board at 12 CFR part 523. The Finance Board, pursuant to its authority in section 2B(a)(1) to administer the Bank Act, adopted and redesignated the former Bank Board's membership regulations at 12 CFR part 933. See 54 FR 36757 (Sept. 5, 1989). However, these regulations were designed to administer membership eligibility requirements that were contained in the Bank Act prior to FIRREA.

In order to address the significant changes that FIRREA has made to the membership eligibility criteria in the Bank Act, the Finance Board is proposing to revise its membership regulations in their entirety.

II. Analysis of Proposed Rulemaking

A. Membership Application Approval Process

Section 933.2 of the proposed rule sets forth the review and approval process for applications for membership in an FHLBank. Under § 933.2(d) of the proposed rule, membership in the FHLBank System would continue to be automatic for those members which are Federally chartered savings associations. Section 5(f) of the Home Owners' Loan Act (HOLA) makes membership in the FHLBank System automatic for all Federal savings associations or Federal savings banks upon receiving their Federal charters. 12 U.S.C. 1464(f) (Supp. I 1989). The Finance Board believes that the factors considered by the OTS when reviewing an application for a Federal charter are the same factors which would be considered by the Finance Board, and therefore that it is not necessary to require these institutions to file an additional application for membership with the Finance Board. Thus, upon receipt of its Federal charter, a Federal savings association or Federal savings bank would automatically become a member of the FHLBank of the district in which its principal place of business is located. No application for membership must be filed. In addition, under proposed §§ 933.2(d) and 933.7(b), such institutions would have 30 calendar days from receipt of their Federal charters to purchase stock in that FHLBank.

Under § 933.2(e) of the proposed rule, a member that converts to a different charter would automatically become a member on the effective date of such conversion, if the resulting institution continues to be an insured depository institution. (For a more detailed discussion of § 933.2(e), see the discussion below regarding Sasser amendment and Oakar amendment transactions).

Under proposed § 933.2(a), all other institutions seeking membership in an FHLBank are required to submit application forms to the FHLBank which satisfy Finance Board requirements. Under proposed § 933.2(b), the application is then sent to the Finance Board for approval.

Under § 933.4 of the proposed rule, a limited portion of the applications for membership may be approved by the board of directors of a FHLBank if all of the conditions set forth in policy guidelines established by the Finance Board are met. The board of directors of an FHLBank may further delegate the authority to approve applications to the President or other senior officers of the FHLBank.

B. Membership Eligibility Requirements

Section 4(a)(1) of the Bank Act, as amended, defines the types of financial institutions eligible to become members of the FHLBank System to include any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. 12 U.S.C. 1424(a)(1) (Supp. I 1989). An eligible institution must meet the membership criteria of section 4 of the Bank Act in order to become a member of the FHLBank System. *Id.* at 1424. There are two separate sets of membership requirements in section 4 of the Bank Act which institutions must meet in order to become members of the FHLBank System. These are discussed in turn below.

The criteria set forth in section 4(a)(1) of the Bank Act apply to all applicants for membership in the FHLBank System. Section 4(a)(2) of the Bank Act

provides that the criteria set forth therein apply to "insured depository institutions." The Finance Board has supervisory authority over the FHLBanks, as well as the duty to ensure that the FHLBanks operate in a financially safe and sound manner, and carry out their housing finance mission consistent with safety and soundness. See 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (as amended). The Finance Board has determined that, pursuant to such authority, the section 4(a)(2) criteria shall, as a matter of policy, apply to insurance company applicants as well as insured depository institutions. The reasons for this determination, as well as requests for comments on specific issues it raises, are discussed more fully in C. below.

1. Section 4(a)(1). General Membership Requirements

Under the section 4(a)(1) membership requirements, an institution shall be eligible for FHLBank membership if:

(A) The institution is duly organized under the laws of any state or of the United States;

(B) The institution is subject to inspection and regulation under the banking laws, or under similar laws, of the state or of the United States; and

(C) The institution *makes* such *home mortgage loans* as, in the judgment of the Board, are *long-term* loans (the "makes" test).

12 U.S.C. 1424(a)(1) (A) through (C) (Supp. I 1989) (emphasis added).

While the requirements of paragraphs (A) and (B) are straightforward, there are three separate components of the "makes" test that must be defined (*i.e.*, "home mortgage loans," "long-term," and "makes"). The proposed rule expounds on each of these components.

a. Definition of home mortgage loans. A "home mortgage loan" is defined in the Bank Act as a loan made by a member upon the security of a home mortgage. *Id.* at 1422(5). A "home mortgage" is defined generally as a mortgage upon real estate upon which is located one or more homes or other dwelling units, all of which may be defined by the Board, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate. *Id.* at 1422(6).

Based on the above statutory definitions, it is reasonable to conclude that a "home mortgage loan" is essentially a loan secured by a first mortgage on real property with one or more structures designed primarily for residential use. See also 75 Cong. Rec. 12609 (1932) (remarks of Rep. Hancock, stating that the term is defined to mean a first mortgage on residential real estate housing).

The Finance Board proposes in § 933.1(j) to define the term "home mortgage loan" as:

(1)(i) A loan, whether or not fully amortizing, which is secured by a mortgage, a deed of trust or other security agreement, or an interest in such a loan, which creates a first lien on one of the following interests in domestic real property:

(A) One-to-four family property or multifamily property, in fee simple;

(B) A leasehold on one-to-four family or multifamily property under a lease not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed;

(ii) The term home mortgage loan shall not include a loan secured by nonresidential real property, or combination business or farm property;

(2) A mortgage pass-through security which represents an undivided ownership interest in:

(i) loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(ii) securities which represent an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(3) Any loans which the Board in its discretion otherwise determines are home mortgage loans.

One-to-Four Family Property

Current Finance Board practice is to include loans secured by first mortgages on one-to-four family property as satisfying the statutory definition of "home mortgage loan" because they are traditional home loans secured by real estate upon which is located one or more dwelling units. The Finance Board proposes in § 933.1(r) to define the term "one-to-four family property" similarly to the definition found in the FDIC Report of Condition and Income (Call Report), with several exceptions. The term is defined specifically as follows:

(1) Real property containing one-to-four dwelling units, or real property containing more than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if (i) applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property, and (ii) the loan to purchase the manufactured housing is secured by that manufactured housing and such security interest is evidenced by a mortgage or other lien on real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

A "dwelling unit" is defined in proposed § 933.1(h) as a single, unified combination of rooms designed for residential use by one household. This proposed definition is intended to incorporate a single-family home, a residence in a building containing one-to-four units, and a residence in a multifamily building of five or more units.

Inclusion of manufactured housing loans secured by real estate under state law within the proposed definition of "home mortgage loan" would continue current Finance Board practice of including such loans as satisfying the "makes" test. A "manufactured housing loan" is defined in proposed § 933.1(n) by reference to the definition in the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(b). (See also 12 CFR 545.45.) The legislative history of FIRREA supports the inclusion of manufactured housing loans as satisfying the "makes" test where state law treats the collateral as real property. Specifically, the FIRREA Conference Report states that all references to housing in FIRREA are intended to include manufactured housing, but not temporary shelters such as recreational vehicles or campers which are designed to be moved frequently. See FIRREA Conference Report at 437.

As under the Call Report, loans secured by one-to-four family property would not include land development loans, which are loans secured by real estate made to finance land improvements preparatory to erecting structures, such as laying sewers, water pipes, etc. The proposed definition of "home mortgage loan" also does not include property securing "residential construction loans" (see proposed § 933.1(i)). Since land development and construction loans are generally not secured by property upon which is located one or more homes or dwelling units (which is required by the statutory definition of "home mortgage loan"), they are not included in the proposed definition of "home mortgage loan." In addition, these loans generally have terms to maturity of five years or less and, therefore, would not be "long-term," as required under the "makes" test. (See discussion of "long-term" below.)

The proposed definition of "one-to-four family property" varies from the Call Report definition in several

respects. First, the definition excludes vacant lots (or unimproved property) in established one-to-four family sections or in areas set aside primarily for one-to-four dwelling units. This would be a continuation of current Finance Board practice to exclude loans on unimproved property from satisfying the "makes" test because the statutory definition of "home mortgage loans" requires that the loans be secured by real estate upon which is located one or more dwelling units.

Second, unlike the Call Report definition, the proposed definition results in the exclusion of loans secured by junior liens on one-to-four family property (such as home equity loans) from satisfying the "makes" test. This is because the statutory definition of "home mortgage loans" requires that they be secured by first mortgages or liens. This would continue the current Finance Board practice of excluding such loans under the "makes" test.

Multifamily Property

Current Finance Board practice is to exclude loans secured by first mortgages on multifamily property from satisfying the "makes" requirement because they are not traditional one-to-four family loans. In contrast to one-to-four family properties, multifamily properties may be purchased for investment purposes, rather than for use as primary residences. In addition, multifamily properties may have a mixed use, *e.g.*, part residential, and part commercial.

However, the statutory definition of "home mortgage loans" can be interpreted to include multifamily loans that are secured by a first mortgage on real estate. The Finance Board believes that it is appropriate to expand the type of loans that meet the "makes" test to include this type of multifamily lending. This interpretation is consistent with the housing finance mission of the FHLBanks.

Accordingly, the Finance Board proposes in § 933.1(j) to include loans secured by a first mortgage on multifamily property within the definition of "home mortgage loan," and to define the term "multifamily property" in § 933.1(p) in a manner similar to the Call Report. "Multifamily property" is defined specifically as follows:

(1) Real property containing five or more dwelling units;

(2) Real property containing five or more dwelling units with commercial units combined, provided the property is primarily residential.

For the reasons discussed above, this definition follows the Call Report and current Finance Board practice and does not include land development loans, certain residential construction loans, and loans secured by vacant lots.

Mortgage Pass-Through Securities

As the term is used in proposed § 933.1(j)(2), a mortgage pass-through security represents an undivided ownership interest in one or more loans or in securities representing interests in loans. The holder of a mortgage pass-through security receives a *pro rata* share of the interest and principal repayments from the underlying pool of mortgage loans or mortgage-backed securities.

For purposes of the "makes" test, the Finance Board currently treats mortgage pass-through securities as if they were the mortgage loans underlying the securities. The Finance Board proposes to continue this approach. Therefore, "home mortgage loan" is defined in proposed § 933.1(j)(2) to include mortgage pass-through securities which represent an undivided ownership interest in one or more loans or securities representing an undivided ownership interest in loans, all of which loans independently satisfy the definition of "home mortgage loan" (*i.e.*, first mortgage loans, etc.) at the time of issuance of the security.

Collateralized mortgage obligations (CMOs) and other mortgage debt securities technically do not represent an ownership interest in the underlying pool of mortgage loans. Instead, they represent a debt obligation that is secured by the underlying mortgage loans. Although an argument can be made that mortgage debt securities should be included as home mortgage loans, because the secondary mortgage market generally does not make distinctions between mortgage pass-through securities and mortgage debt, the Finance Board has concluded that, for purposes of this proposed rule, a security must represent an ownership interest in home mortgage loans in order to satisfy the "makes" test. However, as discussed in 2.a. below, mortgage debt securities will continue to satisfy the "10 percent" requirement.

It should be noted that, if mortgage debt securities were included in the definition of home mortgage loans, members' minimum stock purchase requirements would be increased. This is because the stock purchase requirement is based on the member's "aggregate unpaid loan principal," which is defined in section 6(b)(4) of the Bank Act as home mortgage loans, home-purchase contracts, and similar obligations. 12 U.S.C. 1426(b)(4) (Supp. I 1989).

Other Loans

The proposed definition of "home mortgage loan" in § 933.1(j) also would include any loans which the Finance Board in its discretion otherwise determines are home mortgage loans. For example, the Finance Board could use this provision to determine on a case-by-case basis that other types of loans and new loan products can be used to satisfy the "makes" test.

The proposed definition of "home mortgage loan" follows current Finance Board practice in generally excluding loans secured by "nonresidential real property" (see proposed § 933.1(q)). The proposed rule defines "nonresidential real property" generally to include properties such as business and industrial properties, churches, dormitories, hotels, "homes" for the elderly, golf courses, hospitals, nursing homes and farm property not containing dwelling units. These categories of property are typically nonresidential in nature and generally are treated as nonresidential by the Federal banking agencies for financial reporting purposes. However, the proposed definition provides the Finance Board the discretion to determine, on a case-by-case basis, that specific properties are more residential than nonresidential in nature and that loans secured by a first mortgage on such properties should therefore be treated as "home mortgage loans" for purposes of satisfying the "makes" test.

In addition, the proposed definition generally excludes loans secured by real property that is not only used for residential purposes, but also for business or farm purposes and which is not considered primarily residential (combination business or farm property) (see proposed § 933.1(f)). Such property is predominantly commercial or agricultural in nature and generally is treated as such by the Federal banking agencies for financial reporting purposes. However, as discussed above, the proposed definition of "home mortgage loan" provides the Finance Board the discretion to determine, on a case-by-case basis, that specific combination loans are more residential than nonresidential in nature, and therefore may be treated as "home mortgage loans" under the "makes" test.

b. Long-term requirement. Section 4(a)(1)(C) of the Bank Act requires that an applicant for membership in the FHLBank System make such home mortgage loans as, in the judgment of the Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C) (Supp. I 1989). At the time of enactment of the Bank Act, home mortgage loans generally consisted of

non-amortizing straight-line mortgage loans, which required repayment of the total outstanding principal at the end of the maturity period, usually three to five years. See 75 Cong. Rec. 12608 (June 10, 1932 (remarks of Rep. Hancock); see also 75 Cong. Rec. 12605 (June 10, 1932) (remarks of Rep. Overton) and 75 Cong. Rec. 14644 (July 6, 1932) (remarks of Sen. Copeland). The legislative history of the Bank Act indicates that Congress intended to create an alternative to such short-term non-amortized credit. *Id.* At the same time, in drafting this provision, Congress gave the Finance Board discretion in defining "long-term."

In defining "long-term," the Finance Board has weighed the legislative history against the reality of the marketplace today. The Finance Board proposes to define a "long-term home mortgage loan" in § 933.1(m) as a home mortgage loan with a term to maturity of greater than five years. Many financial institutions currently offer mortgage loans with maturities of three to 10 years, in lieu of or in addition to the traditional 15- or 30-year mortgage loan, in response to the demands and preferences of the institutions' customers. Most of these loans are balloon payment loans with maturities ranging from three to 10 years and payments amortized over 15, 25, or 30 years. Since they have reduced interest sensitivity and risk, these loans can be funded less expensively than a fully amortizing 30-year loan. Consequently, the loan often can be offered to customers at lower rates than the fully amortizing variety. The lower interest rate and the reduced principal payment resulting from a 30-year amortization schedule often enable customers to finance the purchase of homes in circumstances where fully amortizing 15- or 30-year loans are unsuitable to their needs. From the institution's standpoint, 5-, 7-, or 10-year non-fully amortizing loans present no incremental interest rate or funding risk, if they are properly funded.

Moreover, given the fact that most residential mortgage loans are refinanced (or repaid through the sale of the residence) in fewer than 10 years from origination, these types of loans actually reflect the realities of most customers' habits and actions. For borrowers who plan to stay in their homes fewer than 10 years, balloon payment loans may provide a lower-cost, fixed-rate alternative to a 15- or 30-year fixed-rate mortgage loan. These circumstances account in large part for the growing availability of these types of loans at financial institutions.

In view of the foregoing, inclusion of home mortgage loans with maturities of greater than five years among the categories of loans which qualify an institution for FHLBank membership recognizes marketplace realities, and further helps promote the availability of affordable home financing to customers consistent with the FHLBank System's basic mission. Home mortgage loans with maturities of five years or less, regardless of whether the loans fully amortize, generally represent too short a maturity to meet the intent and purpose of the Bank Act based on the legislative history of the Bank Act as discussed above. Finally, the greater-than-five-year standard for "long-term" also would be consistent with the definition of "long-term advance" set forth in the Finance Board's community support regulation, 12 CFR 936.1(n), 56 FR 58639 (Nov. 21, 1991), and § 935.1 of the Finance Board's proposed advances regulation, 57 FR 45338 (October 1, 1992).

Proposed § 933.1(m) defines a "long-term home mortgage loan" as "a home mortgage loan with a term to maturity of greater than five years, or any other home mortgage loan which the Board in its discretion determines is a long-term loan." The Finance Board may determine on a case-by-case basis in taking action on membership applications that certain loans with an original maturity of five years or less meet the "long-term" standard. For example, a mortgage with a term to maturity of five years or less that permits refinancing without requalification may be considered "long-term" despite being of shorter duration than otherwise permitted. This flexibility is built into the proposed rule in order to permit the Finance Board to respond to innovations in mortgage financing without requiring changes to the rule.

The proposed rule does not distinguish between fully amortizing loans and loans that are not fully amortizing. Changes in the mortgage marketplace over the past 60 years have greatly reduced the concerns which existed concerning mortgage loans which are not fully amortizing. In 1932, when the Bank Act was originally enacted, there was considerable concern regarding a borrower's ability to refinance a balloon payment. Today, mortgage financing is more readily obtainable, particularly if the borrower has over five years to secure that refinancing.

Therefore, the Finance Board proposes including within the definition of "long-term home mortgage loan" any home mortgage loan with a term to maturity of greater than five years, regardless of whether the loan is non-amortizing, not fully amortizing, or fully amortizing.

C. *Definition of "makes".* The Bank Act provides that an institution is eligible for FHLBank membership if it makes such home mortgage loans as, in the judgment of the Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C) (Supp. I 1989). This provision is implemented in § 933.3(a)(3) of the proposed rule.

Both the Finance Board and its predecessor, the Bank Board, have interpreted "makes" to include both originating and purchasing qualifying loans, as well as mortgage-backed securities backed by qualifying loans. See Opin. Gen. Couns., Bank Board (Jan. 25, 1988). The Finance Board proposes to continue using this definition of "makes".

The proposed rule includes the assets of an institution's consolidated subsidiaries in the calculation of the "makes" test. This permits applicants that have chosen to use subsidiaries to originate or purchase home mortgage loans or mortgage-backed securities to include those assets in meeting the requirements for membership. The proposed rule defines a "consolidated subsidiary" in § 933.1(g) as a subsidiary of a member whose assets and liabilities are consolidated with those of the member for purposes of reports filed with the member's appropriate Federal banking agency. This definition is intended to reduce or eliminate the need for accounting adjustments on the part of the applicant or FHLBank staff, since it is based on the consolidation standards used by the applicant's appropriate Federal banking agency.

2. Section 4(a)(2). Membership Requirements

Section 933.3(a) (4) through (6) of the proposed rule implements the membership requirements set forth in section 4(a)(2) of the Bank Act. 12 U.S.C. 1424(a)(2). As noted above and discussed more fully below, the Finance Board proposes to apply these requirements to insurance company applicants as well as insured depository institutions. The proposed rule lists the requirements as follows:

(A) The institution has at least 10 percent of its total assets in residential mortgage loans;

(B) The institution's financial condition is such that advances may be safely made to such institution; and

(C) The character of the institution's management and its home-financing policy are consistent with sound and economical home financing.

The proposed rule defines "residential mortgage loans" as used in

the 10 percent requirement. See proposed § 933.1(s). In addition, the proposed rule allows an applicant to include the assets of its consolidated subsidiaries when calculating the 10 percent requirement, as is permitted in calculating home mortgage loans under the "makes" test.

a. *Residential mortgage loans.* The term "residential mortgage loans" is not defined in the Bank Act or current Finance Board regulations. However, the legislative history of FIRREA, which added the 10 percent requirement, provides some guidance on the types of loans Congress intended to include within the 10 percent requirement.

The legislative history of FIRREA indicates that the 10 percent requirement is a product of a compromise between the Senate and the House of Representatives. The compromise reduced the threshold percentage requirement from 60 percent of assets in "Qualified Thrift Investments" (QTIs) under the "Qualified Thrift Lender" (QTL) test in section 10(m) of the HOLA, 12 U.S.C. 1467a(m), to 10 percent of assets in "residential mortgage loans." It is thus reasonable to look, in part, for guidance at the types of loans (*i.e.*, QTIs) that qualify for the QTL test under the QTL regulation implementing section 10(m), 12 CFR part 563 (56 FR 31061 (July 9, 1991)), in determining the types of loans that satisfy the 10 percent requirement.

In contrast to the "makes" test, which requires that institutions make "long-term" home mortgage loans, section 4(a)(2)(A) of the Bank Act has no similar long-term requirement for residential mortgage loans. Therefore, there is no statutory requirement that the years to maturity and the amortization period for residential mortgage loans be defined for the 10 percent requirement.

One-to-Four Family, Multifamily, and Funded Residential Construction Loans

Explicit language in the legislative history indicates that 1–4 family, multifamily and funded residential construction loans are includable as "residential mortgage loans" for purposes of the 10 percent requirement. See FIRREA Conference Report at 428. Current Finance Board practice is to include such loans as satisfying the 10 percent requirement.

The Finance Board proposes to continue including such loans by defining the term "residential mortgage loans" in proposed § 933.1(s) to include: (1) Home mortgage loans (as defined in proposed § 933.1(j)); and (2) funded residential construction loans (as defined in proposed § 933.1(i)). See discussion above. As discussed earlier, "home mortgage loans" would be defined generally to include loans secured by first mortgages on one-to-four family property and multifamily property. A "funded residential construction loan" is defined in proposed § 933.1(i) as the portion disbursed to the borrower of a loan secured by real property made to finance the on-site construction of one-to-four or multifamily dwelling units.

Consistent with the proposed "makes" test and current Finance Board practice, land development loans which finance land improvements preparatory to erecting structures would not be includable under the 10 percent requirement. This is because, unlike residential construction loans, it is uncertain that the activities financed by land development loans will result in residential housing construction.

The proposed "residential mortgage loans" definition follows the proposed "makes" test and current Finance Board practice in excluding loans secured by nonresidential property (see proposed § 933.1(q)). While certain of these loans (*e.g.*, nursing homes, churches, schools, hospitals) are included in the limited category of QTIs subject to percentage restrictions under the QTL regulation, the Finance Board proposes to follow the Federal banking agencies which generally treat such loans for financial reporting purposes as nonresidential in nature. See 12 CFR 563.51(f)(vi) (D) and (E). However, as discussed above, the proposed definition provides the Finance Board with the discretion to determine, on a case-by-case basis, that specific loans may be more residential than nonresidential in nature, and therefore should be treated as "residential mortgage loans" for purposes of satisfying the 10 percent requirement.

The proposed definition of "residential mortgage loans" generally excludes combination business or farm property (see proposed § 933.1(f)), since this type of property is predominantly commercial or agricultural in nature and generally is treated as such by Federal banking agencies for financial reporting purposes, and excludes loans on vacant property. However, the Finance Board has the discretion to determine, on a case-by-case basis, that specific combination loans are more residential than nonresidential in nature, and therefore may be treated as "residential mortgage loans" under the 10 percent requirement.

Manufactured Housing Loans Not Secured by Real Estate

Although manufactured housing loans not secured by real estate may be treated by Federal banking agencies as consumer loans for some purposes, they are residential in nature, as residents often live in such housing on a full-time, permanent basis. Accordingly, the Finance Board proposes to include such loans in the proposed definition of "residential mortgage loans" as satisfying the 10 percent requirement. This would be a change from the current Finance Board practice of excluding such loans from satisfying the 10 percent requirement. Manufactured housing loans secured by real estate under state law are included in the definition of "home mortgage loans" and, therefore, also could be used to meet the 10 percent requirement.

Loans Secured by Junior Liens

Current Finance Board practice is to include loans secured by junior liens on one-to-four family or multifamily property in calculating the 10 percent requirement. These loans are secured by residential real property, and in contrast to the "makes" test, need not be secured by first mortgages or liens in order to be used to meet the 10 percent requirement. In addition, home equity loans are specifically included in the unlimited category of QTIs not subject to percentage restrictions under the QTL test. See 12 U.S.C. 1467a(m)(4)(C)(ii)(II); 12 CFR 563.51(f)(1)(ii). Loans secured by junior liens also appear to be included in the unlimited category of QTIs under the QTL regulation. See 12 CFR 563.51(f)(1)(i). Accordingly, the Finance Board proposes to continue including loans secured by junior liens on one-to-four family or multifamily property as satisfying the 10 percent requirement, by defining the term "residential mortgage loans" in § 933.1(s) to include these loans.

Residential Loans in Process

Residential loans in process are mortgage loan commitments under which the proceeds have not yet been disbursed to the borrower. For example, construction loans where the funds are not released until specific conditions are met are loans in process. *See* Thrift Financial Report, Schedule SC–280. Current Finance Board practice is to exclude residential loans in process from satisfying the 10 percent requirement. The proposed definition of "residential mortgage loans" continues this practice of excluding residential loans in process.

Consumer Loans

Consumer loans (*i.e.*, loans for personal, family, household or educational purposes) are included in the limited category of QTIs subject to

percentage restrictions under the QTL regulation. See 12 CFR 563.51(f)(1)(vi)(F). However, such loans are treated as nonresidential loans by the Federal banking agencies for financial reporting purposes. Current Finance Board practice is to exclude such loans from satisfying the 10 percent requirement.

The proposed definition of "residential mortgage loans" continues the Finance Board practice of excluding consumer loans, notwithstanding their QTL treatment, because of their nonresidential nature. As discussed above, however, manufactured housing loans would be included under the 10 percent requirement because of their residential purpose.

Mortgage-Backed Securities

As discussed above, there is a reasonable basis for looking at QTIs in determining what loans qualify as "residential mortgage loans" under the 10 percent requirement. QTIs include securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing. 12 U.S.C. 1467a(m)(4)(C)(ii)(III); 12 CFR 563.51(f)(1)(iii). Based on the QTI definition, the Finance Board proposes to include within the definition of "residential mortgage loans" not only mortgage pass-through securities, which also are included in the definition of "home mortgage loans" for purposes of the "makes" requirement, but mortgage debt securities as well.

Mortgage debt securities can consist of collateralized mortgage obligations (CMO), mortgage-backed bonds; stripped instruments such as interest-onlys trips (I/O) or principal-only strips (P/O), or CMO residuals. This list of securities is meant to be illustrative and not exhaustive of the types of investments which qualify as mortgage debt securities in the continually evolving secondary mortgage market. The proposed rule requires that mortgage pass-through and mortgage debt securities be entirely backed by assets which meet the definition of "residential mortgage loans" (*i.e.*, home mortgage loans, etc.) at the time of issuance of the security, in order to satisfy the definition of "residential mortgage loans" under the 10 percent requirement.

As discussed above under the "makes" test, CMOs and other mortgage debt securities do not represent an equity interest in the underlying mortgage loans. Under the proposed rule, the mortgage loans collateralizing a CMO could be counted as a "residential mortgage loan" by the institution issuing a CMO and the CMO could be counted as a "residential mortgage loan" by a different institution that owns the CMO for purposes of meeting the 10 percent requirement. In essence, the same mortgage assets could be used twice to meet the 10 percent requirement. The Finance Board is concerned about permitting these assets to be double counted, and specifically requests comment on whether CMOs and other mortgage debt securities should be included in the definition of "residential mortgage loans" under the 10 percent requirement.

Home Mortgage Loans Secured by Leaseholds

The definition of "residential mortgage loan" in proposed § 933.1(s) also includes home mortgage loans secured by leasehold interests, as defined in proposed § 933.1(j), except that the period of the lease term may be of any duration. These loans are included because they are residential in nature, and the duration of the lease term does not impact on the residential nature of such loans.

Other Loans

The proposed definition of "residential mortgage loan" in § 933.1(s) also includes any other loans which the Finance Board in its discretion otherwise determines are residential mortgage loans. The Finance Board could use this provision to determine on a case-by-case basis when it is reviewing and taking action on applications that other types of loans and new loan products satisfy the 10 percent requirement.

b. Financial condition. Section 4(a)(2)(B) of the Bank Act requires that, in order to be eligible for FHLBank membership, an insured depository institution's financial condition must be such that advances may be safely made to it. 12 U.S.C. 1424(a)(2)(B). Section 933.3(a)(5) of the proposed rule implements this requirement.

c. Character of management and home-financing policy. The Bank Act requires that the character of an insured depository institution's management and its home-financing policy be consistent with sound and economical home financing in order to be eligible for FHLBank membership. 12 U.S.C. 1424(a)(2)(C). Section 933.3(a)(6) of the proposed rule implements this requirement.

The Finance Board believes that an institution's commitment to and record of performance in meeting the credit needs of its entire community, including low- and moderate-income residents and neighborhoods, is an integral part of a sound home-financing policy. Currently, the Finance Board reviews Community Reinvestment Act (CRA) ratings of commercial bank and thrift applicants to evaluate their compliance with the home-financing policy requirement. The Finance Board specifically requests comment on the use of CRA ratings, or some other test or tests, for purposes of satisfying this requirement.

Currently, insurance company and credit union applicants are asked to provide evidence of their housing- and community-related activities for purposes of compliance with the home-financing policy requirement. Insurance companies and credit unions are not subject to the CRA and therefore do not receive such ratings. Thus, a comparable or alternative test is necessary to evaluate compliance of such applicants with this requirement. The Finance Board specifically requests comment on appropriate methods to determine compliance by such applications with the home-financing policy requirement.

C. Membership Eligibility Requirements for Insurance Companies

As noted earlier, section 4(a)(1) of the Bank Act, as amended, defines the types of financial institutions eligible to become members of the FHLBank System as follows: any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. 12 U.S.C. 1424(a)(1) (Supp. I 1989). Insurance companies have been eligible to become members of the FHLbank System since the original enactment of the Bank Act in 1932. See 47 Stat. 726 (July 22, 1932).

Insurance company applications for membership currently are considered by the Finance Board on a case-by-case basis. The following section discusses the various statutory eligibility criteria applicable to insurance companies, and raises specific issues for which the Finance Board seeks public comment in determining what standards should apply to insurance companies.

1. Section 4(a)(1). Membership Requirements

In order to be eligible to become a FHLBank member, an insurance company applicant must meet the membership requirements set forth in subparagraphs (A) through (C) of paragraph 4(a)(1) of the Bank Act, 12 U.S.C. 1424(a)(1)(A)–(C), and proposed § 933.3(a) (1) through (3). These requirements are discussed further below.

a. The institution is duly organized under the laws of any State or of the United States. 12 U.S.C. 1424(a)(1)(A). This requirement is straightforward and presumably would be satisfied by all insurance company applicants. *See* proposed § 933.3(a)(1).

b. The institution is subject to inspection and regulation under the banking laws, or under similar laws, of any state or of the United States. 12 U.S.C. 1424(a)(1)(B). See proposed § 933.3(a)(2). All insurance companies are subject to inspection and regulation by state insurance departments in their state of incorporation, as well as by the states in which they are licensed to do business. State insurance laws are similar to Federal banking laws in that they require regulatory monitoring of compliance with minimum capital and reserve requirements, financial condition, asset valuation and compliance with various consumer related requirements. However, some states may require more rigorous inspection and regulation of insurance companies than other states, and some states may not conduct inspections of insurance companies at all or may not conduct on-site inspections. The Finance Board specifically requests comment on whether the degree of inspection and regulation imposed by a particular state should be a factor in determining whether an insurance company applicant satisfies the "inspection and regulation" requirement.

c. The institution makes such home mortgage loans as, in the judgment of the Finance Board, are long-term loans. Id. at 1424(a)(1)(C). Insurance company applicants would be subject to the same requirements under the "makes" test as are applicable to other depository institution applicants. *See* proposed § 933.3(a)(3). In other words, the types of loans and investments previously discussed which meet the definitions of "long-term" and "home mortgage loans" under proposed § 933.1 also would count towards satisfaction of the "makes" test for insurance company applicants. Thus, insurance company applicants could use mortage pass-through securities backed by qualifying long-term home mortgage loans (see definition of "home mortgage loan" in proposed § 933.1(j)), to meet the "makes" test. This would be a continuation of the Finance Board's current practice of including mortgage-backed securities towards satisfaction of the "makes" test. It would also permit an insurance company to become a member even if it did not originate mortgage loans.

2. Section 4(a)(2). Membership Requirements

Section 4(a)(2) of the Bank Act also establishes membership eligibility requirements, including the 10 percent requirement, which are applicable to an insured depository institution that is not a member on January 1, 1989. See 12 U.S.C. 1424(a)(2). The Finance Board proposes to apply all of these eligibility requirements to all applicants for membership, including insurance company applicants. See proposed § 933.3(a) (4) through (6).

The argument could be made that because an insurance company is not an "insured depository institution," as defined in section 2(12) of the Bank Act, see *id.* at 1422(12), it is not subject to the section 4(a)(2) requirements. Language in the legislative history of FIRREA (which added the 10 percent requirement) also suggests that Congress intended that the 10 percent requirement, (and possibly all of the second set of membership criteria in section 4(a)(2)), apply to insured depository institutions such as commercial banks and credit unions. See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. 222, 101st Cong., 1st Sess. 424–25 (1989); 135 Cong. Rec. S. 10206 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle).

However, while section 4(a)(2) of the Bank Act refers to insured depository institutions, it does not provide that only such institutions are subject to the membership eligibility requirements set forth in that section. Under the Bank Act, the Finance Board's primary duty is to ensure that the FHLBanks operate in a financially safe and sound manner. In addition, to the extent consistent with its primary duty, the Finance Board is responsible for, *inter alia*, supervising the FHLBanks, and ensuring that the FHLBanks carry out their housing finance mission. See 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (as amended). Pursuant to these general powers, the Finance Board may determine, as a matter of policy, that some or all of the section 4(a)(2) membership eligibility requirements should apply to insurance company applicants. In addition, prior to the FIRREA amendment to the Bank Act, the financial condition, character of management and home-financing policy requirements were applicable to insurance companies, see 47 Stat. 726 (July 22, 1932), and it is not clear why such requirements should not continue to apply to insurance companies.

The Finance Board specifically requests comment on whether, as a threshold matter, any or all of the section 4(a)(2) eligibility requirements should not apply to insurance company applicants. In this regard, the Finance Board also requests comment on whether other provisions of the Bank Act applicable to approved FHLBank members, such as the requirement that long-term advances be used only for residential housing finance, the collateral requirements for advances, the QTL restrictions, or the community support requirements, sufficiently promote the FHLBanks' housing finance mission and safe and sound operation so as to justify not applying any or all of the section 4(a)(2) membership eligibility requirements to insurance company applicants. See 12 U.S.C. 1430(a), (e), (g). Each of the membership eligibility requirements set forth in section 4(a)(2) is discussed further below.

a. The institution has at least 10 percent of its total assets in residential mortgage loans. See id. at 1424(a)(2)(A). See proposed § 933.3(a)(4). The types of "residential mortgage loans" under proposed § 933.1(s) which would satisfy the test for insurance company applicants.

The Finance Board is aware that some large insurance companies may not be able to meet the 10 percent requirement because they are not primarily residential mortgage lenders. However, even though the insurance company fails the 10 percent requirement, it could be one of the largest mortgage originators in the state. In other words, the dollar amount of residential assets could be large, but when compared to the total assets of the company, such residential assets could constitute less than 10 percent of total assets. The Finance Board specifically requests comment on whether a different test that achieves the same objectives as the 10 percent requirement should apply to insurance company applicants, and if so, what that test should be.

b. The institution's financial condition is such that advances may be safely made to such institution. See 12 U.S.C. 1424(a)(2)(B). See proposed § 933.3(a)(5). Because each state examines and regulates insurance companies according to its own regulatory, examination, accounting and compliance standards, there is no single objective measurement of insurance company financial condition that can be applied to all insurance companies nationwide. For example, insurance companies do not receive CAMEL or MACRO ratings.

The Finance Board is in the process of gathering information on how various state insurance departments examine and rate the financial condition of

insurance companies. This information will be used to assist the Finance Board in establishing a standard or standards that the Finance Board can apply consistently to all insurance company applicants in determining whether the insurance company's financial condition is such that advances may be safely made to it. The Finance Board specifically requests comment on what standard or standards should be established under this membership eligibility requirement.

c. The character of the institution's management and its home-financing policy are consistent with sound and economical home financing. See 12 U.S.C. 1424(a)(2)(C). See proposed § 933.3(a)(6). A depository institution applicant's management can be evaluated, in part, by reviewing the management component of the CAMEL or MACRO rating in its regulatory examination. Insurance companies do not receive such ratings.

The Finance Board is in the process of gathering additional information on how various state insurance departments examine and rate the character of management of insurance companies. This information will assist the Finance Board in establishing a standard or standards that the Finance Board will apply consistently to all insurance company applicants in determining whether the character of the insurance company's management is consistent with sound and economical home financing.

As discussed more fully above, insurance companies do not receive CRA ratings which could otherwise be used to evaluate the companies' home-financing policies. Therefore, a comparable or alternative test is necessary to evaluate compliance of insurance company applicants with the home-financing policy requirement. The Finance Board specifically requests comment on appropriate methods to determine compliance by such applicants with the home-financing policy requirement.

d. One-year grace period. See 12 U.S.C. 1424(a)(2). Section 933.3(b) of the proposed rule applies to a member that has recently commenced business operations. Such a member is given one year from the date of commencing its initial business operations to meet the 10 percent requirement, as required by section 4(a)(2) of the Bank Act. Although section 4(a)(2) of the Bank Act by its terms applies to insured depository institutions, the Finance Board proposes to apply this section to insurance company members as well. The Finance Board specifically requests comment on this proposal.

D. Membership at Principal Place of Business

Under section 4(b) of the Bank Act, institutions eligible to become members may become members only of the FHLBank of the district in which their "principal place of business" is located, or of a FHLBank in an adjoining district if demanded by convenience and with the approval of the Finance Board. See 12 U.S.C. 1424(b) (Supp. I 1989). This requirement is implemented in § 933.5(a) of the proposed rule.

The Bank Act does not define the term "principal place of business." Section 933.5 of the Finance Board's existing regulations defines the term generally as the state in which the institution maintains its "principal office." See 12 CFR 933.5 (1992). The term "principal office" is not defined anywhere in the Finance Board's existing regulations that were transferred from the Bank Board. However, the Finance Board's regulations do define "principal place of business" as the state in which the member maintains its home office established as such in conformity with the laws under which the member is organized. See 12 CFR 931.24. This is essentially the same as the definition of "principal office" which was in the former Bank Board's regulations at the time the Bank Board's regulations were transferred to the Finance Board. See 12 CFR 561.7 (1989). The Finance Board has decided to continue to use this definition. Accordingly, proposed § 933.5(b) provides that unless otherwise designated, an institution's principal place of business will continue to be the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

The proposed rule also makes changes to the ability of a member to transfer its membership to a different FHLBank district. Prior to FIRREA, the PSAs of the FHLBanks had the authority to apply certain regulatory criteria in order to ascertain whether or not a member's charter accurately reflected its true principal place of business. See 12 CFR 523.3–2(c) (1989). The review was aimed at assuring the accessibility, validity and reliability of supervisory information.

The proposed rule eliminates the use of supervisory considerations in determining which FHLBank district is the district of the member's "principal place of business" because, after FIRREA, the FHLBanks no longer supervise their members. Under § 933.5(c) of the proposed rule, a member or an applicant for membership may request in writing that a state other than the state in which it maintains its home office be designated as its principal place of business. The board of directors of the Bank in the district where the institution maintains its home office shall designate within 90 days of receipt of such written request a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following factors are satisfied:

(1) At least 80 percent of the institution's accounting books, records or ledgers are maintained, located, or held in such state;

(2) A majority of meetings of the institution's board of directors and constituent committees are conducted in such state; and

(3) A majority of the institution's five highest paid officers have their place of employment located in such state.

However, under § 933.5(d) of the proposed rule, no designation done pursuant to § 933.5(c) may take effect until the FHLBank districts involved reach agreement on an orderly method of transfer of membership. If the FHLBanks fail to reach an agreement, the Finance Board determines the conditions of the transfer.

Under proposed § 933.5(f), if the board of directors of a FHLBank fails to make the designation requested by the member or applicant pursuant to proposed § 933.5(c), then the member or applicant can request in writing that the Finance Board make the designation.

The Finance Board specifically requests comment on whether the provisions on determination of principal place of business should allow members greater flexibility to move their membership to a different FHLBank district. The Finance Board recognizes that some members do business nationwide. It is therefore interested in comments as to how restrictive it should be in permitting transfers between FHLBank districts. What would be the advantages and disadvantages in having a less restrictive or more restrictive rule? What impact, if any, would a rule permitting members greater flexibility to transfer membership have on the FHLBank System?

E. Stock Requirements

1. Minimum Stock Purchase

Section 6(b) of the Bank Act requires all members to purchase FHLBank stock equal to one percent of the member's "aggregate unpaid loan principal," but not less than $500. 12 U.S.C. 1426(b) (Supp. I 1989). The term "aggregate

unpaid loan principal" is defined in proposed § 933.1(b) as the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home purchase contracts, and similar obligations. See 12 U.S.C. 1426(b)(4) (Supp. I 1989). The term "home mortgage loan" is defined in proposed § 933.1(j). See 12 U.S.C. 1422(5) (Supp. I 1989). In order to ensure that the FHLBanks are applying the definition uniformly, the Finance Board will issue guidelines to the FHLBanks setting forth the method to be used in making these calculations. The Finance Board intends to phase in the uniform guidelines over a period of time in order to mitigate any burden on the FHLBanks as they adjust their capital levels to comply with the new uniform guidelines.

Unlike insured depository institutions, insurance companies do not have standardized financial reporting forms which could be used to calculate their minimum stock purchase requirements. The Finance Board specifically requests comment on how the stock purchase requirement should be calculated for insurance companies.

In addition, section 10(e)(3) of the Bank Act requires each member to purchase FHLBank stock as if at least 30 percent of its assets were home mortgage loans. *Id.* at 1430(e)(3). If an institution's portfolio of home mortgage loans falls below 30 percent of its total assets, section 10(e)(3) requires it to compute its minimum stock purchase as if it has 30 percent of its total assets in home mortgage loans. Thus, a member is required to maintain FHLBank stock equal to at least one percent of 30 percent of its total assets.

Section 933.7(a) of the proposed rule implements the minimum stock purchase requirements in sections 6(b) and 10(e)(3) of the Bank Act. The stock requirements under these sections are mandatory minimum levels of stock a member must hold under the Bank Act.

2. Timing of Stock Purchase

Section 6(c) of the Bank Act establishes the point in the application process at which an applicant for membership in the FHLBank System is required to pay for its minimum stock purchase. 12 U.S.C. 1426(c) (Supp. I 1989). Section 6(c) provides generally, in pertinent part, that stock subscriptions shall be paid for at the time of application therefore, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months. *Id.*

Section 933.7 of the Finance Board's existing regulations interprets section 6(c) to require an applicant to subscribe for stock when it submits an application for membership. 12 CFR 933.7 (1992). However, the regulation creates confusion as to when an applicant actually becomes a member. Section 2(4) of the Bank Act defines the term "member" as any institution which has subscribed for the stock of a FHLBank. 12 U.S.C. 1422(4) (Supp. I 1989). Thus, if an applicant subscribes for stock at the time it submits its application for membership with a FHLBank, the applicant meets the definition of a "member" under the Bank Act before the application has been approved.

Section 933.7(b) of the proposed rule, in conjunction with the proposed definition of "member" in § 933.1(o), provides that an applicant need not pay for stock until its application for membership in a FHLBank has been approved. Upon approval, the applicant has 30 calendar days in which to pay its minimum stock purchase. In the alternative, the applicant (at its election) may pay for the stock in installments. The first one-quarter installment must be paid within 30 calendar days, and a further sum of not less than one-fourth of the total amount payable shall be paid at the end of each succeeding period of four months until the total is paid. If the applicant fails to pay for its minimum stock purchase or its first quarterly installment within 30 calendar days of its approval for membership, the approval shall be rescinded and the applicant will be required to submit a new application for membership. The applicant may apply in writing to the Finance Board for an extension of time within which to purchase its minimum stock requirement. The Finance Board may approve such request not to exceed 30 days upon evidence of good cause. The stock purchase requirements for "Sasser amendment" and "Oakar amendment" transactions are discussed in paragraph 5, below.

An applicant may withdraw from consideration for membership at any point up until it purchases stock in a FHLBank. An applicant approved for membership becomes a member at the time it pays for its minimum stock requirement or pays for the first installment of its minimum stock requirement. Further, since the institution is deemed a member once it has purchased its first installment, it is entitled to the privileges of membership including the ability to obtain advances from its FHLBank. However, the institution's borrowing capacity would be limited by the advances-to-capital stock requirements in sections 10(c) and 10(e) of the Bank Act. See 12 U.S.C. 1430(c) and 1430(e). If it then fails to pay the remaining installments due on its minimum stock requirement, the Finance Board would have the discretion to remove the institution from membership pursuant to § 933.14 of the proposed rule.

3. Adjustments in Holdings

Section 933.9 of the proposed rule repeats the requirements of § 933.9 of the Finance Board's existing regulations regarding adjustments in minimum stock holdings, but also amends it to clarify that a FHLBank shall calculate a member's minimum stock holdings annually, using calendar year-end financial data provided by the member to the Bank each year, in accordance with proposed § 933.18(d).

4. Stock Holdings After the Consolidation of Members

a. Institutions in same district. The proposed rule redesignates § 932.5 of the Finance Board's existing regulations (12 CFR 932.5 (1992)) as paragraph (a) of § 933.11 of the proposed rule. Section 932.5 of the Finance Board's existing regulations governs the treatment of FHLBank stock in a consolidation of two or more members located in the same FHLBank district into one institution operating under the charter of one of the consolidating institutions. See 12 CFR 932.5 (1992). Under proposed § 933.11(a), the stock of the disappearing institution(s) may be redeemed as long as the consolidated institution holds the minimum amount of stock required under proposed § 933.7(a), based on the total assets and borrowings of the consolidated institution.

b. Institutions in different districts. The proposed rule adds new § 933.11(b), which governs the treatment of FHLBank stock in a consolidation of two member institutions located in different FHLBank districts into one institution operating under the charter of one of the consolidating institutions (interdistrict consolidation). In an interdistrict consolidation, the disappearing institution's membership terminates upon cancellation of its charter, except when more than 80 percent of the assets of the consolidated institution are derived from the disappearing institution. In such cases, the disappearing institution's membership shall continue and the membership of the other institution shall be terminated upon consummation of the consolidation. Although the consolidated institution would be a

member of a different FHLBank district, it could be required to hold the FHLBank stock of the FHLBank of which it is no longer a member for as long as that FHLBank requires that the stock be held as collateral securing any indebtedness to the FHLBank. Such indebtedness would be liquidated in an orderly manner as determined by the FHLBank. Upon the completion of such liquidation, the FHLBank shall redeem the stock in a manner prescribed in § 933.16 of this proposed rule and the consolidated institution would be paid for the redeemed stock.

The consolidated institution would be entitled to receive dividends on the stock of the FHLBank of which it is no longer a member, since holders of FHLBank stock share in dividend distributions without preference. See 12 U.S.C. 1426(g) (Supp. I 1989). However, the consolidated institution would not be allowed to vote such shares in an election of directors of the FHLBank, since the consolidated institution is not a member of that FHLBank. See 12 U.S.C. 1424(b) (Supp. I 1989). Further, the consolidated institution may not include the stock of the FHLBank of which it is no longer a member in its calculation of the number of votes it is allowed to cast in an election of directors of the FHLBank in which it is a member, since such stock represents an ownership interest in a different corporate entity. See *id.* at 1427(b).

5. Charter Conversion and Reorganization Transactions

The so-called "Sasser amendment" authorizes an SAIF-insured savings association to convert to a commercial bank or state chartered savings bank, but requires that the deposits of the resulting institution remain insured by the SAIF. 12 U.S.C. 1815(d)(2)(G) (1989) (Sasser amendment transactions). The insurance of these deposits may not be transferred from the SAIF to the Bank Insurance Fund (BIF) until after August 9, 1994. 12 U.S.C. 1815(d)(2)(A)(ii) (1989).

The so-called "Oakar amendment" authorizes a commercial bank or BIF-insured savings bank to merge with, consolidate with, or acquire the assets of, an SAIF-insured savings association. See Federal Deposit Insurance Corporation Improvement Act (FDICIA), Public Law 102–242, section 501, 105 Stat. 2236 (Dec. 19, 1991) (Oakar amendment transactions). The Oakar amendment institution must continue to pay premiums to SAIF on the deposits attributable to the former savings association unless the deposits are transferred to the BIF. As with Sasser amendment transactions, this cannot be done until after August 9, 1994.

The OTS currently conditions its approval of Sasser amendment and Oakar amendment transactions by requiring the resulting institution to retain the association's stock in the FHLBank System for as long as SAIF premiums are being assessed on the deposits transferred from the association, in accordance with the requirements of the Finance Board.[1] This condition has given rise to considerable legal and operational confusion in the FHLBank System as to the appropriate treatment of such institutions for purposes of FHLBank membership and stock holding requirements. The proposed rule establishes the rules for retention of such stock in Sasser amendment and Oakar amendment transactions.

a. Sasser amendment transactions. The proposed rule amends existing § 932.6 of the Finance Board's regulations and redesignates it as § 933.2(e). This redesignated section addresses the treatment (for purposes of membership and stock holding requirements) of a savings association member that has converted to another charter.

Under § 933.2(e) of the proposed rule, when a member savings association converts to a new charter and continues to be an insured depository institution, the resulting institution shall automatically become a member on the effective date of such conversion. See 12 U.S.C. 1815(d)(2)(A)(ii) (Supp. I 1989). This is because the newly chartered institution is identical to the former institution except for its form of charter. No application for membership thus would be required.

However, after converting its charter to that of a commercial bank or state savings bank, the institution may withdraw from membership in its FHLBank because it is not required by law to be a FHLBank member. While section 6(e) of the Bank Act prohibits Federal savings associations from withdrawing from FHLBank membership, there is no such statutory authority to prohibit commercial banks or state savings banks from withdrawing from membership. See 12 U.S.C. 1426(e) (Supp. I 1989). As with any other institution exiting the FHLBank System, the Sasser amendment institution must file with the Finance Board and its FHLBank a written notice six months before it withdraws. It would not be permitted to reacquire membership in any FHLBank for a period of 10 years. See 12 U.S.C. 1426(e) and (h) (Supp. I 1989), and proposed § 933.13(a).

Once the Sasser amendment institution terminates its membership in the FHLBank System, it may not continue to hold FHLBank stock since, under the Bank Act, only member institutions may own FHLBank stock. In such cases, the Sasser amendment institution would be required to repay all outstanding advances and its capital stock in the FHLBank would be redeemed. *See id.* at 1426(e). Such liquidation of advances and redemption of stock would be administered in accordance with § 933.16 of this proposed rule.

b. Oakar amendment transactions. The proposed rule amends existing § 932.4 of the Finance Board's regulations and redesignates it as § 933.12. This redesignated section addresses the membership and stock holding requirements of institutions that acquire members in an Oakar amendment transaction.

Under § 933.12 of the proposed rule, when an institution that is not a FHLBank member acquires FHLBank stock as a result of acquiring the assets of a member, the acquiring institution may not continue to hold the FHLBank stock unless it becomes a member of the FHLBank System. Under the proposed rule, the acquiring institution would have 60 calendar days after the effective date of the reorganization to notify the FHLBank that it intends to apply for membership. If such notification is given, and as long as an application is filed within 60 calendar days of such notification, the FHLBank may permit the acquiring institution to continue to hold any outstanding FHLBank advances and the FHLBank stock owned by the disappearing institution pending a determination on the membership application. If the acquiring institution fails to apply for FHLBank membership, or if its application is denied, it would be required to repay all outstanding advances to the FHLBank. Such advances shall be liquidated in an orderly manner as determined by the FHLBank. As the advances are liquidated, the FHLBank may redeem outstanding FHLBank stock on a *pro rata* basis. However, the institution's stock holdings shall not be reduced to an amount less than that required by sections 10(c) and 10(e) of the Bank Act,

[1] On August 18, 1992, the OTS issued a proposed rule which sets forth new procedures for Sasser amendment and Oakar amendment transactions when the resulting institution is not a savings association. *See* 57 F.R. 37112 (Aug. 18, 1992). Under OTS's proposed rule, the OTS would no longer issue orders approving such transactions. Instead, the resulting institution would be required simply to submit a notice to the OTS in the form of either a letter describing material information regarding the transaction, or a copy of a filing made with its primary regulator.

until all outstanding indebtedness to the FHLBank has been liquidated. 12 U.S.C. 1430(c), (e) (Supp. I 1989). Upon completion of such liquidation, the acquiring institution's FHLBank stock shall be redeemed in the manner prescribed in § 933.16 of this proposed rule. The acquiring institution would be entitled to receive dividends on outstanding stock acquired in the transaction, but would not be allowed to cast votes on such stock in an election of directors of the disappearing institution's FHLBank, unless the acquiring institution is approved for membership.

Unlike resulting institutions in Sasser amendment transactions, acquiring institutions in Oakar amendment transactions cannot automatically become members of the FHLBank System because they may not meet the FHLBank membership eligibility criteria. Under proposed § 933.12(c), in order to be a member of the FHLBank System (and, thus, to be able to hold stock in a FHLBank), an Oakar amendment institution must apply for membership in accordance with the requirements of § 933.2 of the proposed rule. The Oakar amendment institution shall become a member upon approval of its application for membership.

The Oakar amendment institution shall maintain the minimum amount of stock required under § 933.7(a) of the proposed rule, based on its total assets and borrowings after the reorganization. If the amount of stock acquired by the Oakar amendment institution is less than the amount required under § 933.7(a) of the proposed rule, the deficient amount of stock must be purchased within 30 calendar days of membership approval. At the election of the Oakar amendment institution, the deficient amount of stock may be purchased in installments. Not less than one-fourth of the total deficient amount payable must be paid within 30 calendar days of membership approval, and a further sum of not less than one-fourth of such total is paid at the end of each succeeding period of four months until the total is paid. The Oakar amendment institution may apply in writing to the Finance Board for an extension of time within which to purchase the deficient amount of stock. The Finance Board may approve such request not to exceed 30 days upon evidence of good cause.

The acquiring institution would not be subject to the 10-year moratorium on reacquiring FHLBank membership set forth in § 933.17 of this proposed rule if it applies for membership and is not approved or if it chooses not to become a FHLBank member. This is because the institution simply acquired FHLBank stock in a merger transaction and was never itself a member of the FHLBank System. *See* 12 U.S.C. 1426(h) (Supp. I 1989).

F. Withdrawal and Removal From Membership

1. Procedure for Withdrawal

The proposed rule redesignates § 933.32 of the Finance Board's existing regulation on voluntary withdrawal from membership as § 933.13. The proposed rule also revises that section to provide that a member that is eligible under applicable law to withdraw from FHLBank membership must provide the Finance Board and its FHLBank at least six months written notice of its intention to terminate its membership in conformance with section 6(e) of the Bank Act. 12 U.S.C. 1426(e) (Supp. I 1989). The proposed rule continues to allow a member to cancel its notice of withdrawal by providing to both the Finance Board and its FHLBank a written cancellation notice before the effective date to the withdrawal. After such cancellation of its notice of withdrawal, a member would need to provide an additional full six months written notice if it subsequently decides to withdraw.

2. Procedure for Removal

The proposed rule redesignates § 933.33 of the Finance Board's existing regulation on removal of institutions for membership as § 933.14. The proposed rule continues to set forth the statutory grounds contained in section 6(e) of the Bank Act, 12 U.S.C. 1426(e), for removing a member from membership, and adds an additional ground in proposed § 933.14(b)(4) pursuant to the Finance Board's general supervisory powers over the FHLBanks. A member may be removed from membership in a FHLBank if any of the following grounds exists:

(1) Failure to comply with any provision of the Bank Act or any Finance Board regulation;

(2) Insolvency (assets less than liabilities);

(3) Its management or home-financing policies are inconsistent with sound and economical home financing or the purposes of the Bank Act; or

(4) Any other condition of the member's operations that the Finance Board believes would jeopardize the safety and soundness of the FHLBank.

Under proposed § 933.14(a), if a FHLBank believes that any of these grounds exists for removing a member, it may submit a written request to the Finance Board recommending removal of such member and stating the grounds for such removal. If the Finance Board believes, upon recommendation of a FHLBank or otherwise, that any of the grounds for removal exists, and it determines that membership should be withdrawn, it must give the member at least 30 calendar days written notice of its intention to terminate the member's membership. Such notice shall state the grounds for removal and the time and place for a hearing on such removal action.

Section 933.33 of the Finance Board's existing regulations on removal from membership references the OTS' adjudicatory procedures for hearings (12 CFR part 509). The reference to the OTS' adjudicatory procedures was placed originally in § 933.33 (formerly 12 CFR 523.31 (1989)) by the former Bank Board. Section 933.14 of the proposed rule does not reference the OTS' adjudicatory procedures. Instead, the proposed rule states that hearings on removal of members from the FHLBank System shall be conducted in accordance with procedures established by the Finance Board.

3. Automatic Termination of Membership for Institutions Placed in Receivership

Section 933.15 of the proposed rule provides for the automatic termination of membership for institutions placed in receivership. The receiver may be required to maintain FHLBank stock for as long as the FHLBank requires as collateral securing any outstanding indebtedness to the FHLBank. Such indebtedness shall be liquidated in an orderly manner as determined by the FHLBank. As such indebtedness is liquidated, the FHLBank shall redeem the stock held by the receiver in the manner prescribed in § 933.16 of this proposed rule. The receiver shall be entitled to receive dividends on outstanding FHLBank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of the Finance Board's regulations. The receiver may not cast votes on the FHLBank stock of the institution placed in receivership in an election of directors of such institution's Banks.

4. Orderly Liquidation of Advances and Redemption of Stock

The proposed rule adds § 933.16 to implement the requirements in section 6(e) of the Bank Act concerning the orderly liquidation of advances and subsequent redemption of FHLBank stock upon termination of an institution's membership in the FHLBank System. See 12 U.S.C. 1426(e)

(Supp. I 1989). Under the proposed rule, if an institution owes no outstanding indebtedness to its FHLBank upon termination of membership, the FHLBank is permitted to immediately redeem the institution's FHLBank stock. Further, proposed § 933.16 requires that the indebtedness of such institution to the FHLBank be liquidated in an orderly manner as determined by the FHLBank. Under § 933.16(a) of this proposed rule, such liquidation may be done with a *pro rata* redemption of outstanding FHLBank stock. However, the institution's stock holdings shall not be reduced to an amount less than that required by sections 10(c) and (10(e) of the Bank Act, until all outstanding indebtedness to the FHLBank has been liquidated. 12 U.S.C. 1430(c), (e) (Supp. I 1989). Upon completion of such liquidation, the institution's remaining FHLBank stock would be redeemed. The institution would receive a sum equal to the original amount it paid for such FHLBank stock. However, if at any time the Finance Board finds that the paid-in capital of a FHLBank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the FHLBank, the FHLBank shall on the order of the Finance Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Finance Board.

5. Acquisition of Membership After Expiration of Period of Withdrawal

Section 6(h) of the Bank Act provides that an institution which withdraws from membership may acquire membership in any FHLBank only after the expiration of a period of 10 years thereafter. 12 U.S.C. 1426(h) (Supp. I 1989). There are two statutory exceptions to the moratorium on reacquiring membership: where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks or in connection with obtaining a charter as a Federal saving association. *Id.* The proposed rule adds § 933.17 to implement this 10-year moratorium on reacquiring membership.

Under proposed § 933.7(b)(3), an applicant newly approved for membership that fails to purchase its minimum stock requirement or first quarterly installment thereof within the required 30-day period, is not a "member" as defined in proposed § 933.1(o). The institution therefore is not subject to the 10-year moratorium on reentry in the FHLBank System for withdrawals of "members" from the FHLBank System.

G. FHLBank Access to Information

The proposed rule revises §§ 933.18 and 933.22 of the Finance Board's existing regulations on reports and examinations to implement the changes made to section 22(b) of the Bank Act by FIRREA. Both sections, as revised, are combined as § 933.18 of the proposed rule. Specifically, proposed § 933.18 implements section 22(b) of the Bank Act, which requires as a condition precedent to FHLBank membership that a member be deemed:

(1) To consent to such examinations as the FHLBank or the Finance Board may require for purposes of FHLBank membership;

(2) To agree that reports of examinations by local, state, or Federal agencies or institutions may be furnished by such authorities to the FHLBank or the Finance Board upon request; and

(3) To agree to give the FHLBank or the Federal agency, upon request, such information as they may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of FHLBank members.

12 U.S.C. 1442(b) (Supp. I 1989).

In addition, § 933.18(d) of the proposed rule requires members to provide their FHLBank with their calendar year-end financial data each year, to allow the FHLBank to calculate the member's minimum stock purchase requirement. Section 933.18(e) of the proposed rule requires members to provide their FHLBank with a copy of the Call Report, Thrift Financial Report, or other appropriate reports of operation and condition within 20 calendar days of filing with the member's appropriate Federal banking agency. This will allow the FHLBank to monitor the member's credit quality and financial condition.

H. Institutions Eligible To Make Application To Become Members

In 1980, Congress expanded the scope of the FHLBanks' non-credit services through the enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). *See* Pub. L. 96–221, 94 Stat. 132 (March 31, 1980). Specifically, section 311 of DIDMCA added section 11(e)(2) of the Bank Act to permit the FHLBanks, subject to such rules and regulations (including definitions of terms used in this paragraph) as the Finance Board may prescribe, to provide correspondent services to members and institutions which are eligible to make application to become members pursuant to section 4 of the Bank Act. 12 U.S.C. 1431(e)(2) (Supp. I 1989). The "eligible to make application" language is not defined anywhere in the Bank Act. However, section 11(e)(2) of the Bank Act contains explicit language which grants the Finance Board considerable discretion to define the terms used in that section, including the "eligible to make application" language.

Accordingly, the Finance Board proposes in § 933.1(k) to define "institutions which are eligible to make application to become members" for purposes of contracting for FHLBank correspondent services as "any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or any insured depository institution, regardless of whether the institution applies for or would be approved for membership." Under this definition, a non-member need not satisfy the membership eligibility criteria in section 4, namely the 10 percent requirement, but simply must come within one of the categories of institutions listed in section 4(a) as eligible to become a member of the FHLBank System.

In determining how to interpret the phrase "eligible to make application," the Finance Board looked at similar language in other sections of the Bank Act for guidance. For example, sections 4(a) (1) and (2), which list the membership eligibility criteria, use the language "eligible to become a member" and "may become a member," respectively, in delineating the criteria an applicant must meet in order to be eligible for FHLBank membership. 12 U.S.C. 1424(a) (1) and (2) (Supp. I 1989). Furthermore, section 6(f) provides generally that an FHLBank may permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member. *Id.* at 1426(f).

There is a clear distinction between "eligible to make application" in section 11(e)(2) and "eligible to become a member." The "eligible to make application" language suggests some lesser standard than actually being eligible to become a member.

The legislative history of section 11(e)(2) also supports the proposed definition of "institutions which are eligible to make application." In addition to granting the FHLBanks check processing and clearing powers, Congress granted similar authority in section 312 of the DIDMCA to the National Credit Union Administration's (NCUA's) Central Liquidation Facility to process checks and drafts for its member credit unions. Although sections 311 and 312 follow each other in the DIDMCA and confer similar powers, there is one significant difference between the two sections. Section 311

authorizes the FHLBanks to offer correspondent services to members and "institutions which are eligible to make application to become members." In contrast, section 312 confers on the NCUA's Central Liquidation Facility the authority to offer correspondent services to credit unions and other entities that are eligible to become a member of the Central Liquidation Facility. This is the only substantive difference between the two statutory provisions. To interpret these phrases in exactly the same manner would ignore the "to make application" language contained in section 311.

Further, the "eligible to make application" language is used in another context in the DIDMCA. Section 103 of the DIDMCA amended section 19(b) of the Federal Reserve Act and thereby expanded the types of institutions which are required to hold reserves against deposits. Reserves must be maintained against deposits held by financial institutions that meet the Federal Reserve Act's definition of "depository institution." Section 103 of the DIDMCA amended section 19(b) of the Federal Reserve Act to define the term "depository institution" as any insured bank, mutual savings bank, savings bank, credit union, savings and loan association, or any institution "eligible to make application" to become any of the foregoing. 94 Stat. 133, current version at 12 U.S.C. 461. The DIDMCA Conference Report states that the purpose of this language is to make reserve requirements applicable to all depository institutions. Joint Explanatory Statement of Congress, H.R. Rep. No. 842, 96th Cong., 2d Sess. 69 (1980).

On several occasions, the Board of Governors of the Federal Reserve System (Federal Reserve Board) has interpreted the "eligible to make application" language to apply the reserve requirements very broadly to any institution that is eligible to make application for deposit insurance, whether or not the institution meets the requirements for deposit insurance. See Board Ruling and Staff Opinions Interpreting Regulation D, Opinions 2–310, 2–310.1, 2–301.13, and 2–310.14, 3 Fed. Banking L. Rep. (CCH) ¶ 30,499G. In each case, the analysis focused on whether the institution is permitted under its chartering authority to apply for deposit insurance. Although several conditions must be met in order to actually obtain deposit insurance (*e.g.*, valid incorporation, an acceptable management staff, sound financial condition), the Federal Reserve Board did not consider such conditions when determining whether an institution is eligible to make application for deposit insurance and, thus, subject to reserve requirements under section 19(b).

In view of the foregoing, the Finance Board has concluded that for purposes of contracting for FHLBank correspondent services, the phrase "institutions which are eligible to make application to become members" in section 11(e)(2) of the Bank Act should be interpreted to mean all institutions listed in section 4(a) of the Bank Act, regardless of whether or not they have satisfied or would satisfy all of the requirements to actually obtain FHLBank membership.

III. Solicitation of Comments

The Finance Board solicits comments on all aspects of this proposed rule. The Finance Board is providing a 60-day comment period.

Regulatory Flexibility Act

The proposed rule largely implements statutory requirements applicable to institutions applying for membership in the FHLBank System, regardless of their size. The Finance Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The proposed rule would not impose any new recordkeeping requirements and requires only minimal additional reporting at minimal cost for institutions applying for FHLBank membership. The proposed rule allows applicants for membership for the most part to demonstrate that they satisfy the requirements of the proposed rule by providing copies of reports already generated for other purposes. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities.

For these reasons, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The title, description of need and use, and the respondent description for the information collection requirements are discussed in the SUPPLEMENTARY INFORMATION.

Any comments on the proposed information collection should be sent to Gary Waxman, Paperwork Reduction Project, OMB, room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.15 and 1320.21, the following table discloses the estimated annual reporting burden for each collection of information in the proposed rule:

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collected	Average number of respondents	×	Average number of responses per respondent	=	Total average responses	×	Average hours per response	=	Total average hours
1. Membership application	900		1		900		13.0		11,700.0
2. Stock calculation	3,300		1		3,300		0.6		1,980.0
3. Membership withdrawal	6		1		6		0.8		3.6
4. Principal place of business	6		1		6		3.5		21.0
Totals	4,212		1		4,212		*3.3		13,704.6

*Weighted average hours per response.

List of Subjects

12 CFR Part 932

Conflict of interests, Federal home loan banks.

12 CFR Part 933

Federal home loan banks, reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, subchapter B of the Code of Federal Regulations, as follows:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 continues to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6–7, 47 Stat. 727, 736, as amended (12 U.S.C. 1426–1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

§§ 932.2, 932.4, 932.5, 932.6, and 932.7 Removed.

2. In part 932, §§ 932.2, 932.4, 932.5, 932.6, and 932.7 are removed.

3. Part 933 is revised to read as follows:

PART 933—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec.
933.1 Definitions.

Subpart B—Application For Membership

Sec.
933.2 Membership application approval process.
933.3 Membership eligibility requirements.
933.4 Delegation.
933.5 Determination of membership in a district.

Subpart C—Stock Requirements

Sec.
933.6 Par value and price of stock.
933.7 Stock purchase.
933.8 Issuance and form of stock.
933.9 Adjustments in holdings.
933.10 Excess stock.

Subpart D—Consolidations and Reorganizations Involving Members

Sec.
933.11 Consolidation of members.
933.12 Reorganizations involving nonmembers.

Subpart E—Withdrawal and Removal From Membership

Sec.
933.13 Procedure for withdrawal.
933.14 Procedure for removal.
933.15 Automatic termination of membership for institutions placed in receivership.
933.16 Orderly liquidation of advances and redemption of stock.
933.17 Acquisition of membership after expiration of period of withdrawal.

Subpart F—Bank Access to Information

Sec.
933.18 Reports and examinations.

Subpart G—Membership Insignia

Sec.
933.19 Official membership insignia.

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 4, as amended by secs. 701(b)(1), 704(a), 710(b)(1), 103 Stat. 412, 415, 418, (12 U.S.C. 1424); sec. 6, as amended by secs. 701(b)(1), 706, 710(b) (2), (3), 715, 103 Stat. 412, 416, 418, 421 (12 U.S.C. 1426); sec. 22, as amended by sec. 719, 103 Stat. 422 (12 U.S.C. 1442).

Subpart A—Definitions

§ 933.1 Definitions.

As used in this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

(b) *Aggregate unpaid loan principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home purchase contracts, and similar obligations.

(c) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

(d) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(e) *Board* means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

(f) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(g) *Consolidated subsidiary* means a subsidiary of a member, whose assets and liabilities are consolidated with those of the member for purposes of reports filed with the member's appropriate Federal banking agency.

(h) *Dwelling unit* means a single, unified combination of rooms designed for residential use by one household.

(i) *Funded residential construction loan* means the portion disbursed to the borrower of a loan secured by real property made to finance the on-site construction of one-to-four or multifamily dwelling units.

(j) *Home mortgage loan* means:

(1)(i) A loan, whether or not fully amortizing, which is secured by a mortgage, a deed of trust or other security agreement, or an interest in such a loan, which creates a first lien on one of the following interests in domestic real property:

(A) One-to-four family property or multifamily property, in fee simple;

(B) A leasehold on one-to-four family property or multifamily property under a lease not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed;

(ii) The term home mortgage loan shall not include a loan secured by nonresidential real property, or combination business or farm property;

(2) A mortgage pass-through security which represents an undivided ownership interest in:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(ii) Securities which represent an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(3) Any loans which the Board in its discretion otherwise determines are home mortgage loans.

(k) *Institutions which are eligible to make application to become members* mean, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(l) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(m) *Long-term home mortgage loan* means a home mortgage loan with a term to maturity greater than five years, or any other home mortgage loan which the Board in its discretion determines is a long-term home mortgage loan.

(n) *Manufactured housing loan* means a loan that is secured by manufactured housing, as defined in the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(o) *Member* means an institution that has been admitted to membership in a Bank and, pursuant to the requirements of § 933.7 of this part, has purchased capital stock in the Bank.

(p) *Multifamily property* means:

(1) Real property containing five or more dwelling units; or

(2) Real property containing five or more dwelling units with commercial units combined, provided the property is primarily residential.

(q) *Nonresidential real property* means real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, nursing homes, educational and charitable institutions, dormitories, clubs, lodges, association buildings, "homes" for elderly persons, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

(r) *One-to-four family property* means:

(1) Real property containing one-to-four dwelling units, or real property containing more than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by that manufactured housing and such security interest is evidenced by a mortgage or other lien on real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

(s) *Residential mortgage loan* means any one of the following types of domestic loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Manufactured housing loans whether or not defined by state laws as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family or multifamily property;

(5) Mortgage pass through securities representing an undivided ownership interest in:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (s)(1) through (4) of this section; or

(ii) Securities representing an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (s)(1) through (4) of this section;

(6) Mortgage debt securities secured only by loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (s)(1) through (4) of this section;

(7) Home mortgage loans secured by leasehold interests, as defined in § 933.1(j) of this part, except that the period of the lease term may be for any duration; or

(8) Any loans which the Board in its discretion otherwise determines are residential mortgage loans.

(t) *State* means a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

Subpart B—Application for Membership

§ 933.2 Membership application approval process.

(a) *Application form.* An applicant for membership in a Bank shall submit to that Bank an application form which satisfies Board requirements.

(b) *Approval process.* All applications for membership shall be submitted to the Board for approval pursuant to the requirements of § 933.3 of this part, except as set forth in § 933.4 of this part.

(c) *Action on applications.* If an application is forwarded to the Board for action, the Board shall promptly notify the Bank after action is taken on the application. Upon receipt of notice of Board action, the Bank shall promptly inform the applicant of such action.

(d) *Automatic approval for Federal savings associations.* Upon receipt of a Federal savings association charter pursuant to section 5 of the Home Owners' Loan Act, a Federal savings association or Federal savings bank automatically becomes a member of the Bank of the district in which its principal place of business is located, and shall purchase stock in that Bank pursuant to § 933.7(b)(1) of this part. No application for membership must be filed.

(e) *Automatic approval for certain charter conversions.* A federally insured depository institution member that converts to a different charter shall automatically become a member on the effective date of such conversion, if the resulting institution continues to be an insured depository institution. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue. No application for membership must be filed.

§ 933.3 Membership eligibility requirements.

(a) *Eligibility requirements.* Any building and loan association, savings association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution, shall be eligible to become a member of a Bank if:

(1) The applicant is duly organized under the laws of any State or of the United States;

(2) The applicant is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States;

(3) The applicant (including its consolidated subsidiaries) originates or purchases long-term home mortgage loans;

(4) The applicant (including its consolidated subsidiaries) has at least 10 percent of its total assets in residential mortgage loans;

(5) The applicant has a financial condition such that advances may be safely made to such institution; and

(6) The applicant has character of management and a home-financing policy that are consistent with sound and economical home financing.

(b) *One-year grace period.* A member that has recently commenced business operations shall have until one year after commencing its initial business operations to meet the 10 percent residential mortgage loans requirement contained in paragraph (a)(4) of this section.

§ 933.4 Delegation.

(a) The Board hereby delegates to the board of directors of each Bank the authority to approve applications for membership that are filed by institutions eligible for membership in their Bank that meet all of the conditions set forth in policy guidelines established by the Board. The board of directors of each Bank may further delegate the authority to approve such applications to the President or other senior officers of the Bank.

(b) If the board of directors of a Bank approves an application pursuant to this section, the Bank shall notify the Board of its action within 10 calendar days of the Bank's approval. The Bank shall make monthly reports to the Board setting forth purchases (pursuant to § 933.7 of this part) by new members of their minimum stock requirement.

§ 933.5 Determination of membership in a district.

(a) *Eligibility.* (1) In general, an institution eligible to become a member of a Bank under the Act and this part may become a member of, and secure

advances only from, the Bank of the district in which the institution's principal place of business is located.

(2) An institution eligible to become a member may become a member of the Bank of a district adjoining such district if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as designated in accordance with paragraphs (c) and (e) of this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* A member or an applicant for membership may request in writing that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following factors are satisfied:

(1) At least 80 percent of the institution's accounting books, records or ledgers are maintained, located, or held in such state;

(2) A majority of meetings of the institution's board of directors and constituent committees are conducted in such state; and

(3) A majority of the institution's five highest paid officers have their place of employment located in such state.

(d) *Transfer of membership by Bank board of directors.* (1) Written notice of a designation made pursuant to paragraph (c) of this section shall be sent to the Board and the institution.

(2) The notice shall include the designated principal place of business and the Bank district to which membership will be transferred.

(3) No transfer of membership made pursuant to paragraph (c) of this section shall take effect until the Bank districts involved reach agreement on a method of orderly transfer.

(4) In the event that the Banks fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on withdrawal or removal from membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.13, 933.14 and 933.16 of this part, including the moratorium on reacquiring Bank membership set forth in § 933.17 of this part.

(f) *Board designation.* If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c) of this section, then the member or applicant may request in writing that the Board make the designation.

Subpart C—Stock Requirements

§ 933.6 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Board has fixed a higher price.

§ 933.7 Stock purchase.

(a) *Minimum stock purchase.* (1) All members shall purchase and hold Bank stock in an amount at least equal to one percent of the member's aggregate unpaid loan principal, but not less than $500.

(2) If a member has less than 30 percent of its total assets in home mortgage loans, it shall purchase stock equal to one percent of 30 percent of its total assets.

(3) When calculating a member's minimum stock purchase requirement under this section, the Bank shall include the assets of the member's consolidated subsidiaries.

(4) A member's aggregate unpaid loan principal shall be calculated according to guidelines issued by the Board.

(b) *Timing of minimum stock purchase.* (1) Within 30 calendar days after an institution's application for membership is approved or an institution obtains a Federal savings association charter pursuant to section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) At the election of the newly admitted institution, the institution may purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total amount payable shall be paid within 30 calendar days of the approval of membership, and that a further sum of not less than one-fourth of such total shall be paid at the end of each succeeding period of four months until the total is paid.

(3) An applicant approved for membership shall become a member at the time it pays for its minimum stock requirement or the first installment thereof. If the applicant fails to pay for its minimum stock requirement or its first installment within 30 calendar days of its approval for membership, such approval shall be rescinded and the applicant shall be required to submit a new application for membership.

(4) The Board may approve a written request from an applicant for an extension of time not to exceed 30 days within which to purchase its minimum stock requirement upon evidence of good cause.

§ 933.8 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) Stock may be issued in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank may convert all outstanding certificated stock to uncertificated form at its discretion.

§ 933.9 Adjustments in holdings.

(a) *Annual adjustment.* (1) A Bank shall calculate each member's required minimum stock holdings annually, using calendar year-end financial data provided by the member to the Bank each year, pursuant to § 933.18(d) of this part.

(2) The Bank shall increase or decrease the amount of stock that each member must hold to conform to section 6(b) of the Act, 12 U.S.C. 1426(b), and notify each member of the adjustment.

(b) *Redemption of excess shares.* (1) If the amount of stock that a member must hold is decreased, upon proper application of the member, the Bank may, in its discretion, retire such excess stock, and the Bank shall pay for each share upon surrender the value thereof determined pursuant to section 6(b)(3) of the Act, 12 U.S.C. 1426(b)(3), or, at its election, credit any part of such payment against the member's debt to the Bank.

(2) A Bank may require a member to give 30 calendar days written notice of its intention to apply, pursuant to this paragraph, to retire excess stock.

(3) A member's stock holdings shall not be reduced to an amount less than required by sections 10(c) and 10(e) of the Act, 12 U.S.C. 1430(c), (e).

§ 933.10 Excess stock.

Upon approval by a member's Bank, such member may purchase stock over the minimum amount required by sections 6(b) and 10(e)(3) of the Act, 12 U.S.C. 1426(b), 1430(e)(3), if the laws under which the member operates so permit.

Subpart D—Consolidations and Reorganizations Involving Members

§ 933.11 Consolidation of members.

(a) *Consolidation of institutions in same district.* Upon consolidation of two or more member institutions which are all members of the same Bank district into one institution operating under the charter of one of the consolidating institutions, the stock of the disappearing institution(s) may be redeemed, provided that the resulting institution holds the minimum amount of stock required pursuant to § 933.7(a) of this part; based on the total assets and borrowings of the consolidated institution.

(b) *Consolidation of institutions in different districts*—(1) *Termination of membership.* Upon consolidation of two member institutions located in different Bank districts into one institution operating under the charter of one of the consolidating institutions, the disappearing institution's membership shall be terminated upon cancellation of its charter, except that in the event that more than 80 percent of the assets of the consolidated institution are derived from assets of the disappearing institution, then the consolidated institution shall continue to be a member of the Bank to which the disappearing institution belongs and the membership of the other institution shall be terminated upon consummation of the consolidation.

(2) *Bank stock acquired in the consolidation.* The consolidated institution may continue to hold the stock of the Bank of which it is no longer a member only for as long as the Bank requires that the stock be held as collateral securing any outstanding indebtedness to the Bank for which the Bank does not demand immediate repayment.

(3) *Liquidation of disappearing institution's indebtedness to Bank.* The indebtedness owed to the Bank in which membership has been terminated shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the stock shall be redeemed in the manner prescribed in § 933.16 of this part.

(4) *Dividends on acquired Bank stock.* The consolidated institution is entitled to receive dividends on its outstanding stock of the Bank of which it is no longer a member in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(5) *No voting rights on acquired Bank stock.* The consolidated institution may not cast votes on the stock acquired in the consolidation in an election of directors of the Bank of which it is no longer a member. The consolidated institution may not include the stock in its calculation of the number of votes it may cast in an election of directors of the Bank in which it is a member.

§ 933.12 Reorganizations involving nonmembers.

(a) *Termination of membership.* If a member is part of a reorganization that results in the transfer of all of the member's assets to an institution that is not a member, the Bank shall terminate its membership in accordance with § 933.16 of this part.

(b) *Notification of decision to seek membership.* If the acquiring institution notifies the Bank within 60 calendar days after the effective date of the reorganization that it intends to apply for membership, the Bank may permit the acquiring institution to continue to hold any outstanding Bank advances and stock pending a determination on the membership application.

(c)(1) *Application for membership required.* The acquiring institution must apply for membership pursuant to § 933.2 of this part within 60 calendar days of the notification required in paragraph (b) of this section. The acquiring institution shall become a member upon approval of its application for membership.

(2) *Outstanding advances and Bank stock.* If the application for membership is approved, then the Bank may permit the acquiring institution to assume the outstanding advances and may transfer the stock held by disappearing institution to the acquiring institution.

(3) *Minimum stock requirement.* (i) The acquiring institution shall maintain the minimum amount of stock required under § 933.7(a) of this part, based on the total assets and borrowings of the acquiring institution after the reorganization. If the amount of stock acquired by the acquiring institution is less than the amount of stock required to be held under § 933.7(a) of this part, the acquiring institution shall purchase the deficient amount of stock within 30 calendar days of the membership approval.

(ii) At the election of the acquiring institution, the deficient amount of stock may be purchased in installments, provided that not less than one-fourth of the total deficient amount payable shall be paid within 30 calendar days of the approval of membership, and that a further sum of not less than one-fourth of such total shall be paid at the end of each succeeding period of four months until the total is paid.

(iii) The Board may approve a written request from the acquiring institution for an extension of time not to exceed 30 days within which to purchase the deficient amount of stock upon evidence of good cause.

(d)(1) *Failure to obtain membership.* If the acquiring institution fails to apply for membership, or if the application for membership is denied, then any indebtedness to the Bank shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the Bank may redeem outstanding Bank stock in the manner prescribed in § 933.16 of this part.

(2) *Dividends on acquired Bank stock.* The acquiring institution is entitled to receive dividends on outstanding stock of the disappearing member institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g) and § 932.3 of this chapter.

(3) *No voting rights on acquired Bank stock.* The acquiring institution may not cast votes on the stock acquired from the disappearing member institution in an election of directors of the disappearing member institution's Bank, unless the acquiring institution is approved for membership.

Subpart E—Withdrawal and Removal From Membership

§ 933.13 Procedure for withdrawal.

(a) Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Board and its Bank at least six months written notice of the member's intention to terminate its membership.

(b) A member may cancel its notice of withdrawal by providing both the Board and its Bank written notice any time before the effective date of the withdrawal.

§ 933.14 Procedure for removal.

(a) *Removal.* If a Bank believes that any of the grounds for removal of a member contained in paragraph (b) of this section exists, it may submit a written request to the Board recommending removal of the member.

(1) The request shall state the grounds for removing the member.

(2) If the Board, in its sole discretion, believes that any of the grounds for removal of a member in paragraph (b) of this section exists, it may, after a hearing, remove the member from membership.

(b) *Grounds.* The following are grounds for removing a member from membership in a Bank:

(1) Failure to comply with any provision of the Act or any regulation of the Board adopted under the Act;

(2) The member is insolvent. A member is deemed insolvent if its assets are less than its liabilities;

(3) A member's management or home-financing policies are inconsistent with sound and economical home-financing or with the purposes of the Act; or

(4) Any other condition of a member's operations exists that the Board believes would jeopardize the safety and soundness of the member's Bank.

(c) *Procedure.* (1) If the Board believes any of the grounds set forth in paragraph (b) of this section exists, and it determines that membership should be withdrawn, it shall provide the member with at least 30 calendar days written notice of its intention to terminate the member's membership.

(2) Such notice shall be served as determined by the Board and shall state the grounds for such action and the time and place of a hearing at which the member may be heard.

(3) Such hearing shall be conducted in accordance with procedures established by the Board.

§ 933.15 Automatic termination of membership for institutions placed in receivership.

(a) *Automatic termination.* As of the effective date of being placed in receivership, an institution's Bank membership shall be automatically terminated.

(b) *Orderly liquidation of advances and redemption of stock.* Upon such termination of Bank membership, the indebtedness owed to the Bank by the institution placed in receivership shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the Bank shall redeem outstanding Bank stock held by the receiver in the manner prescribed in § 933.16 of this part.

(c) *Dividends on Bank stock.* The receiver shall be entitled to receive dividends on outstanding Bank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(d) *No voting rights on Bank stock.* The receiver may not cast votes on the Bank stock of the institution placed in receivership in an election of directors of such institution's Bank.

§ 933.16 Orderly liquidation of advances and redemption of stock.

(a) If an institution's membership in a Bank is terminated, the indebtedness of such institution to the Bank shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the Bank may redeem outstanding Bank stock on a *pro rata* basis, provided that the institution's stock holding shall not be reduced to an amount less than that required by sections 10(c) and 10(e) of the Act, 12 U.S.C. 1430 (c), (e), until all outstanding indebtedness has been liquidated. Upon completion of such liquidation, such institution's remaining stock in the Bank shall be surrendered and canceled.

(b) Upon termination of membership, the Bank may immediately redeem an institution's stock in the Bank if the institution has no outstanding indebtedness to the Bank. The institution shall receive a sum equal to the original amount paid for the stock surrendered, except that if at any time the Board finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the Bank, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board.

§ 933.17 Acquisition of membership after expiration of period of withdrawal.

An institution which withdraws from membership pursuant to § 933.13 of this part may acquire membership in a Bank only after the expiration of a period of 10 years thereafter, except:

(a) Where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to § 933.5 of this part; or

(b) In connection with obtaining a charter as a Federal savings association (as defined in 12 U.S.C. 1813), which automatically becomes a Bank member pursuant to § 933.2(d) of this part.

Subpart F—Bank Access to Information

§ 933.18 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or the Board may require for purposes of the Act;

(b) Agrees that reports of examinations by local, state or appropriate Federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of § 933.9(a) of this part; and

(e) Agrees to provide the Bank with copies of reports of condition and required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operation required to be filed.

Subpart G—Membership Insignia

§ 933.19 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words "Member Federal Home Loan Bank System."

By the Federal Housing Finance Board.

Dated: November 24, 1992.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92–29064 Filed 12–10–92; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–16]

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4000 series engines, that currently requires switching the ENGINE ANTI ICE "ON" prior to every takeoff and keeping it "ON" for any flight operation below 15,000 feet, and placing a placard in the cockpit to make the crew aware of this requirement. This action would limit the requirements of the AD to those engines which are not equipped with an improved electronic engine control (EEC). This proposal is prompted by the development of new EEC software that provides for more cooling flow at lower idle speeds. The actions specified by the proposed AD are intended to prevent a high pressure compressor failure caused by excessive blade tip to airseal interference, that can result in total loss of engine thrust.

DATES: Comments must be received by January 11, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–16, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Product Support Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7084; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–16." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–16, 12 New England Executive Park, Burlington, Massachusetts 01803–5499.

Discussion

On February 15, 1991, the FAA issued AD 91–05–20, Amendment 39–6919 (56 FR 8707), applicable to Pratt & Whitney PW4000 series turbofan engines, to require switching the Engine Anti Ice "On" prior to every takeoff and keeping it "On" for any flight operation below 15,000 feet, and placing a placard in the cockpit to make the crew aware of this requirement. That action was prompted by five engine failures while undergoing production acceptance testing at the engine manufacturer's facilities and by two additional in-flight engine failures experienced during a specialized flight test program. All failed engines exhibited excessive HPC blade tip to airseal interference, resulting in substantial loss of outer airseal material from the ninth through fifteenth stages of the HPC. An investigation identified that HPC blade tip to airseal clearances were insufficient to ensure proper engine operation during rapid acceleration to takeoff power when that acceleration was preceded by several minutes of operation at takeoff power and minimum idle rotor speed, sequentially. At minimum rotor idle speed the compressor bore internal cooling flow was insufficient to provide the necessary compressor rotor thermal contraction. During rapid acceleration to takeoff power the blade tip to airseal clearances were insufficient to prevent excessive blade tip rubbing. For this reason, higher inflight engine idle rotor speeds were needed to assure proper HPC bore cooling airflow. Although no revenue service engine failures have been reported, the flight test failures confirm that certain inflight operating profiles can occur which produce excessive blade tip to airseal interference. That condition, if not corrected, could result in a high pressure compressor (HPC) failure caused by excessive blade tip to airseal interference, which can result in total loss of engine thrust.

Since the issuance of that AD, a new variable stator vane (VSV) control schedule has been developed that has been incorporated into improved electronic engine controls (EEC). This new VSV control schedule provides for adequate HPC secondary cooling flow without the need to maintain the idle speed at higher levels, as required by the current AD. This cooling airflow assures proper rotor thermal contraction which results in sufficient blade to airseal clearance, thus providing more margin during rapid engine acceleration to takeoff power from low rotational speeds. Engines equipped with the new VSV control schedule are no longer required to have the Engine Anti Ice "On" prior to every takeoff and kept "On" for any flight operation below 15,000 feet.

Operation with the Engine Anti Ice "On" precludes the engine from attaining inflight idle rotational speed below Approach Idle. Engine operation at a higher rotational speed burdens the operator with the cost of increased fuel consumption. Relieving operators of this requirement provides operational

advantages and cost savings while maintaining an acceptable level of safety.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–05–20 to limit the requirements of AD 91–05–20 to those engines that are not equipped with the improved EEC as identified by part numbers.

There are approximately 41 PW4000 series engines of the affected design that are installed on aircraft of U.S. registry. The FAA estimates that the proposed change will decrease fuel consumed by the affected engines by about 0.7%, or an estimated cost per year per engine of $52,500. Relieving operators of this burden will save approximately $2,152,500 per year in decreased fuel costs.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6919 (56 FR 8707, March 1, 1991) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 92–ANE–16. Supersedes AD 91–05–20, Amendment 39–6919.

Applicability: Pratt & Whitney Models PW4152, PW41456, and PW4158 model turbofan engines equipped with electronic engine control (EEC) Part Numbers 50D436, 50D791, 50D824, 51D037, and 51D053, installed on but not limited to Airbus A310 and Airbus A300 series aircraft.

Compliance: Required within 30 days after the effective date of this airworthiness directive (AD), unless accomplished previously.

To prevent a high pressure compressor failure that can be caused by excessive blade tip to airseal interference, which can result in total loss of engine thrust, accomplish the following:

(a) The Engine Anti Ice must be switched to "On" prior to takeoff and must be in the "On" position for any flight operation below 15,000 feet.

(b) Install placards in the cockpit of Airbus A310–300 and A300–600 aircraft, just above the Captain and the First Officer Primary Flight Displays, indicating the following: "BEFORE TAKE OFF, SET ENG. ANTI ICE ON. KEEP ENG. ANTI ICE ON FOR ANY OPERATION BELOW 15,000 FT."

Note: Further information on the placards may be obtained from Airbus Industrie Service Information Letter 72–001, Revision 1, dated September 18, 1990.

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

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

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 19, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–30120 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–214–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2, and repair, if necessary. This proposal would also require modification of the outer wing rear spar forward face which, when accomplished, would constitute terminating action for the repetitive inspections. This proposal is prompted by results of fatigue testing of the center fuselage, which revealed cracks on the wing rear spar that spread around four fasteners in a fatigue-sensitive area. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing.

DATES: Comments must be received by February 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–214–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–214–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion:

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that during a fatigue test of the center fuselage on a Model A320 series airplane, damage was found on the wing rear spar after 103,126 simulated flights. Cracks were found that spread around four fasteners in a fatigue-sensitive area. If not detected and corrected, cracks in this area could propagate and form a long crack in the rear spar. This condition, if not corrected, could result in reduced structural integrity of the wing.

Airbus Industrie has issued Service Bulletin A320–57–1020, dated September 5, 1991, which describes procedures for repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2. Airbus Industrie has also issued Service Bulletin A320–57–1021, dated September 5, 1991, which describes procedures for modification of the outer wing rear spar forward face between ribs 1 and 2. This modification involves cold working the bolt holes and installing medium interference fit bolts on the aft wing spar attachment. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 92–204–034(B) in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2, and repair, if necessary. The proposed AD would also require modification of the outer wing rear spar forward face which, when accomplished, would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $112 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,775 or $800 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 92–NM–214–AD.

Applicability: Model A320 series airplanes; serial numbers 002 through 071, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 13,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracks in the left- and right-hand sides of the wing rear spar between ribs 1 and 2, in accordance with Airbus Industrie Service Bulletin A320–57–1020, dated September 5, 1991.

(1) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If no cracks are found, repeat the inspection required by paragraph (a) of this

AD thereafter at intervals not to exceed 3,000 landings.

(b) Within 3 years after the effective date of this AD, modify the outer wing rear spar forward face between ribs 1 and 2, in accordance with Airbus Industrie Service Bulletin A320–57–1021, dated September 5, 1991.

(c) Accomplishment of the modification required by paragraph (b) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

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

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

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30178 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–20]

Proposed Control Zone and Transition Area Modifications; Brookings, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the control zone and transition area near Brookings, SD, to accommodate a new ILS/DME RWY 30 instrument approach procedure to Brookings Municipal Airport, Brookings, SD. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 92–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon, Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area near Brookings, SD, to accommodate a new ILS/DME RWY 30 instrument approach procedure to Brookings Municipal Airport, Brookings, SD.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area that would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in § 71.171 of FAA order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order. Transition areas are published in § 71.181 of FAA order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

AGL SD CZ Brookings, SD [Revised]
Brookings Municipal Airport, SD (lat. 44°18′15″ N, long. 96°48′58″ W)
Brookings VOR (lat. 44°18′12″ N, long. 96°48′54″ W)

That airspace extending upward from the surface within a 7 nautical mile radius of the Brookings Municipal Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation of Transition Areas

AGL SD TA Brookings, SD [Revised]
Brookings Municipal Airport, SD (lat. 44°18′15″ N, long. 96°48′58″ W)
BARTT Outer Marker (lat. 44°14′20″ N, long. 96°42′06″ W)

That airspace extending upward from 700 feet above the surface within a 7 nautical mile radius of the Brookings Municipal Airport and within 4 nautical miles northeast and 8 nautical miles southwest of the 129° bearing from the BARTT outer marker extending from the outer marker to 16 nautical miles southeast of the outer marker, and within 8 nautical miles north and 4 nautical miles south of the 118° bearing from the airport to 16 nautical miles east of the airport, and within 8 nautical miles southwest and 4 nautical miles northeast of the 322° bearing from the airport extending from the airport to 16 nautical miles northwest of the airport, excluding that airspace within the Brookings, SD, Control Zone during the specific dates and times that it is effective.

* * * * *

Issued in Des Plaines, Illinois on October 26, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–30123 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

14 CFR Part 234

[Docket No. 48524; Notice No. 92–32]

RIN 2137–AB94

Amendments to the On-Time Disclosure Rule

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the on-time flight performance reporting requirements by (1) eliminating the exclusion of flights delayed or cancelled due to mechanical problems, (2) adding the aircraft tail number, wheels-up and wheels-down time for each flight reported, (3) adding several definitions, (4) clarifying the reporting requirement for a new flight, and (5) making some editorial changes.

DATES: Comments on the proposed rule must be received on or before January 11, 1993.

ADDRESSES: Comments should be directed to the Docket Clerk, Docket 48524, room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket 48524. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC, 20590 (202) 366–4387 or 366–4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1987, the Department issued a final rule (52 FR 34056) which required the largest U.S. air carriers to report their on-time performance for every domestic scheduled passenger flight operated to or from a reportable airport, with the exception of qualifying flights that were delayed 15 minutes or more or cancelled because of mechanical problems. A flight is considered on-time if it arrives less than 15 minutes after its published arrival time. The U.S. carriers covered by the reporting requirement are those generating at least 1 percent of the U.S. domestic scheduled-passenger revenues on a yearly basis. Reportable airports are those airports in the continguous 48 states generating at least 1 percent of the domestic scheduled-passenger enplanements on an annual basis. In practice, all reporting carriers are voluntarily submitting data for their entire domestic scheduled-passenger operations. The purpose of the rule was to reduce airline flight delays and consumer dissatisfaction with airline service by providing a persuasive market-based incentive for airlines to improve their quality of service and reliability of schedules. The reporting system developed for the administration of these reporting requirements is called the On-Time Flight Performance System.

Flights that were delayed 15 minutes or more or cancelled because of mechanical problems and which were reported to the Federal Aviation Administration (FAA) under 14 CFR 121.703 or 121.705, were excluded from the reporting requirements. Mechanical delays included delays on the flight on which the problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, for which the delay was attributed to the initial mechanical problem. However, flights delayed less than 15 minutes because of a mechanical problem were included in the on-time performance data.

In 1986–87, the Department conducted a year-long study on airline operating performance at eight of the country's largest airports. This study included all flights, even those delayed or cancelled because of mechanical problems, and it showed that only 40 to 50 percent of the flights arrived on-time. In September 1991, the on-time flight performance for the 31 largest airports

ranged from 79 to 92 percent. The 1991 figures are higher than the carrier's actual performance, since mechanical delays and cancellations (estimated to impact about 2 to 7 percent of all flights) are excluded. Nonetheless, there has been marked improvement in carrier on-time performance which has greatly benefited consumers.

The improvement can be attributed to, among other things, more realistic flight scheduling by the air carriers and improved traffic management by the FAA. The reporting requirements created an incentive for the carriers to adjust scheduled flight times and make other changes to improve schedule reliability. These actions reduced unrealistic scheduling resulting in improved on-time performance. In September 1987, the first month the on-time flight performance statistics were reported under 14 CFR 234, there were 150 nonstop flight segments that were late at least 80 percent of the time (Air Travel Consumer Report, issued November 1987). In March 1992, the number went down to 32 nonstop flight segments that were late at least 80 percent of the time (Air Travel Consumer Report, issued May 1992). While the occurrence of perpetually late flight segments has decreased, there is still room for improvement.

Inspector General Audit

The Department's Office of Inspector General (IG) audited the March 1989 on-time performance reports of Alaska, American, America West, Continental, Delta, Eastern, Northwest, Pan American, Southwest, Trans World, United, and USAir to determine their accuracy. The IG sampled 4,598 of the 383,501 carriers' reported flights, and found that the data were accurate in every case. However, there were problems with non-reported flight operations for all 12 reporting carriers. A non-reported flight operation was a flight which the carrier believed was excluded from the reporting requirements because the flight experienced a qualifying mechanical delay or cancellation or was a discontinued flight. Out of the 3,903 non-reported flights sampled by the IG, 1,005 reporting discrepancies were found (25.7 percent of total). Most of the reporting discrepancies were flights delayed because of mechanical problems but not reported to FAA under 14 CFR 121.703 or 121.705.

The IG concluded that the Research and Special Programs Administration (RSPA) relied too heavily on air carrier reporting. It determined that if all scheduled flights were reported including qualifying mechanicals, RSPA would have a complete data base for the carriers' on-time flight performance statistics. Currently, the Department must try to monitor mechanical delays and discontinued flights by matching each carrier's reported flights against the monthly Official Airline Guide tape of the carriers' schedules. The Department is presently unable to readily verify that the approximately 23,000 flights excluded from the reporting system each month for mechanical problems actually experienced a mechanical problem. From an information standpoint, it is preferable to track an actual record rather than to compute what is missing, and then try to assess why it is missing.

Regulatory Review

To reduce the burden of government regulations, the President requested that agencies review existing regulations ("Reducing Burden of Government Regulations" memorandum, dated January 28, 1992). As part of the Department's initiative, RSPA considered a request from FAA that RSPA expand the On-Time Flight Performance System to include: aircraft tail number, wheels-up time (the time the aircraft leaves the ground) and wheels-down time (the time the aircraft touches the ground) for each flight. This notice of proposed rulemaking is consistent with the criteria established by the President. The expected benefits to society clearly outweigh the costs. This proposal promotes the economic health of the airline industry by providing the FAA the needed information to reduce costly airline delays by more efficient use of the existing air network.

The addition of the data items would give the FAA valuable data for pinpointing airport delays. Wheels-up and wheels-down time used in conjunction with departure and arrival times (already reported by carriers) would tell the FAA the extent of ground delays. Elapsed flight time (computed from the wheels-up time and the wheels-down time) would reveal delays experienced in the air. The reporting of the aircraft tail number would allow the FAA to track an aircraft through the air network, which would enable the FAA to study the ripple effects of delays at hub airports. Data by aircraft type would tell the FAA the capacity impacted by air traffic delays and congestion.

With the additional data, the FAA would build a model to analyze air traffic delays. A safer environment for aircraft operations would result with the added information to accurately analyze the impact of airspace reconfigurations. The data also could be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels.

FAA has estimated that a mere 1 percent reduction in flight delays would produce a cost savings of $85 million to the public and industry. According to an FAA study, air traffic delays cost the public and the industry $8.5 billion in 1990.

New Reporting Requirements

Given the improvement in carrier on-time flight performance and the opportunity to make further improvements, RSPA proposes to maintain the current On-Time Flight Performance System with some modifications. We are proposing to require carriers to include mechanical delayed and cancelled flights in their submissions; and to add the aircraft tail number, wheels-up and wheels-down time for each flight reported. The proposed data are items which air carriers track for their internal use. The modifications in the reporting system would result in improved consumer information and give the FAA data it needs to improve the air traffic control system.

Mechanical delays and cancellations would now be included in each carrier's reported data, not as a separate category, providing the consumer with complete information concerning a carrier's performance. The intent of the on-time performance rule was to provide the consumer with information to make an informed decision on which flight or carrier to use. However, under the current reporting requirements, the delays and cancellations due to mechanical problems are not a part of the on-time performance information on which the consumer's decision is based. Carriers currently report their flight performance statistics based on some factors over which they normally have no control, such as weather. Yet, a factor (carrier maintenance) over which a carrier does have some control is not reported in the on-time performance statistics.

In the earlier notice of proposed rulemaking (52 FR 22046, June 10, 1987), the Department was concerned how the proposed disclosure, enforcement, and computer reservation system (CRS) displays alternatives might affect airline safety. The question was asked: "For example would such a rule put undue pressure on airline personnel to keep aircraft in service and meet flight schedules?" American Airlines responded (Docket 44827) that "it did not believe that on-time

disclosure would impinge on air carrier safety." It went on to say that "there is no economic reason to create a special category of excusable delays such as maintenance * * * carriers can control the quality of their maintenance by devotion of sufficient resources." On the other hand, Continental responded in the same docket that reporting mechanical delays and cancellations could be counterproductive to safety considerations. It stated that:

> Safety considerations frequently require maintenance delays. Safety is *promoted* by these delays. If consumers were to associate levels of maintenance delays with low levels of carrier performances, there might be an incentive unreasonably to expedite maintenance and possibly enlarge the safety risk.

No other carrier commented specifically on the safety question of reporting mechanical delays or cancellations; however, there was a common concern that setting on-time performance standards, which carriers would be required to meet, could compromise safety. Because of this concern, the Department did not adopt performance standards in the final rule.

The Department stated in the final rule:

> The data requirements will not adversely affect airline safety. The air carriers owe the highest duty to their passengers to provide safe air transportation. The regulation in no way seeks to interfere with that obligation (52 FR 34062, September 9, 1987).

The Department added a precautionary measure to the reporting requirements which stated:

> However, to avoid any possibility of penalizing carriers for their conscientiousness and concern for the safety of their passengers, we are providing that delays and cancellations caused by mechanical problems be excluded from the reported data (Ibid.).

Flight delays and cancellations caused by aircraft mechanical problems were, therefore, excluded from the On-Time Flight Performance System in order "not to create negative incentives or to compromise safety in any way." (Ibid.) However, after five years of experience with the On-Time Flight Performance System, do you believe that the mechanical delay and cancellation exclusions need to be continued as a precautionary measure?

The smallest reporting carrier reports approximately 8,000 domestic passenger flights per month, while the largest carrier reports approximately 80,000 a month. For the smallest carrier to increase its on-time performance a mere 1 percentage point, it would have to operate 80 flights that should have been delayed or cancelled for mechanical reasons. For the largest carrier the number goes up to 800 flights. Do you believe the incentive exists at either end of the spectrum, for a carrier to compromise safety for the sake of on-time performance statistics?

Even though the IG's audit found 1,005 reporting exceptions out of a sample of 3,903 nonreported flights, the IG concluded that the exceptions appear to be caused by confusion over interpretations of FAA and DOT regulations, rather than intentional misreporting by the air carriers to show better on-time performance. The IG also found that these 1,005 exceptions in the nonreported flight segments did not materially affect the on-time flight performance of any carrier.

Would carriers try to improve their on-time flight performance by taking safety risks which may violate safety rules and subject the carriers to fines or penalties by the FAA? Would the adverse publicity of safety violations be a sufficient deterrent to carriers? Air carriers owe the highest duty to provide safe air transportation. If we include mechanical delays and cancellations in the data base would we be interfering with this obligation?

To address Continental's concern that travelers may associate maintenance delays with low levels of carrier performance, creating an incentive for carriers to unreasonably expedite maintenance and possibly enlarging the safety risk, the proposal to include mechanical delays and cancellations in the On-Time Flight Performance System would treat all delays alike. The causes of flight delays would not be reported or identified. Therefore, consumers and DOT would not be able to compare air carriers' on-time flight performances on the basis of mechanical delays and cancellations.

Collecting data on all flights delayed or cancelled because of mechanical problems would increase the amount of data reported by carriers. However, at the same time, it would simplify and reduce carrier reporting burden. Carriers would not be required to determine which delays were cause by qualifying mechanical delays; and they would not be required to filter out the qualifying mechanical delays for reporting purposes. In the Department's 1987 regulatory evaluation of the rule which established On-Time Flight Performance System, it was estimated that excluding mechanical delays from the reporting system would double the cost of the monthly submissions from $185,000 to $370,000 for all reporting carriers. By including all mechanical delays or cancellations, the confusion between the on-time reporting requirements and the FAA's mechanical reporting requirements would be eliminated. The carriers would be filing more complete and accurate data; and consumers would have a more complete factual basis on which to make purchase decisions concerning air transportation.

The Department proposes to include all mechanical delays and cancellations in the On-Time Flight Performance System and to collect aircraft tail number, wheels-up time and wheels-down time. By adding three basic data items to an existing data base, DOT will be able to make more efficient use of its resources. This action will save the FAA the time, effort and expense of creating a new data base that is needed for the study of air traffic delays.

Any regulation considered by the Department must be evaluated in terms of the impact on safety. Commenters should address whether, and specifically how, the proposed change in the rule would affect airline operations in any way that would impinge on safety. For example, would such a rule change put undue pressure on airline personnel to keep aircraft in service and meet flight schedules? If an adverse impact is possible, how could such an effect be avoided?

Definitions

Since the airline service quality performance reporting went into effect, the Office of Airline Statistics has clarified the reporting instructions by issuing interpretations. Consistent with these interpretations RSPA is proposing to amend the regulations by adding several definitions. Specifically, RSPA is proposing to define cancelled or discontinued flight, diverted flight, extra-section flight, and wet-leased flight.

Cancelled Flights

A cancelled flight means a flight operation that was not operated, but was listed in a carrier's computer reservation system 7 days or less of the scheduled departure. A cancelled flight is a reportable flight and is counted as a late flight.

Discontinued Flights

A discontinued flight means a flight dropped from a carrier's computer reservation system more than 7 days before its scheduled departure. A discontinued flight is excluded from the on-time performance reporting system.

Diverted Flights

A diverted flight means a flight which is not operated in accordance with the carrier's published schedule. When

reporting statistics relating to a diverted flight, the original scheduled flight number and the original scheduled origin and destination airport codes are used. For example, a carrier has a published schedule of A to B to C. If the carrier were to actually fly an A to C operation, the correct reporting would show A to B as a diverted flight, and B to C as a cancelled flight.

Extra-Section Flights

An extra-section flight means a flight conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight (see 14 CFR 241.03). For example, 180 passengers arrive to board a carrier's 9:00 scheduled flight. The aircraft has a seating capacity of 100. The carrier then rolls out a second aircraft to accommodate the other 80 passengers. The second flight is an extra-section flight, which is not reported under part 234.

Wet-Leased Flights

A wet-lease flight means a flight operated with a leased aircraft and crew. When a carrier fulfills its scheduled flights by a wet-lease arrangement, it shall report the flights as if the leased aircraft and crews were a part of its own fleet.

Clarification of Reporting Requirement

In the past, carriers have asked what is the effective date for reporting a new flight. Consistent with previous interpretations, we are proposing to clarify the regulations to state that a reporting carrier shall report the information for a new flight beginning with the first day of the new scheduled operation.

Waivers From Part 234 Reporting Requirements

Pursuant to § 234.12, the Secretary, or his or her delegate, may for good cause grant waiver from the reporting requirements of part 234.

In January 1992, the administration of airline service quality performance reporting was transferred to RSPA's Office of Airline Statistics from the Office of Secretary. The Administrator of RSPA has delegated authority from the Secretary to oversee the collection and dissemination of information on civil aeronautics (49 CFR 1.53(g)). In this NPRM, we propose to amend section 234.12 to clarify that the waivers from the rule will be granted or denied by the Administrator, Research and Special Programs Administration.

Editorial Changes

Since the original regulations were issued, the Office of Aviation Information Management was renamed the Office of Airline Statistics. Appropriate changes to the regulations are proposed to reflect this name change.

The appendix to the final rule implementing the On-Time Flight Performance System (52 FR 34056, dated September 9, 1987) lists the data items that the reporting carriers are required to report. Two of the data items listed in the appendix which carriers are reporting (difference in minutes between OAG and CRS scheduled arrival times, and difference in minutes between OAG and CRS scheduled departure times) were inadvertently omitted from § 234.4(a). We propose to include them in this section.

Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore, this proposed rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The objective of the proposed rule is to simplify the on-time reporting instructions, and to expand the data base to supply the FAA the necessary data to reduce air traffic delays and congestion.

This proposed rulemaking is considered significant under DOT's regulatory policies and procedures, because it involves an important Departmental policy concerning the reporting of flight delays and cancellations caused by mechanical problems. A draft regulatory evaluation has been prepared and placed in the rulemaking docket. There is a potential savings to the airline industry and to the general public of $85 million. This saving would be derived from the decrease in air traffic delays, resulting from FAA's more efficient management to air traffic. The FAA estimates that a mere 1 percent reduction in delays will produce a cost savings of $85 million to the public and industry. Air traffic delays cost the public and the industry $8.5 billion in 1990. The cost to the air carriers to add the three data items would be a one-time programming and testing cost of approximately $34,000, 10 carriers at $3,400 per carrier. Once the programming is in place, the annual cost to the carriers would be approximately $1,000 per carrier. By our calculations, the economic benefits to the industry, as well as to the consumer, far outweigh the cost of supplying the data. We also are proposing to eliminate the exclusion of flights delayed by mechanical problems in the carriers' on-time performance reports. While this action would require carriers to report more data, it would save the carriers from identifying the cause of the delays and filtering out the mechanical delays. The end result will be better consumer information, at a cost savings to the carriers of at least $204,000 based on 10 reporting carriers. This estimate is based on the cost estimated by the Department to exclude mechanical delays when the rule was adopted in 1987. We encourage air carriers to comment on these cost estimates.

Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined the proposed rulemaking does not pose the risk of a taking of constitutionally protected private property.

Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act (14 CFR 399.73). The amendments will affect only large certificated air carriers accounting for at least 1 percent of U.S. domestic passenger revenues (over $400 million annually).

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Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being sent to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under OMB No: 2138–0041; Administration: Research and Special Programs Administration; Title: Airline Service Quality Performance Reports; Need for Information: Consumer Information Flight Data for Air Traffic Control; Proposed Use of Information: Consumer Publications and To build a Model for Studying Air Traffic Delays; Frequency: Monthly; Burden Estimate: 1,780; Average Burden Hours Per Respondent; 178. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, (202) 366–4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137–AB94 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Proposed Rule

Accordingly, RSPA proposes to amend Chapter II, 14 CFR part 234—Airline Service Quality Performance Reports as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for part 234 would continue to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2 "Definitions" would be amended by revising the definitions of "reportable flight" and "reporting carrier;" removing the definitions of "mechanical delay" and "mechanical cancellation;" and adding new definitions "cancelled flight", "discontinued flight", "diverted flight", "extra-section flight" and "wet-leased flight", in alphabetical order to read as follows:

§ 234.2 Definitions.

For the purpose of this part:

Cancelled flight means a flight operation that was not operated, but was listed in a carrier's computer reservation system within 7 days of the scheduled departure.

Discontinued flight means a flight dropped from a carrier's computer reservation system more than 7 days before its scheduled departure.

Diverted flight means a flight which is not operated in accordance with the carrier's published schedule. For example, a carrier has a published schedule of A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight.

Extra-section flight means a flight conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight.

* * * * *

Reportable flight means any nonstop flight to or from any airport within the contiguous 48 states that account for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported in the reports submitted to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Offices of Airline Statistics (OAS).

Reporting carrier means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported in reports submitted to the Department pursuant to part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by OAS.

Wet-leased flight means a flight operated with a leased aircraft and crew.

3. Section 234.4 would be amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (e) and (f), respectively, and adding new paragraphs (c) and (d) to read as follows:

§ 234.4 Reporting of on-time performance.

(a) Each reporting carrier shall file RSPA Form 234 "On-Time Flight Performance Report" with OAS, on a monthly basis, setting forth the information for each of its reportable flights held out in the Official Airline Guide (OAG), in the computer reservations systems, or in other schedule publications. The reportable flights include, but are not limited to, cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, OAS, and shall contain the following information:

(1) Carrier and flight number.

(2) Aircraft tail number.

(3) Origin and Destination airport codes.

(4) Published OAG departure and arrival times for each scheduled operation of the flight.

(5) CRS scheduled arrival and departure time for each scheduled operation of the flight.

(6) Actual departure and arrival time for each operation of the flight.

(7) Difference in minutes between OAG and CRS scheduled arrival times.

(8) Difference in minutes between OAG and CRS scheduled departure times.

(9) Actual wheels-up and wheels-down time for each operation of the flight.

(10) Date and day of week of scheduled flight operation.

(11) Scheduled elapsed time, according to CRS schedule.

(12) Actual elapsed time.

(13) Amount of departure delay, if any.

(14) Amount of arrival delay, if any.

(15) Amount of elapsed time difference, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the *original* scheduled flight number and the *original* scheduled origin and destination airport codes.

(c) A reporting carrier shall report the information specified in paragraph (a) of this section for a new flight beginning with the first day of the new scheduled operation.

(d) A reporting carrier shall not report the information specified in paragraph (a) of this section for any discontinued or extra-section flight.

* * * * *

4. Section 234.5 would be revised to read as follows:

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed with the OAS on ADP computer tape in the format specified in accounting and reporting directives issued by the Director, OAS, within 15 days of the end of the month for which data are reported.

5. Section 234.6 would be revised to read as follows:

§ 234.6 Baggage-handling statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with the carrier. The information shall be submitted to the Department within 15 days of the end of the month to which it applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in the reporting directives issued by the Director, OAS.

6. Section 234.8 would be amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in accounting and reporting directives issued by the Director, OAS. The calculations shall be performed for each reportable flight, except those scheduled to operate three times or less during a month. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flights, or portion thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued or extra-section flights for which data are not reported to the Department.

* * * * *

7. Section 234.12 would be revised to read as follows:

§ 234.12 Waivers.

Any air carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Administrator, Research and Special Programs Administration may be granted for good cause shown. The requesting party shall state the basis for such a waiver.

Issued in Washington, DC on December 4, 1992.

Richard R. John,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

[FR Doc. 92–29931 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–62–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Past Performance Reporting

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On November 10, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the efficacy of Commission rules relative to performance reporting and disclosure by commodity pool operators and commodity trading advisors. The original comment period expires on December 10, 1992. 57 FR 53457 (November 10, 1992). The Commission has received a request for an extension of the comment period. In order to ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period for an additional 65 days.

DATES: Written comments must be received on or before February 16, 1993.

ADDRESSES: Comments should be sent to Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attn: Secretariat. Reference should be made to the request for public comment on past performance reporting.

FOR FURTHER INFORMATION CONTACT: Paul Bjarnason, Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC on the 7th day of December, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30140 Filed 12–10–92; 8:45 am]

BILLING CODE 6351–01–M

17 CFR Part 150

Revision to Recordkeeping Requirements; Reopening of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On October 26, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of Proposed Rulemaking relating to Commission recordkeeping requirements. 57 FR 48480. The applicable comment period expired on November 25, 1992. The Commission has received a request for an extension of the comment period. In light of the apparently widespread interest in the proposed revisions to these rules, and because it wishes to ensure that all interested parties have an adequate opportunity to submit informed comments, the Commission has determined to reopen the period for public comment.

DATES: The comment period will remain open through January 9, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Recordkeeping Requirements".

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Supervisory Statistician, (202) 254–3310.

Issued in Washington, DC, this 7th day of December, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30071 Filed 12–10–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 301

[GL–709–88]

RIN 1545–AM70

Levy and Distraint

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulatory amendment regarding the authority to collect taxes by means of levy and distraint. The Technical and Miscellaneous Revenue

Act of 1988 (TAMRA), amended section 6331 of the Internal Revenue Code concerning the collection of tax by means of levy in several respects. The statute increased the 10 day requirement for notification of intention to levy to 30 days, required specific types of information to be included in the notice, and expanded the reasons for releasing a levy on salary or wages to include all the situations described in section 6343(a). TAMRA also placed restrictions on levies that are uneconomical or that are scheduled to be made on the day a person is required to appear in response to a summons issued for the purpose of collecting any underpayment of tax by that person. The proposed regulatory amendment reflects these changes. In addition, the proposed regulatory amendment changes the existing regulations with respect to levying on bank deposits to conform to section 6332(c), which was enacted by TAMRA. The proposed regulatory amendment also reflects two changes made by the Tax Equity and Fiscal Responsibility Act of 1982: Extending to "other property" of a taxpayer the requirement of notification of intention to levy that exists for a levy on salary or wages; and requiring that any mailing of that notice be done by certified or registered mail. Finally, several stylistic changes were made to clarify parts of the regulations that were not affected by the statutory changes.

DATES: Written comments and requests for a public hearing must be received by February 9, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL–709–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Susan B. Watson, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking contains proposed changes to §§ 301.6331–1 and 301–6331–2, to reflect amendments made to sections 6331 and 6332(c) of the Internal Revenue Code by section 349(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law No. 97–248, 96 Stat. 325 (TEFRA) as well as by sections 6236(a), (b) and (d) of the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100–647, 102 Stat. 3573 (TAMRA).

Explanation of Provisions

Some minor changes are proposed to § 301.6331–1. The first change relates to section 6332(c), which was enacted by section 6236(e)(1) of TAMRA and which provides that banks may not surrender funds to the Service until 21 days after a levy on those funds is served. Prop. reg. § 1.6331–1(a)(1) reflects this change by providing that a levy on a bank account applies not only to those funds on deposit at the time the levy is made, but also to any interest that accrues on those deposits during the 21 day waiting period. In addition, some conforming changes have been made to the jeopardy rules contained in § 301.6331–1(a)(2), and existing § 301.6331–2(c), which describes the continuing effect of a levy on salary or wages, has been moved to § 301.6331–1 to improve organization. This section also has been amended to provide that a continuous levy on salary or wages remains in effect until released for any of the reasons provided in section 6343(a). Previously such a levy was required to be released only if it was satisfied or if the period of limitations provided in section 6502 (and any period during which such period of limitations was suspended as provided by law) had lapsed. Finally, some minor clarifying changes also have been made to the section.

The changes made to § 301.6331–2 principally reflect the additional protections provided to taxpayers by the Taxpayer Bill of Rights contained in TAMRA. As proposed, § 301.6331–2(a)(1) now provides that the Service must notify a taxpayer of the Services's intent to levy at least 30 days (instead of 10 days) in advance. Also, this protection is being extended so that in addition to applying to salary and wages, it now applies to other property as well. In addition, if the notice is mailed, the Service must use certified or registered mail.

New § 301.6331–2(a)(2) provides that the notice to the taxpayer must contain a brief and non-technical description of (1) the statutory provisions and procedures relating to the levy and sale of property, (2) the administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals, (3) the alternatives available to taxpayers that could prevent levy on the property (including installment agreements), and (4) the statutory provisions and procedures relating to redemption of property and the release of liens on property. As under prior law, the requirement to give notice and the observance of a waiting period do not apply if the Service determines that the collection of tax is in jeopardy.

Proposed § 301.6331–2(b) reflects TAMRA's enactment of section 6331(f). Under section 6331(f), no levy may be made on property if the levy and sale expenses estimated by the Service exceed the estimated fair market value of the property. While section 6331(f) could be narrowly read to require an estimate to be made as the Service is about to seize property, there is no legislative history regarding this provision to suggest that Congress intended to impose such an unworkable approach. Accordingly, the proposed regulations adopt the more reasonable and practical approach. They require this estimate to be made either at the time of the seizure or within a reasonable period of time prior to the seizure. The estimates made within this time frame may be based upon earlier estimates and may be formal or informal.

Section 6331(f) and its legislative history do not indicate whether estimates are to be made on an aggregate basis or with respect to each individual item of property potentially subject to seizure. For practical reasons, the proposed regulations provide that the estimate of expenses and fair market value are to be made on an aggregate basis for all of the items to be seized pursuant to a particular levy. The proposed regulations also provide that no levy should be made on individual items of insignificant monetary value. This restriction does not limit, for example, the Service's ability to seize boxes of paper clips or other supplies owned by a business whose assets are to be levied upon.

In accordance with section 6331(g), which also was enacted by TAMRA, § 301.6331–2(c) of the proposed regulations generally precludes the Service from levying on the property of a taxpayer on the day the taxpayer (or an officer or employee of that taxpayer) is required to appear in response to a summons issued by the Service for the purpose of collecting any underpayment of tax by the taxpayer. The relevant date is not only the date established pursuant to section 7605 but also any date set by a court of competent jurisdiction if judicial enforcement of the summons is required.

Proposed Effective Dates

These regulations are proposed to be effective on December 10, 1992. The Service believes that prior to the effective date of these regulations, taxpayers are afforded the protections enacted by TAMRA by virtue of the provisions of the Internal Revenue Code, but the Service solicits comments as to whether these regulations should be retroactive.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel on Advocacy of the Small Business Administration for comment on their impact on small business.

Comments on Proposed Regulations

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Susan B. Watson, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6331–1 is amended as follows:

1. In paragraph (a)(1), following the eight sentence, a new sentence is added.
2. In the new tenth sentence of paragraph (a)(1), the language "§ 301.6331–2(c)" is removed and "§ 301.6331–1(b)(1)" is added in its place.
3. The new fourteenth sentence of paragraph (a)(1) is revised.
4. Paragraph (a)(2) is revised.
5. Paragraph (b) is amended by:
a. Redesignating paragraph (b) as (b)(2):
b. Adding a paragraph heading for new paragraph (b);
c. Adding a new paragraph (b)(1) heading and text.
6. New paragraph (d) is added.
7. The additions and revisions read as follows:

§ 301.6331–1 Levy and distraint.

(a) * * *

(1) * * * A levy on a bank reaches any interest that accrues on the taxpayer's balance under the terms of the bank's agreement with the depositor during the 21-day holding period provided for in section 6332(c). * * * Similarly, a levy on reaches property in the possession of the person levied upon at the time the levy is made together with interest that accrues during the 21-day holding period provided for in section 6332(c). * * *

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331(a), the 30-day period provided in section 6331(d) or the limitation on levy provided in section 6331(g)(1).

* * * * *

(b) *Continuing levies and successive seizures*—(1) *Continuing effect of levy on salary and wages.* A levy on salary or wages has continuous effect from the time the levy originally is made until the levy is released pursuant to section 6343. For this purpose, the term "salary or wages" includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. They levy attaches to both salary or wages earned but not yet paid at the time of the levy, advances on salary or wages made subsequent to the date of the levy, and salary or wages earned and becoming payable subsequent to the date of the levy, until the levy is released pursuant to section 6343. In general, salaries or wages that are the subject of a continuing levy and are not exempt from levy under section 6334(a)(8) or (9), are to be paid to the district director, the director of the service center, or the director of the compliance center on the same date the payor would otherwise pay over the money to the taxpayer. For example, if an individual normally is paid on the Wednesday following the close of each work week, a levy make upon his or her employer on any Monday would apply to both wages due for the prior work week and wages for succeeding work weeks as such wages become payable. In such a case, the levy would be satisfied if, on the first Wednesday after the levy and on each Wednesday thereafter until the employer receives a notice of release from levy described in section 6343, the employer pays over to the district director, the director of the service center, or the director of the compliance center wages that would otherwise be paid to the employee on such Wednesday (less the exempt amount pursuant to section 6334).

* * * * *

(d) *Effective date.* These regulations are effective December 10, 1992.

Par. 3. Section 301.6331–2 is revised to read as follows:

§ 301.6331–2 Procedures and restrictions on levies.

(a) *Notice of intent to levy*—(1) *In general.* Levy may be made upon the salary, wages, or other property of a taxpayer for any unpaid tax no less than 30 days after the district director, the director of the service center, or the director of the compliance center has notified the taxpayer in writing of the intent to levy. The notice must be given in person, be left at the dwelling or usual place of business of the taxpayer, or be sent by registered or certified mail to the taxpayer's last known address. The notice of intent to levy is separate from, but may be given at the same time as, the notice and demand described in § 301.6331–1.

(2) *Content of Notice.* The notice of intent to levy is to contain a brief statement in non-technical terms concerning the following information—

(i) The Internal Revenue Code provisions and the procedures relating to levy and sale of property;

(ii) The administrative appeals available with respect to the levy and sale of property and the procedures relating to such appeals;

(iii) The alternatives available that could prevent levy on the property (including the use of an installment agreement under section 6159); and

(iv) The Internal Revenue Code provisions and the procedures relating

to redemption of property and release of liens on property.

(b) *Uneconomical levy*—(1) *In general.* No levy may be made on property if the district director estimates that the anticipated expenses with respect to the levy and sale will exceed the fair market value of the property. The estimate is to be made on an aggregate basis for all of the items that are anticipated to be seized pursuant to the levy. Generally, no levy should be made on individual items of insignificant monetary value. For the definition of fair market value, see § 301.6325–1(b)(1)(i). See § 301.6341–1 concerning the expenses of levy and sale.

(2) *Time of estimate.* The estimate, which may be formal or informal, is to be made at the time of the seizure or within a reasonable period of time prior to a seizure. The estimate may be based on earlier estimates of fair market value and anticipated expenses of the same or similar property.

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

Example 1. A district director anticipates that Taxpayer A has only one item of property that can be seized and sold. This item is estimated to have a fair market value of $250.00. The district director also estimates that the costs of seizure and sale will total $300.00 if this item is seized. The district director is prohibited from levying on this one item of Taxpayer A's property because the costs of seizure and sale are estimated to exceed the property's fair market value.

Example 2. The facts are the same as in *Example 1* except that the district director anticipates that Taxpayer A has 10 items of property that can be seized and sold. Each of those items is estimated to have a fair market value of $250.00. The district director also estimates that the costs of seizure and sale will total $300.00 regardless of how many of those items are seized. The district director is prohibited from levying on only one item of Taxpayer A's property because the cost of seizure and sale are estimated to exceed the fair market value of the single item of property. The district director, however, would not be prohibited from levying on two or more items of Taxpayer A's property because the aggregate fair market value of the seized property would exceed the estimated costs of seizure and sale.

Example 3. A taxpayer has three items of property, A, B, and C. The district director anticipates that the value of items A, B, and C depends on their being sold as a unit. The district director estimates that due to high anticipated costs of storing or maintaining item B prior to the sale, the aggregate fair market value of items A, B, and C will not exceed the anticipated expenses of seizure and sale if all three items are seized. Accordingly, the district director is prohibited from levying on items A, B and C.

Example 4. The facts are the same as in *Example 3* except that the district director does not anticipate that the value of items A, B, and C depends on those items being sold as a unit. If the district director estimates that the aggregate fair market value of items A and C exceeds the aggregate anticipated costs of the seizure and sale of those two items, items A and C can be seized and sold. The district director is prohibited from levying on item B because the high cost of storing or maintaining item B prevents the aggregate fair market value of items A, B, and C from exceeding the anticipated expenses of seizure and sale if all three items are seized.

(c) *Restriction on levy on date of appearance.* Except for continuing levies on salaries or wages described in § 301.6331–1(b)(1), no levy may be made on any property of a person on the day that person, or an officer or employee of that person, is required to appear in response to a summons served for the purpose of collecting any underpayment of tax from the person. For purposes of this paragraph (c), the date on which an appearance is required is the date fixed by an officer or employee of the Internal Revenue Service pursuant to section 7605 or the date, if any, fixed as the result of a judicial proceeding instituted under sections 7604 and 7402(b) seeking the enforcement of such summons.

(d) *Jeopardy.* Paragraphs (a) and (c) of this section do not apply to a levy if the district director finds, for purposes of § 301.6331–1(a)(2), that the collection of tax is in jeopardy.

(e) *Effective date.* These regulations will become effective on December 10, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–29633 Filed 12–10–92; 8:45]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 763; 92F–014P]

Dunnigan Hills Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Yolo County, California, to be known as "Dunnigan Hills." This proposal is the result of a petition filed by Ron McClendon of R.H. Phillips Vineyards.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by January 25, 1993.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; Attn: Notice No. 763.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey

(U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from R.H. Phillips Vineyards proposing to establish a viticultural area in northwestern Yolo County, California, to be known as "Dunnigan Hills." The proposed viticultural area is located near Sacramento, California, and between the Napa Valley viticultural area on the west and the Clarksburg, Merritt Island and Lodi viticultural areas to the southeast. The proposed area contains approximately 89,000 acres, of which 1,118 acres are planted to vineyards. The terrain in the proposed viticultural area is characterized by gently rolling hills of 100 to 400 feet elevation. The petitioner states that two wineries and 6 vineyards are located within the proposed viticultural area.

Evidence of Name

According to the petitioner, the Dunnigan Hills area was settled in the 1850's and 1860's by western Europeans who raised grain and livestock. In 1853, A.W. Dunnigan opened a hotel which was known as Dunnigan's. In 1876, the Northern Railway was extended to Dunnigan's hotel and a town plat was recorded for the town of Dunnigan. The nearby hills were soon known as the Dunnigan Hills.

Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition includes:

(a) The name "Dunnigan Hills" appears on each of the three U.S.G.S. maps submitted with the petition.

(b) The name "Dunnigan Hills" appears in the United States Department of Agriculture Soil Survey of Yolo County California (1972).

(c) The petitioner states that the name "Dunnigan Hills" was used to describe the subject area as early as 1913 by Tom Gregory in A History of Yolo County and as recently as 1987 by Joann Larkey, in Yolo County, Land of Changing Patterns.

Evidence of Boundaries

Each of the U.S.G.S. maps used to delineate the boundary of the proposed area shows the name "Dunnigan Hills" over an area which roughly coincides with the boundaries of the proposed Dunnigan Hills viticultural area. According to the petitioner, the southern, eastern and northern boundaries of the Dunnigan Hills are distinguished by a change from the low, rolling hills of the proposed area to the flat terrain of the floor of the Sacramento Valley. On the west, the terrain changes to the steeper and higher slopes of the Coast Range.

Geographical Features

The Dunnigan Hills are a group of low, rolling hills running in a northwest to southeasterly direction for about 19.5 miles. At the widest point, the hills are about 10 miles wide.

The petitioner provided the following evidence relating to features which he contends distinguish the proposed viticultural area from the surrounding areas:

Topography and Elevation

The Dunnigan Hills rise out of a part of the Sacramento Valley which is nearly flat, varying only between 60 and 130 feet above sea level. In contrast to the surrounding valley floor, the proposed area consists of low, rolling hills, which rise to an elevation of about 400 feet above sea level. The hills are crossed by streams that flow west to east out of the Coast Range. On the west, the Dunnigan Hills drop to an elevation of approximately 250 feet before the transition to the steeper, higher slopes of the Coast Range begins. The terrain in the Coast Range rises rapidly to 1,200 and 1,600 feet, with peaks which are even higher.

Soil

The predominant soils in the proposed area are the Corning-Hillgate association, well-drained, gently sloping to moderately steep gravelly loams or loams on terraces, and the Sehorn-Balcom association, well-drained, gently sloping to steep silty clay loams and clays over sandstone. Soils outside the area include the Dibble-Millsholm and Positas associations in the foothills of the Coast Range to the west, and the Yolo-Brentwood, Rincon-Marvin-Tehama, Capay-Clear Lake and Willows-Pescadero associations on the valley floor to the north, south and east.

Climate

The petitioner states that the proposed area is warmer in the summer and winter than the Coast Range highlands to the west. He also states that the area is less prone to frost damage in the spring than the rest of the Sacramento Valley because "the hills and streams provide better air drainage than that found on the valley floor to the north, east and south of the Dunnigan Hills." This air drainage also makes the proposed area cooler than the surrounding valley floor in summer.

Proposed Boundary

The boundary of the proposed Dunnigan Hills viticultural area may be found on three United States Geological Survey (U.S.G.S.) maps with a scale of 1:62500. The boundary is described in § 9.145.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties concerning this proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of

the person submitting a comment is not exempt for disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.145 to read as follows:

Subpart C—Approved American Viticultural Areas

§9.145 Dunnigan Hills.

(a) *Name.* The name of the viticultural area described in this section is "Dunnigan Hills."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Dunnigan Hills viticultural area are three U.S.G.S. 15 minute series topographical maps of the 1:62500 scale. They are titled:

(1) "Guinda, Calif.," 1959.

(2) "Dunnigan, Calif.," 1953.

(3) "Woodland, Calif.," 1953.

(c) *Boundary.* The Dunnigan Hills viticultural area is located in Yolo County, California. The boundary is as follows:

(1) The beginning point is on the Dunnigan, Calif., U.S.G.S. map at the intersection of Buckeye Creek and U.S. Route 99W just south of the Colusa—Yolo county line;

(2) From the beginning point, the boundary follows Route 99W in a southeasterly direction until an unnamed westbound light-duty road coincident with a grant boundary (referred to by the petitioner as County Road 17) diverges from Route 99W just north of the town of Yolo, California, on the Woodland, Calif., U.S.G.S. map;

(3) The boundary then follows the Country Road 17 for approximately 2 miles to an unnamed southbound light duty road (referred to by the petitioner as County Road 95A);

(4) The boundary then follows County Road 95A south for approximately ½ mile to an unnamed westbound light duty road (referred to by the petitioner as County Road 17A);

(5) The boundary then proceeds west along County Road 17A for approximately ⅜ mile to an unnamed southbound light duty road (referred to by the petitioner as County Road 95);

(6) The boundary then proceeds south along County Road 95 for approximately 1 mile to an unnamed light duty road which goes in a southwesterly direction (referred to by the petitioner as County Road 19);

(7) The boundary than proceeds southwest along County Road 19 for approximately ¼ mile to an unnamed light duty road which travels south-southwest (referred to by the petitioner as County Road 94B);

(8) The boundary then proceeds southwest along County Road 94B approximately 1¼ mile until it intersects Cache creek

(9) The boundary then follows Cache Creek in a westerly direction 5.5 miles until it intersects an unnamed north-south light duty road approximately 1 mile north of the city of Madison, California (referred to by the petitioner as County Road 89);

(10) The boundary then follows County Road 89 two miles in a northerly direction back on to the Dunnigan, Calif., U.S.G.S. map where it intersects an unnamed light duty road (referred to by the petitioner as County Road 16);

(11) The boundary follows County Road 16 west for approximately 2 miles onto the Guinda, Calif., U.S.G.S. map, where it turns north onto an unnamed light-duty road between sections 31 and 32 of T10N/R1W (referred to by the petitioner as County Road 87);

(12) The boundary follows County Road 87 north for 2 miles to an unnamed east-west light duty road (referred to by the petitioner as County Road 14);

(13) The boundary follows County Road 14 west for 3 miles, and then leaves the unnamed road and turns north on the dividing line between sections 22 and 23 of T11N/R2W;

(14) The boundary continues due north until it intersects Little Buckeye Creek just south of the Yolo-Colusa county line;

(15) The boundary then follows Little Buckeye Creek in an easterly direction until it joins Buckeye Creek;

(16) The boundary then follows Buckeye Creek in an easterly direction back to the point of beginning on the Dunnigan, Calif., U.S.G.S. map.

Stephen E. Higgins,

Director.

[FR Doc. 92–30002 Filed 12–10–92; 8:45 am]

BILLING CODE 4810–31–M

POSTAL SERVICE

39 CFR Part 111

Address Information Product Cycle and Mandatory Update Change

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This rule proposes to change the frequency of required use of updated address information product files from four times a year to six times a year. The Computerized Delivery Sequence File (CDS) will not be affected by the frequency change. This action will reduce the potential for outdated address information being applied to mailings.

DATES: Comments must be received on or before January 18, 1993.

ADDRESSES: Written comments should be directed to Susan Hawes, Address Management Office, Customer Service Support, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., room 5801, Washington, DC 20260–6803.

Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Address Management Office, Customer Service Support, room 5801, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–6803.

FOR FURTHER INFORMATION CONTACT: Susan Hawes, (202) 268–3503.

SUPPLEMENTARY INFORMATION: The Postal Service makes a variety of address information products available to mailers for the purpose of validating mailing address information and obtaining access to postal rate discounts. The Postal Service proposes to change the current quarterly product cycle dates for these products to bimonthly cycles. The requirements and mandatory usage dates for these products will remain unchanged (i.e., CRIS, 75 days; ZIP+4, 6 weeks). Currently updates are produced by January 15, April 15, July 15, and October 15 of each year. Mailers are then required to update their lists within a specified time to qualify for certain postage discounts. For example, mailers using the Carrier Route

Information System (CRIS) product to qualify for carrier-route discounts are given two and one-half months to update their lists, so that use of information from the updated CRIS products becomes mandatory April 1, July 1, October 1, and January 1, respectively. The time provided mailers to update their list varies by product.

(Note: The following charts are based on the CRIS product cycle and are provided as examples designed to enhance the understanding of the proposed cycle changes.)

PRESENT QUARTERLY UPDATE SCHEDULE
[CRIS Product]

Release date	Mandatory use date	Period covered
January 15	April 1	January 15 to June 30 (5½ months).
April 15	July 1	April 15 to September 30 (5½ months).
July 15	October 1	July 15 to December 31 (5½ months).
October 15	January 1	October 15 to March 31 (5½ months).

In addition to the regular quarterly updates, monthly update information is also available to mailers. The use of monthly update information is not mandatory; however, many mailers find the monthly updates valuable as a fresh data source for maintaining the most current and accurate quality information possible.

During fiscal year 1991, 8 million changes occurred to the Address Management System (AMS) database containing approximately 29 million address records. This translates to approximately 667,061 changes per month. Due to the dynamic nature of this database, the Postal Service has concluded that the current period covered by each mandatory quarterly update is no longer sufficient, and that increasing the frequency of the mandatory updates of all Address Information System (AIS) products and their use by mailers will decrease the potential for "stale" mailings which must be rehandled by the Postal Service.

Accordingly, based on discussions with mailers concerning the optimum number of mandatory updates for these products, the Postal Service proposes to increase the mandatory update frequency for all address information products from four to six times per year. This increase in frequency will apply to the following address information products.

CRIS File
Five Digit File
Delivery Statistics
City State File
CRIS Cross File
File
Zip+4 File
County Cross File

The time provided to mailers to update their mailing lists after receipt of an updated product would remain unchanged. Because of a concern to avoid unduly increasing mailers' processing costs, the Postal Service believes that updates more frequent than every other month are not appropriate at this time.

Based on the use of more frequently updated and therefore more accurate address information, mailers are expected to realize the following benefits.

—More mail qualifying for presort discounts based on the use of the later information available.
—Enhanced timeliness of delivery based on the use of up-to-date carrier route numbers and 5-digit ZIP Codes for addresses that have changed.
—More stable rates because of less rehandling volume.

The following chart lists the proposed CRIS product update release dates, the proposed mandatory use dates, and the period covered by each update.

The implementation of the revised schedule will begin no sooner than December 20, 1992, the next effective date of the Domestic Mail Manual (DMM).

PROPOSED UPDATE SCHEDULE
[CRIS Product]

Release date	Mandatory use date	Period covered
February 15	May 1	February 15 to June 30 (4½ months).
April 15	July 1	April 15 to August 31 (4½ months).
June 15	September 1	June 15 to October 31 (4½ months).
August 15	November 1	August 15 to December 31 (4½ months).
October 15	January 1	October 15 to February 28 (4½ months).
December 15	March 1	December 15 to April 30 (4½ months).

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

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

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

PART 122—DELIVERY ADDRESS

2. In 122.441, Delivery Statistics File, change the fifth sentence to read: "The information is updated monthly via transaction files and can be ordered either with a single base file in the initial shipment or with a base file furnished bimonthly."

PART 323—PRESORTED AND CARRIER ROUTE FIRST-CLASS MAIL

3. In 323.2, Carrier Route First-Class Mail, revise the sixth sentence to read as follows: "Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of each effective date of the bimonthly updates, which are February 15, April 15, June 15, August 15, October 15, December 15."

PART 424—ADDITIONAL ELIGIBILITY REQUIREMENTS FOR SPECIFIC [SECOND CLASS] RATES

424.7 Walk-Sequence Rates

4. In 424.773, DSF, change the first sentence to read: "The Delivery Sequence File (DSF) is updated bimonthly."

424.8 Additional Requirements for Presort Rates

5. In 424.832, Proper Makeup, change the first sentence to read: "Mailers are responsible for makeup of mail to carrier routes according to the information published bimonthly in the Carrier Route Information System (CRIS)." Change the second sentence to read: "Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of the effective date of the bimonthly updates, which are February 15, April 15, June 15, August 15, October 15, December 15."

PART 531—CODING ACCURACY SUPPORT SYSTEM (CASS) CERTIFICATION [AUTOMATION-COMPATIBLE MAIL]

6. Change 531.14, Use of Current Information, to read: "When used for ZIP+4 coding or ZIP+4 barcoding, the ZIP+4 matching software and methods described in 531.11 through 531.13 must have a valid CASS certification. The matching software must use the current Postal Service ZIP+4 file that includes all applicable monthly or bimonthly change transaction files.".

7. Change 535.1a, ZIP+4 Database Product Description, to read: "ZIP+4 Database Tape and Bimonthly Cumulative Updates, which contain a master copy of the ZIP+4 database plus bimonthly updates of all additions, changes, or deletions that occurred within the database since the last release date.".

PART 624—PREPARATION OF SPECIFIC [THIRD-CLASS] BULK RATES

624.3 Eligibility for Carrier Route Presort Rate

8. In 624.361, Proper Makeup, change the first and second sentences to read: "Mailers are responsible for makeup of mail to carrier routes according to the information published bimonthly in the Carrier Route Information System (CRIS). Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of the bimonthly updates, which are February 15, April 15, June 15, August 15, October 15, December 15.".

9. In 624.362(b), change the heading to read as follows: "CRIS Hard-Copy (Paper) Bimonthly Updates and Monthly Scheme Changes.". Change the last sentence to read as follows: "Customers requesting updates to bimonthly Carrier Route Information System (CRIS) scheme information are provided updates on a complete zone-by-zone basis each month.".

10. In 624.362(c), change the heading to read as follows: "CRIS Bimonthly Updates and Monthly Scheme Microfiche Changes.". Change the last sentence to read as follows: "Customers requesting updates to bimonthly Carrier Route Information System (CRIS) scheme information are provided entire new sets to fiche each month that include all the monthly updates.".

11. In 624.362(d), change the heading to read as follows: "CRIS Bimonthly Updates and Monthly Scheme Tape Changes.".

12. In 624.362(f), Other Methods, change the third and fourth sentences to read as follows: "However, the mailer is responsible for sorting in accordance with the latest bimonthly CRIS scheme provided in 624.362(a) through 624.362(f). The mailer is considered to have made a sorting error only if the mail is not sorted according to the latest bimonthly CRIS scheme.".

624.8 Walk-Sequence Reduction

13. In 624.873, Delivery Sequence Information, change the first sentence to read: "The Delivery Sequence File (DSF) is updated bimonthly.".

PART 763—[FOURTH CLASS] CARRIER ROUTE BOUND PRINTED MATTER

763.2 Current Scheme

14. In 763.222, change the heading to read: "CRIS Hardcopy (Paper) Bimonthly Updates and Monthly Scheme Changes.". Change the last sentence to read: "Customers requesting updates to bimonthly CRIS scheme information are provided updates on a complete zone-by-zone basis each month.".

15. In 763.223, change the heading to read: "CRIS Bimonthly Updates and Monthly Scheme Microfiche Changes.". Change the last sentence to read: "Customers requesting updates to bimonthly scheme information are provided entire new sets of fiche each month that include all monthly updates.".

16. In 763.224, change the heading to read: "CRIS Bimonthly Updates and Monthly Scheme Tape Changes.".

17. In 763.23, Other Methods, change the third sentence to read: "However, the mailer is responsible for sorting in accordance with the latest bimonthly CRIS scheme provided in 624.362.".

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 92–30110 Filed 12–10–92; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 61, 64, and 69

[CC Docket Nos. 91–141, 91–213, 92–222, and 80–286; DA 92–1606]

Expanded Interconnection With Local Telephone Company Facilities; Transport Rate Structure and Pricing; Allocation of General Support Facility Costs; Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission grants in part and denies in part (DA 92–1606) a Motion to Restructure Pleading Cycles by the United States Telephone Association. The revised comment dates spread the burden of the comments and other pleadings in these dockets over a longer, more manageable time frame, while ensuring that all of these proceedings move forward in a timely manner.

DATES: Comments on Allocation of General Support Facility Costs (CC Docket No. 92–222) are due on December 4, 1992, and reply comments are due on December 21, 1992. Comments on Expanded Interconnection—Separations (CC Docket Nos. 92–141 and 80–286) are due on December 21, 1992, and reply

comments are due on January 22, 1993. Comments on Expanded Interconnection—Transport—Phase I (CC Docket No. 91–141) are due on January 14, 1993, and replies are due on February 19, 1993. Comments on Transport Rate Structure and Pricing (CC Docket No. 91–213) are due on February 1, 1993, and reply comments are due on March 9, 1993. Comments on Expanded Interconnection—Transport—Phase II (CC Docket No. 91–141) are due on March 3, 1993, and reply comments are due on April 2, 1993.

ADDRESSES: Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC 20554. Two copies of the comments concerning the separations issues are also to be filed with all CC Docket No. 80–286 Federal-State Joint Board Commissioners, staff members, and other persons listed in Appendix A of Expanded Interconnection with Local Telephone Company Facilities and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 91–141 and 80–286, FCC 92–441 (released Oct. 16, 1992) (Expanded Interconnection Notice).

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten (202–653–6975), Linda L. Hallet (202–632–1298), or David L. Sieradzki (202–632–1304), Policy & Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: The proposed rules originally appeared in the Federal Register at Transport Rate Structure and Pricing, 57 FR 54205 (Nov. 17, 1992); Allocation of General Support Facility Costs, 57 FR 54542 (Nov. 19, 1992), and Expanded Interconnection with Local Telephone Company Facilities and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board.

1. The United States Telephone Association, Inc. (USTA) has requested that the pleading cycles in the above-captioned proceedings be restructured.[1] USTA proposes no changes in the comment dates in the proceeding on the allocation of general support facility (GSF) costs[2] and the Joint Board proceeding on the separation of expanded interconnection costs.[3] USTA proposes extending the comment dates in the Transport Rate Structure and Pricing proceeding[4] and in Phases I and II of the Expanded Interconnection proceeding.[5] Under USTA's proposal, comments in Phase I of the Expanded Interconnection proceeding would be due on January 8, 1993, and replies would be due on February 9, 1993; and comments in Phase II of the Expanded Interconnection proceeding would be due on February 24, 1993, and replies would be due on March 26, 1993. Comments in the Transport proceeding would be due on March 30, 1993, and replies would be due on May 7, 1993, more than six months after release of the recent order.

2. In support of its request, USTA states that the schedules in these proceedings require a large number of filings, including comments, tariff filings, and petitions for reconsideration, within a short time frame. Given the novelty of the issues and the complexity of the required tasks, USTA argues that a restructured pleading cycle would promote more efficient use of resources by the Commission and the parties, and would not affect the pace of policy implementation. Several parties, including LECs, competitive access providers, and interexchange carriers, filed comments generally supporting USTA's proposal.[6]

3. While we do not routinely grant extensions of time,[7] we believe that USTA has shown good cause for a limited extension of time. There are an extraordinary number of filings due during December and January in these proceedings, as well as possible petitions for reconsideration and activities related to the tariff revisions reflecting the policies we have adopted concerning expanded interconnection and transport. We believe, however, that USTA's proposed comment and reply dates for the Transport proceeding would result in undue delay. Instead, we restructure the pleading cycle in a manner that ensures that both the Expanded Interconnection and Transport proceedings more forward in a timely manner.

4. We therefore adopt the following schedule:

December 4, 1992: Comments on Allocation of GSF Costs (CC Docket No. 92–222) (no change)

December 21, 1992: Reply comments on Allocation of GSF Costs (CC Docket No. 92–222) (no change). Comments to Joint Board on Separation of Expanded Interconnection Costs (CC Docket Nos. 91–141 and 80–286) (no change)

January 14, 1993: Comments on Expanded Interconnection for Switched Transport (Phase I) (CC Docket No. 91–141)

January 22, 1993: Reply comments to Joint Board on Separation of Expanded Interconnection Costs (CC Docket Nos. 91–141 and 80–286) (no change)

February 1, 1993: Comments on Transport Rate Structure and Pricing (CC Docket No. 91–213)

February 19, 1993: Reply comments on Expanded Interconnection for Switched Transport (Phase I) (CC Docket No. 91–141)

March 3, 1993: Comments on Expanded Interconnection—Competitive Switched Access Networks (Phase II) (CC Docket No. 91–141)

March 9, 1993: Reply comments on Transport Rate Structure and Pricing (CC Docket No. 91–213)

April 2, 1993: Reply comments on Expanded Interconnection—Competitive Switched Access Networks (Phase II) (CC Docket No. 91–141)

5. Accordingly, it is *Ordered that* the USTA Motion to Restructure Pleading

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[1] Motion to Restructure Pleading Cycles by the United States Telephone Association (Nov. 10, 1992).

[2] Expanded Interconnection with Local Telephone Company Facilities and Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 91-141 and 92-222, FCC 92-440 (released Oct. 19, 1992) (Expanded Interconnection Order), ¶¶ 267-69. The comment date on the allocation of GSF is December 4, 1992 and the reply comment date is December 21, 1992.

[3] Expanded Interconnection with Local Telephone Company Facilities and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 91-141 and 80-286, FCC 92-441 (released Oct. 16, 1992) Expanded Interconnection Notice), ¶¶ 54-55. The comment date on separation of expanded interconnection costs is December 18, 1992, and the reply comment date is January 22, 1993.

[4] Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, FCC 92-442 (released Oct. 16, 1992) (Transport Order and Notice). Comments are due on December 18, 1992, and replies are due on January 21, 1993.

[5] Expanded Interconnection Notice, ¶¶ 1-53. Comments on Phase I are due on December 4, 1992 and replies are due on December 21, 1992. Comments on Phase II are due on December 21, 1992, and replies are due on January 22, 1993.

[6] MCI Telecommunications Corp. Comments (Nov. 24, 1992); MFS Communications Co., Inc. Comments (Nov. 24, 1992); *Ex Parte* Letter from Lisa M. Zaina, General Counsel, Organization for the Protection and Advancement of Small Telephone Companies, to James D. Schlichting, Chief, Policy and Program Planning Commission (Nov. 20, 1992); Rochester Comments (Nov. 16, 1992); Sprint Communications Co. Comments (Nov. 20, 1992) (generally supporting USTA proposal but suggesting modifications to schedule that would slightly advance date of Transport comments and slightly postpone date of Transport replies); WilTel, Inc. Comments (Nov. 16, 1992).

[7] 47 CFR 1.46(a).

Cycles is granted to the extent provided herein, and otherwise is denied.[8]

Federal Communications Commission.

James D. Schlichting,

Chief, Policy and Program Planning Division, Common Carrier Bureau.

[FR Doc. 92–29929 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–238, RM–8066]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KAEZ–FM, Inc., permittee of Station KAEZ–FM, Channel 289A, Amarillo, Texas, seeking the substitution of Channel 289C3 for Channel 289A at Amarillo, Texas, and the modification of Station KAEZ–FM's license accordingly. Channel 289C3 can be allotted to Amarillo in compliance with the Commission's minimum distance separation requirements and can be used at Station KAEZ–FM's licensed site. The coordinates for Channel 289C3 at Amarillo are North Latitude 35–12–28 and West Longitude 101–51–18. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 289C3 at Amarillo or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric S. Kravetz, Esq., Brown Nietert & Kaufman, 1920 N Street, NW., suite 660, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–238, adopted September 28, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640 Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30064 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–243; RM–7700]

Television Broadcasting Services; Frederiksted, Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Luis E. Rosa seeking the allotment of UHF Channel 66 as the community's first local television broadcast service. Channel 66 can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 66 are North Latitude 17–42–48 and West Longitude 64–53–00.

DATES: Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., Route 1, Box 203A, Castleton, Virginia 22716 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making MM Docket No. 92–243, adopted October 1, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30066 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR 73

[MM Docket No. 92–244–RM–8027]

Radio Broadcasting Services; Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert E. Miller, Jonathan Cohen and Arthur V. Belendiuk, d/b/a Calypso Communications, proposing the substitution of Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands, and the modification of Station WVNX(FM)'s construction

[8] This action is taken pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291.

permit accordingly. Channel 267B can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements at petitioner's present construction site with a site restriction of 20 kilometers (12.9 miles) east. The coordinates for channel 267B at Charlotte Amalie are North Latitude 18–20–30 and West Longitude 64–43–59.

DATES: Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur V. Belendiuk, Esq., Smithwick and Belendiuk, P.C., 1990 M Street, NW., suite 510, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–244, adopted October 1, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30063 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the tidewater goby (*Eucyclogobius newberryi*) as endangered, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act). The tidewater goby is a fish that occurs in tidal streams associated with coastal wetlands in California. This species has significantly declined throughout its historic range and continues to be threatened by loss and degradation of its coastal habitat. Since 1900, the tidewater goby has disappeared from nearly 50 percent of the coastal lagoons within its historic range, including 74 percent of the lagoons south of Morro Bay. Only three populations currently exist south of Ventura County. The Service seeks comments and data from the public on this proposed rule.

DATES: Comments from all interested parties must be received by February 9, 1993. Public hearing requests must be received by January 25, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Office Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (telephone 805/644–1766). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donna C. Brewer, Ventura Field Office (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby, *Eucyclogobius newberryi* (Girard), is a small fish, rarely exceeding 50 mm (2 inches) standard length, and is characterized by large pectoral fins and a ventral sucker-like disk formed by the complete fusion of the pelvic fins. The tidewater goby was first described as a new species (*Gobius newberryi*) by Girard (1856) from specimens collected in the San Francisco Bay area. Based on Girard's specimens, Gill (1862) reassigned *Gobius newberryi* to the newly described genus *Eucyclogobius* (Eschmeyer 1990).

A member of the family Gobiidae, the tidewater goby is the only species in the genus *Eucyclogobius* and is almost unique among fishes along the U.S. Pacific coast in its restriction to low-salinity waters in California's coastal wetlands. All life stages of tidewater gobies are found at the upper end of lagoons in salinities less than 10 parts per thousand (ppt). Although its closest relatives are marine species, the tidewater goby does not have a marine life history phase. This lack of a marine phase severely restricts the frequency of genetic exchange between coastal lagoon populations and significantly lowers the potential for natural recolonization of a locality once extirpated. Studies by Crabtree (1985) noted that some populations of gobies have differentiated genetically, indicating long isolation. Tidewater gobies have a shorter lifespan, and seem to be an annual species (Swift 1990; Irwin and Stoltz 1984), further restricting their potential to recolonize habitats from which they have been extirpated.

The tidewater goby occurs in shallow water (less than 1 meter (3 ft) deep), on the substrate, in loose aggregations of a few to several hundred individuals (Swift *et al.* 1989). Peak nesting activities commence in late April or early May, when male gobies dig a vertical nesting burrow 10–20 centimeters (4–8 in) deep in clean, coarse sand. Suitable water temperatures for nesting are 18–22 °C with salinities of 5–10 ppt. Male gobies remain in the burrows to guard eggs, which are hung from the ceiling and walls of the burrow until hatching. Larval gobies are found midwater around vegetation until they become benthic (Swift *et al.* 1989). Although the potential for year-round spawning exists, it is probably unlikely, because of seasonal low temperatures and disruptions of lagoons during winter storms. Although usually associated with lagoons, the tidewater goby has been documented in ponded freshwater habitats as far as 8 km (5 miles) upstream from San Antonio lagoon in Santa Barbara County (Irwin and Stoltz 1984).

Currently, the tidewater goby is discontinuously distributed throughout California, ranging from Tillas Slough (mouth of the Smith River), Del Norte County, south to Agua Hedionda Lagoon in San Diego County. Areas of precipitous coastlines that preclude the formation of lagoons at stream mouths

have created three natural gaps in the distribution of the goby. Gobies are apparently absent from three sections of the coast, between: (1) Humboldt Bay and Ten Mile River, (2) Point Arena and Salmon Creek, and (3) Monterey Bay and Arroyo del Oso.

Roughly 10 percent of the coastal lagoons presently containing populations of tidewater goby are under Federal ownership. Over 40 percent of the remaining populations are either wholly or partly owned and managed by the State of California. The remainder are privately owned.

Previous Federal Action

The tidewater goby was first classified by the Service as a category 2 species in 1982 (47 FR 58454). It was reclassified as a category 1 candidate in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). Category 2 applies to taxa for which information in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not available to support proposed rules. Category 1 applies to taxa for which the Service has on file substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. On October 24, 1990, the Service received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered (Swift 1990). The Service's finding that this petition presented substantial information that the requested action may be warranted was published on March 22, 1991 (56 FR 12146). Following this finding, the Service initiated a status review on the tidewater goby.

Section 4(b)(3)(B) of the Endangered Species Act (Act), as amended in 1982, requires the Secretary to make a finding within 12 months of the date a petition is received as to whether or not the requested action is warranted. Based on the additional information supplied by Dr. Swift's petition, this proposed rule constitutes the Service's finding that the petitioned action is warranted. The petition, status surveys, and accompanying data describe the goby as imperiled owing to past and continuing wide-ranging losses of coastal and riparian habitats within its historic range.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the tidewater goby (*Eucyclogobius newberryi*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Coastal development projects that result in the loss of coastal saltmarsh habitat are currently the major factor affecting the tidewater goby. Coastal marsh habitats have been drained and reclaimed for residential and industrial developments, and waterways have been dredged for navigation and harbors, resulting in permanent and direct losses of wetland habitats as well as indirect losses due to associated changes in salinity. Coastal road construction projects have severed the connection between marshes and the ocean, resulting in unnatural temperature and salinity profiles that the tidewater goby cannot tolerate.

Furthermore, upstream water diversions adversely affect the tidewater goby by altering downstream flows, thereby diminishing the extent of marsh habitats that occurred historically at the mouths of most rivers and creeks in California. Alterations of flows upstream of coastal lagoons has already changed the distribution of downstream salinity regimes. Since the tidewater goby has relatively narrow salinity tolerances, changes in salinity distributions due to upstream water diversions may adversely affect both the size and distribution of goby populations (D. Holland, Univ. of Southwestern Louisiana, pers. comm., 1991).

Historically, the tidewater goby occurred in at least 87 of California's coastal lagoons (Swift *et al.* 1989). Since 1900, it has disappeared from approximately 50 percent of formerly occupied lagoons. A rangewide status survey conducted in 1984 found that 22 historic populations of tidewater goby had been extirpated (Swift *et al.* 1989). Only 5 years later, a subsequent status survey documented the disappearance of an additional 21 populations. In the San Francisco Bay area, 9 of 10 previously identified populations have disappeared (Swift *et al.* 1989, 1990). Losses in the southern part of the State have been greatest, including 74 percent of the coastal lagoons south of Morro Bay. Only three populations currently remain south of Ventura County. Since 1989, three additional tidewater goby populations have been lost, in San Luis Obispo and Santa Cruz counties (Swift *et al.* 1989, 1990). Five small populations have been rediscovered since 1984, but the overall losses indicate a decline of 35 percent rangewide in only 6 years (Holland 1991a, 1991b, 1991c; Swift *et al.* 1991).

Of the 43 remaining populations of tidewater gobies identified by Swift *et al.* (1990), most are small and threatened by a variety of both human and natural factors. According to Swift *et al.* (1990), only 6 extant localities contain populations that are considered large enough and free enough from habitat degradation to be safe for the immediate future. These areas are all located north of San Francisco Bay. The remaining lagoons are so small or so modified that tidewater goby populations are restricted in distribution and vulnerable to elimination (Swift *et al.* 1989, 1990). The number of extirpated localities of gobies has left remaining populations so widely separated throughout most of its range that recolonization is unlikely.

Several specific proposed and ongoing coastal development activities threaten habitats supporting tidewater gobies, including (1) road widening and bridge replacement projects along Highway 101, (2) water diversion projects in San Luis Obispo County, (3) expansion of several State Park Recreation areas in Santa Barbara and San Luis Obispo Counties, and (4) hotel and golf course developments in San Luis Obispo and Marin Counties.

In addition to these specific threats, the tidewater goby is vulnerable throughout its remaining range because of the loss of coastal marsh, as noted above and because of other effects of water diversions as well. In addition to restricting the goby's overall range by altering downstream salinities, water diversions and alternations of water flows may negatively impact the species' breeding and foraging activities. Gobies in southern and central California breed primarily in sand/mud substrates and apparently avoid areas that contain large amounts of decaying vegetation (Holland 1991b). Reductions in water flows may allow aggressive plant species to colonize the otherwise bare sand/mud substrates of coastal lagoon margins, thus degrading the habitat quality for the goby. Decreases in stream flows also reduce the deep stream pools utilized by gobies venturing upstream from lagoons. In San Luis Obispo County alone, the effects of drought, either directly or

exacerbated by upstream water diversions, have been responsible for the extirpation of at least three populations of gobies between 1986 and 1990 (K. Worcester, Calif. Dept. Fish Game, pers. comm., 1991).

The tidewater goby is also adversely affected by groundwater overdrafting and discharge of agricultural and sewage effluents. In Santa Barbara, for example, increased groundwater pumpage and siltation from topsoil runoff in the San Antonio Creek drainage has significantly affected areas immediately upstream of occupied goby habitat (i.e., Barka Slough) (C. Swift, Los Angeles County Museum of Natural History, pers. comm., 1991). Swift *et al.* (1989) cite evidence that enrichment by agricultural and sewage effluents may cause algal blooms and deoxygenation that restrict habitable areas of lagoons utilized by tidewater gobies, especially in summer. The potential for these factors to degrade remaining goby habitats has also been noted at all three extant localities south of Ventura County (D. Holland, pers. comm., 1991), and at several sites along the central California coast (T. Taylor, Calif. State Parks and Recreation, pers. comm. 1991; K. Worcester, pers. comm., 1991).

The tidewater goby is further threatened by channelization of the rivers it inhabits. Because most of the goby's localities have been moderately to extremely channelized, winter floods scour the species out of the restricted channelized areas where no protection is afforded from such high flows. This type of event was responsible for the disappearance of gobies from Waddell Creek lagoon in the winter 1972–73 (C. Swift, pers. comm., 1991), and they have not returned.

Finally, cattle grazing and feral pig activities also present a threat to the existence of the tidewater goby. These activities have resulted in increased sedimentation of coastal lagoons and riparian habitats, removal of vegetative cover, increased ambient water temperatures, and elimination of plunge pools and collapsed undercut banks utilized by tidewater gobies. In San Luis Obispo County, increased sedimentation into Morro Bay has significantly accelerated the conversion of wetland habitats to upland (Josselyn *et al.* 1989). Presently, cattle continue to graze freely both upstream and in many of the coastal lagoons supporting tidewater gobies (K. Worcester, pers. comm., 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not known to be applicable.

C. Disease or Predation

Over the past 20 years, at least 60 species of fishes have been introduced to the western states, 59 percent of which are predatory (Hayes and Jennings 1986, Jennings 1988). The introduction of exotic predators to southern California waters has been facilitated by the interbasin transport of water (e.g., California Aqueduct). Introduced predators, particularly centrarchid fishes, may have contributed to the elimination of tidewater gobies from several localities in California (Swift *et al.* 1989). The present-day absence of the tidewater gobies from the San Francisco delta area may well be explained by the presence of introduced predators such as striped bass (*Morone saxatilis*) and native predators including the Sacramento perch (*Archoplites interruptus*) (Swift *et al.* 1989, 1990). Two of the most recent disappearances of gobies from San Luis Obispo County (Old Creek) and San Diego County (San Onofre Creek) are likely due to the presence of largemouth bass (*Micropterus salmoides*) and green sunfish (*Lepomis cyanellus*), respectively. Natural predation on gobies by rainbow trout (*Oncorhynchus mykiss*) has been documented (Swift *et al.* 1989). Other non-native predators, specifically crayfish (*Cambarus spp.*) and mosquitofish (*Gambusia spp.*), may also threaten goby populations through direct predation on adults, larvae, or eggs.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act regulate the placement of dredge and fill materials into waters of the United States. Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of waters of the United States and adjacent wetlands, unless a listed species may be adversely affected. Individual permits, which are subject to more extensive review, are required for projects that affect greater than 10 acres.

The U.S. Army Corps of Engineers (Corps) is the agency responsible for administering the section 10 and section 404 programs. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the agencies arise. In practice, the Corps' actions under section 10 and section 404 are insufficient to protect the tidewater goby.

Most projects within the range of the tidewater goby may require approval from the Corps as currently described in section 404 of the Clean Water Act. Projects proposed in coastal lagoons may also require a permit under section 10 of the Rivers and Harbors Act. Federal listing of this species would ensure greater consideration of the effects of permitted actions during the review process as well as provide the protections of section 7 of the Endangered Species Act.

The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect Federal candidate species. However, project proponents are not required to avoid impacts to this species, and proposed mitigation measures are frequently not adequately implemented. As with section 404 permits, the Service's comments through these environmental review processes are only advisory.

The California Coastal Act (CCA) regulates the approval of developments within the coastal zone. The continued loss and degradation of coastal wetlands since the CCA was enacted in 1974 attests to the limitations of this legislation, although a significant slowing in wetland losses has occurred.

E. Other Natural or Manmade Factors Affecting its Continued Existence

By far, the most significant natural factor adversely affecting the tidewater goby is drought, and resultant deterioration of coastal and riparian habitats. California has recently experienced 5 consecutive years of lower than average rainfall. These drought conditions, when combined with human induced water reductions (i.e., diversions of water from streams, excessive groundwater withdrawals) have degraded coastal and riparian ecosystems and have created extremely stressful conditions for most aquatic species. Formerly large populations of tidewater gobies have declined in numbers owing to reduced availability of suitable lagoon habitats (i.e., San Simeon Creek, Pico Creek), others disappeared owing to lack of water when the lagoons dried (i.e., Santa Rosa Creek). In San Luis Obispo County alone, 6 of 20 populations of tidewater gobies were extirpated between 1984 and 1989 owing to drought coupled with water diversions and pollution (K. Worcester, pers. comm., 1991).

Habitat degradation and losses of the tidewater goby from weather-related

natural phenomena commonly occur, due to the restriction of the species to coastal lagoon systems and its dependence on freshwater inflows. Events such as river flooding and heavy rainfall have been reported to destroy goby burrows and wash gobies out to sea. Storm surges that enter a lagoon may also adversely affect entire goby populations by rapidly changing salinity.

The tidewater goby was undoubtedly subjected to such natural flood events even before major human alteration of drainage basins. As mentioned under Factor A, channelization and urbanization have increased the frequency and perhaps the intensity of such flood events. In addition, populations of gobies are becoming more isolated from one another as intervening populations are extirpated, thus further decreasing the likelihood of successfully colonizing and reestablishing a population lost to a "natural" flood.

Competition with introduced species is a potential threat to the tidewater goby. Although problems have not been documented so far, the spread of two introduced oriental gobies (the yellowfin goby, *Acanthogobius flavimanus*, and chameleon goby, *Tridentiger trigonocephalus*) may have a detrimental effect on the tidewater goby. According to Swift *et al.* (1990), the chameleon goby was recently found in Pyramid Lake, probably imported with central California water. If this goby becomes established in the Santa Clara River as other imported species have (e.g., *Cottus asper*), the tidewater goby population at the mouth of the Santa Clara River may be at risk.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. The tidewater goby has been extirpated from nearly 50 percent of the lagoons within its historic range, including 74 percent of the lagoons south of Morro Bay. Forty-three populations remain; however, only 6 are large in number and reasonably free from immediate threats. Based on this evaluation, the preferred action is to list the tidewater goby as endangered. The tidewater goby has experienced substantial declines throughout its historic range, lives within specific habitat zones that have been, and will continue to be targeted for development and suffer degradation by human activities, and are extremely vulnerable to adverse habitat modification and to water quality changes. The tidewater goby is imminent danger of extinction throughout its range and requires the full protection of listing as endangered under the Act in order to survive. For the reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. Furthermore, the Service is to designate critical habitat on the basis of the best scientific and commercial data available after taking into consideration the economic, and other relevant impacts of specifying an area as critical habitat (16 U.S.C. 1533(b)(2)). In the case of the tidewater goby, critical habitat is not presently determinable. A final designation of critical habitat requires detailed information on the possible economic effects of such a designation. The Service does not currently have sufficient information needed to perform the economic analysis. A delay in the proposed listing of the species in order to gather additional information and perform analyses would not serve the needs of the species. The Service will continue to gather information on this species, and will publish a determination on the designation of critical habitat at a later date.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act as codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A number of Federal agencies or departments control lands that support the tidewater goby. These agencies include the Department of Defense (U.S. Army Corps of Engineers, U.S. Navy, U.S. Air Force, and U.S. Marine Corps) and Department of the Interior (National Park Service and U.S. Fish and Wildlife Service). Federal actions that may be affected by this proposal would be the funding or authorization of projects within the species' habitat, including the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), and special use permits. Other Federal actions that are subject to environmental review under the National Environmental Policy Act would also require consultation with the Service. Projects on federally owned land would also be subject to the provisions of section 7 of the Endangered Species Act.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental

take in connection with otherwise lawful activities, and for economic hardship under certain circumstances. Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species:

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Office Supervisor at the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary authors of this proposed rule are Donna C. Brewer and Cathy Brown of the Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Fishes to the List of Endangered and Threatened Wildlife:

§ 17.12 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Goby, tidewater	*Eucyclogobius newberryi*	U.S.A. (CA)	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30175 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Proposal To List the Relict Darter and Bluemask (=Jewel) Darters as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the relict darter (*Etheostoma chienense* and bluemask (=jewel) darter (*Etheostoma (Doration)* sp.) as endangered under the Endangered Species Act of 1973, as amended (Act). The relict darter, which is endemic to the Bayou du Chien drainage in western Kentucky, has been collected from only five sites within this drainage and is known to spawn in only one Bayou du Chien tributary. The relict darter has been and continues to be impacted by poor water quality and habitat deterioration resulting from stream channelization, siltation caused by poor land use practices, and by other water pollutants. The bluemask darter is endemic to the Caney Fork River system (above Great Falls), Cumberland River

basin, in central Tennessee. Based on historic records, the species was known from five rivers in the Caney Fork River system. The bluemask darter is now known from four stream reaches. Its distribution has been reduced by such factors as impoundments, water withdrawal, and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, gravel mining, poor land use practices, and waste discharges. These factors continue to impact the species and its habitat. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by February 9, 1993. Public hearing requests must be received by January 25, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For further information on this proposed rule, please contact Mr. Richard G. Biggins at the above address.

SUPPLEMENTARY INFORMATION:

Background

Relict Darter

The relict darter is endemic to the Bayou du Chien watershed in extreme western Kentucky. Recently this darter, which is one of 10 recognized species in the *Etheostoma squamiceps* complex of the subgenus *Catonotus*, was formally described by Page *et al.* (1992). It is a small (2½-inch) fish. Females and nonbreeding males have light tan colored backs and sides, with brown mottling and six to eight dark brown saddles. They have white unmarked undersides. Breeding males have gray to dark brown sides and backs and light tan undersides.

Warren and Burr (1991) reviewed all known recent and historical literature regarding the relict darter and surveyed known collection sites and potential habitat within the Bayou du Chien watershed. They reviewed fish collection records from adjacent watersheds and also surveyed these areas for the relict darter. They speculated that the fish was once more widespread in the Bayou du Chien system. However, based on historic and current records, they reported that the fish has only been documented from nine sites in Graves and Hickman Counties, Kentucky; only one spawning site is known.

The relict darter's distribution has apparently been reduced by such factors as channelization and the general deterioration of water and habitat quality resulting from siltation and other pollutants contributed by poor land use practices and by waste discharges. These factors continue to impact the species and its habitat. Because the species presently inhabits only limited areas and is known to spawn in only one small tributary, it is very vulnerable to extirpation from toxic chemical spills. Additionally, because of its small population size, the species' long-term genetic viability is questionable.

On October 29, 1991, the Service notified by mail (22 letters) potentially affected Federal and State agencies, and local governments, as well as interested individuals, that a status review of the relict darter was being conducted. Three comments were received as a result of this notification. The Tennessee Valley Authority and the Kentucky State Nature Preserves Commission supported the species' potential Federal protection and the Kentucky Department of Fish and Wildlife Resources provided information on fish collections in the watershed. No objections to the potential listing of the relict darter were received.

The relict darter does not appear in the Service's notice of review for animal candidates published in the **Federal Register** of November 21, 1991 (56 FR 58804–58836). However, a status survey completed in late 1991 indicated the species is facing significant threats and is in need of protection under the Act. Based on this information, the Service's Acting Assistant Director on April 29, 1992, approved elevating the relict darter to a category 1, priority 2 (based on a priority scale of 1 to 12) candidate. A category 1 species is a species for which the Service has sufficient information to propose for protection under the Act. The listing priority scale is fully explained in a notice covering the Service's listing and recovery priority guidelines that was published in the **Federal Register** of September 21, 1983 (48 FR 43098).

Bluemask Darter

Although formal description of the bluemask darter (*Etheostoma* (*Doration*) sp.) is not expected before early 1993, species distinctiveness is affirmed by the morphological and allozymic comparison of the characteristics of this species with those of other darters of the same subgenus (Steven Layman, University of Alabama, personal communication, 1992). The bluemask darter is a small (1¾-inch) fish, closely related to *E. stigmaeum*. Breeding males are nearly covered by a bright blue color. Females and nonbreeding males are not as brightly colored. They have six dark saddle-like markings across the back and seven to eight lateral blotches. The species inhabits areas of slow to moderate current over sand and fine gravel, a habitat type that is very limited in some of the occupied streams.

The bluemask darter is endemic to the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Based on current and historic records reviewed by Layman (1991), the species has been collected from five rivers in the Caney Fork River system—Upper Caney Fork River, Collins River, Rocky River, Calfkiller River, and Cane Creek in Grundy, Warren, Van Buren, and White Counties.

A 1991 fish survey (Layman 1991) of the Caney Fork River system above and below Great Falls revealed that the species is now restricted to isolated populations in reaches of four rivers in the Caney Fork River system—Cane Creek, Van Buren County: Collins River, Warren and Grundy Counties; Rocky River, Van Buren County; and Upper Caney Fork River, White County.

The bluemask darter has been impacted by such factors as impoundments, water withdrawals, and the general deterioration of water and substrate quality resulting from siltation and other pollutants contributed by coal mining, gravel mining, poor land use practices, water withdrawal, and waste discharges. These factors continue to impact the species and its habitat.

In the **Federal Register** (56 FR 58804–58836) of November 21, 1991, the Service listed the bluemask darter as a category 2 species. A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants, but for which there is insufficient information to proceed with a listing proposal. Based on more recent status information, this species was approved by the Service's Acting Assistant Director on April 29, 1992, as a category 1, priority 2 candidate.

On February 28, 1992, the Service notified by mail (40 letters) potentially affected Federal and State agencies and local governments, as well as interested individuals, that a status review of the bluemask darter was being conducted. Three agencies responded. The Tennessee Wildlife Resources Agency said it would help protect the darter during the status review period and

would continue this protection if it were listed. The U.S. Soil Conservation Service and the Department of the Air Force responded to the bluemask darter notification letter but did not take a position on the potential listing. No objections to the potential listing of the bluemask darter were received.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the relict darter and the bluemask darter are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The relict darter is endemic to the Bayou du Chien system in extreme western Kentucky (Warren and Burr 1991). Webb and Sisk (1975) indicated that this darter was "fairly common" in the high gradient reaches of Bayou du Chien in the early 1970s. Warren and Burr (1991) speculated that in presettlement times the species was likely more widespread within the Bayou du Chien watershed in areas upstream of the Mississippi floodplain (upstream of Moscow, Kentucky).

Warren and Burr (1991) surveyed the system in 1991 and collected the species of five sites but found it abundant at only two sites (18 were collected at one site and 46 at another). The other three sites yielded a total of only eight relict darters. They and other researchers have only been able to locate one spawning area in a small tributary stream located in Graves County.

Adult relict darters are concentrated in headwater areas in slow-flowing pools, usually associated with gravel, sand, and leaf litter substrates near fallen tree branches, undercut banks, or overhanging streambank vegetation (Warren and Burr 1991). Warren and Burr (1991) noted that the Bayou du Chien system has been extensively channelized. Much of the streams' sinuosity was eliminated, undercut banks were lost, streambank vegetation and instream cover were removed, and some smaller streams now flow only intermittently. This massive alteration of the relict darter's habitat reduced both relict darter numbers and the amount of suitable habitat. Aside from past channelization impacts, the area is extensively farmed, and much of the watershed has been deforested. These alterations result in a fairly high silt load within the Bayou du Chien system that continues to degrade the habitat and further impacts the species.

The bluemask darter has only been collected from the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Layman (1991) reviewed historic collection records and reported that the species has been collected from five rivers in the Caney Fork River system—Upper Caney Fork River, Collins River, Rocky River, Calfkiller River, and Cane Creek in Grundy, Warren, Van Buren, and White Counties. Historic fish collection records are sparse for this area. However, considering the extent of the fish's preferred habitat (slow to moderate current areas with sand and fine gravel substrates (Layman 1991)), which was inundated by Great Falls Reservoir in the 1910s, the species was once likely more widely distributed within this portion of the Caney Fork system than available records indicate. The belief that the species has undergone a range reduction is also supported by Starnes and Etnier (1980).

In 1991 Layman (1991) surveyed the Caney Fork River system above and below Great Falls. He found the fish restricted to isolated populations in short reaches of four rivers in the Caney Fork River system—Cane Creek, Van Buren County; Collins River, Warren and Grundy Counties; Rocky River, Van Buren County; and upper Caney Fork River, White County. Layman (1991) estimated that the bluemask darter currently inhabits about 500 feet of Cane Creek, 25 miles of the Collins River, 2 miles of the Rocky River, and 2.5 miles of the upper Caney Fork River.

The species was historically taken from two sites in the Calfkiller River, White County. However, Layman (1991) made collections at both of these historic collection sites and four other Calfkiller River sites, but no specimens were taken. It is believed that the species has now been extirpated from this river. The fish was also not taken (Layman 1991) in collections made in other Caney Fork tributaries—Barrens Fork River, Falling Water River, Charles Creek, Laurel Creek, Hickory Creek, Town Creek, and Mountain Creek.

The bluemask darter's distribution has been reduced by such factors as impoundments, water withdrawal, and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, gravel mining, poor land use practices, water withdrawal, and waste discharges. These factors continue to impact the species and its habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The specific areas inhabited by both fish are presently unknown to the general public, and until this proposal is published the public will be unaware of the presence of these rare fish in the Bayou du Chien and the Caney Fork River watersheds. As a result, take of these fish by the general public has not been a problem. However, both fish exist in very small, restricted areas; and the relict darter is known to spawn in only one short stream reach. If the specific inhabited stream reaches become public knowledge through critical habitat designation during the sometimes controversial listing process, it would be extremely easy for vandals to seriously impact the species. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if specific inhabited locations are revealed. Federal protection could help to minimize the negative impact of illegal or inappropriate take.

C. Disease or Predation

Although the relict and bluemask darters are undoubtedly consumed by predators, there is no evidence that predation is a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

The States of Kentucky and Tennessee prohibit taking fish and wildlife for scientific purposes without a State collecting permit. These permits provide some protection for these fish. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect them.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Because the existing relict and bluemask darter populations inhabit only short stream reaches, they are vulnerable to extirpation from accidental toxic chemical spills. This is especially true of the only known relict darter spawning site, which is close to a railroad line. Additionally, because the relict darter population has been drastically reduced in size, the species'

long-term genetic viability is questionable.

All bluemask darter populations are now isolated by the Great Falls Reservoir. As the populations in Cane Creek and the Upper Caney Fork are extremely small, and as the reservoir restricts gene flow among populations, the long-term genetic viability of these populations is questionable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both fish in determining to propose these rules. Based on these evaluations, the preferred action is to propose the relict darter and bluemask darter for Federal protection. The relict darter is now known from only five sites in the Bayou du Chien system in western Kentucky. The bluemask darter is currently known from only four streams in the Caney Fork River system in central Tennessee. These fish and their habitat have been and continue to be impacted by habitat destruction and range reduction. Their limited distribution also makes them very vulnerable to toxic chemical spills. Because of their restricted distributions and their vulnerability to extinction, endangered status appears to be the most appropriate classification for these species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these fish.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further threaten these two species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the fishes' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these fish, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; and if needed, more specific distributional information would be provided.

Each of these fish occupies very restricted stream reaches. Thus, as any significant adverse modification or destruction of these species' habitat would likely jeopardize their continued existence, no additional protection for the species would accrue from critical habitat designation that would not also accrue form listing these species. Therefore, when listed, habitat protection for these species will be accomplished through the section 7 jeopardy standard and section 9 prohibitions against take.

In addition, both fish are very rare, and taking for scientific purposes and private collection could pose a threat if specific site information were released. The publication of critical habitat maps in the Federal Register and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the often controversial critical habitat designation process. The locations of populations of these species have consequently been described only in general terms in these proposed rules. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "ADDRESSES" section; from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501; and from the Kentucky Department of Fish and Wildlife Resources, Kentucky State Nature Preserves Commission, Tennessee Wildlife Resources Agency, and Tennessee Department of Conservation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting these species. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not listed to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations (50 CFR 17.21) set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

Public Comments Solicited

The Service intends that any final action resulting from these proposals will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from these proposals.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of these proposals. Such requests must be made in writing and should be addressed to the Field Supervisor (see **ADDRESSES** section of this rule).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Layman, S.R. 1991. Status survey for the dirty darter, (*Etheostoma olivaceum*) and the jewel darter, (*Etheostoma (Doration)* sp.) in the Caney Fork and Cumberland Rivers, Tennessee. Final report submitted to the U.S. Fish and Wildlife Service, Asheville, NC. 35 pages.

Page, L.M., P.A. Cease, D.L. Swofford, and D.G. Buth. 1992. Evolutionary relationships with the *Etheostoma squamiceps* complex (Percidae: subgenus *Catonotus*) with descriptions of five new species. Copies 1992(3), pp. 615–646.

Starnes, W.C., and D.A. Etnier. 1980. Fishes. Pages B1–B134 *In* D.C. Eagar and R.M. Hatcher (eds.). Tennessee's Rare Wildlife Volume 1: The Vertebrates. Tennessee Heritage Program.

Warren, M.L., and B.M. Burr. 1991. Survey of the relict darter (*Etheostoma (Catonotus)* sp. cf *E. neopterum*). Final report submitted to the U.S. Fish and Wildlife Service, Asheville, NC. November 1991. 33 pp.

Webb, D.H., and M.E. Sisk. 1975. The fishes of west Kentucky. III. The fishes of Bayou du Chien. Trans. Ky. Acad. Sci. 36:63–7.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195 Ext. 228).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	
Fishes:							
•	•	•	•	•	•	•	
Darter, bluemask (=jewel)	*Etheostoma (Doration)* sp.	U.S.A. (TN)	Entire	E		NA	NA
•	•	•	•	•	•	•	
Darter, relict	*Etheostoma (Catonotus)* sp.	U.S.A. (KY)	Entire	E		NA	NA
•	•	•	•	•	•	•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30176 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition to List Barton Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for the petition to add the Barton Springs salamander (*Eurycea* sp.) to the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that the requested action may be warranted. A status review is initiated.

DATES: The finding announced in this notice was made on November 25, 1992. To be incorporated into the 12-month finding, information should be submitted to the Service by January 11, 1993 (see ADDRESSES below). However, the Service will continue to accept information on the status of the Barton Springs salamander at any time

ADDRESSES: Information, comments, or questions concerning this petition should be sent to the State Administrator, Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East 6th Street, room 407, Austin, Texas 78701. The petition, petition finding, and supporting data are available for public inspection by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish and Wildlife Biologist, at the above address (Telephone 512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a status review of the species concerned.

On January 22, 1992, the Service received a petition from Dr. Mark Kirkpatrick and Ms. Barbara Mahler to list the Barton Springs salamander (*Eurycea* sp.) as an endangered species. The petition also requested critical habitat be designated. The Kirkpatrick and Mahler document, dated January 22, 1992, clearly identified itself as a petition and contained the names, signatures, affiliations, telephone numbers, and addresses of the petitioners.

This finding is based on various documents, including the petition and sources readily available to the Service. Listing will be evaluated in accordance with the Act's requirements. In accordance with the Administrative Procedure Act (5 U.S.C. 553), the Service will consider the request to designate critical habitat and will review the information provided and otherwise available in its deliberation.

The Barton Springs salamander has been considered a Category 2 candidate species since December 30, 1982, when it first appeared in the Animal Candidate Review for Listing as Endangered or Threatened Species (Animal Notice of Review). Category 2 taxa are considered by the Service as candidates for possible addition to the List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threats are not currently available to support proposed rules.

Biological Information

The Barton Springs salamander is a morphologically and genetically distinct, but currently unnamed, species in the genus *Eurycea.* Sweet (1978, 1984) found distinct morphological differences between the Barton Springs salamander and other Texas *Eurycea,* but did not formally describe the salamander as a new species. Recent taxonomic work at the University of Texas, based on morphological and genetic data, clearly separates the Barton Springs salamander from other Texas *Eurycea* [Texas Parks and Wildlife Department (TPWD) 1992]. Based on geographic isolation and morphological and genetic differences, the Barton Springs salamander warrants recognition as a species (TPWD 1989, 1990, 1992, Sweet 1978, 1984, Chippindale, pers. comm., 1992).

The Barton Springs salamander is completely aquatic. Adults average about 2.5 inches in length. The Barton Springs salamander is a neotenic (retains a larval form with external gills throughout its life) salamanders from the Edwards Plateau of Texas.

Population Status

There are inherent difficulties in estimating the population size and range of aquifer-dwelling species, such as the Barton Springs salamander. The subterranean conduits, caverns and cavities where the salamanders are found are inaccessible to humans. Consequently, the abundance of Barton Springs salamander is unknown. Researchers have to rely on observing individuals that reach the surface. During the past 4 years, Barton Springs salamander juveniles have been found at one of the openings of Barton Springs (Andrew Price, Texas Parks and Wildlife Department, pers. comm., 1992, Hillis and Chippindale 1992, providing evidence that the subterranean population is reproductively viable.

The known range of the Barton Springs salamander is the subterranean, water-filled conduits, caverns, and cavities in a segment of the Edwards Aquifer near the Barton Springs, in Zilker Park, Austin, Texas (Sweet 1978, 1984; TPWD 1990, 1992). Hereafter, this aquifer segment will be referred to as the Barton Springs segment. Some individuals reach the surface in springhead areas in Zilker Park. Charles Sexton (City of Austin, *in litt.,* 1992) has reported sightings of adult Barton Springs salamanders during the summers of 1989, 1990, and 1991 in the Barton Springs swimming area. Despite searches for Barton Springs salamander in other springs, including springs in the Barton Springs segment, and in caves reaching the water table, the salamander has not been found outside of its currently recognized ranged (TPWD) 1990).

Until the nearly 1970's, the Barton Springs salamander was commonly observed in aquatic vegetation in the Barton Springs headwaters (Hillis and Chippindale 1992). The abundance of salamanders in this area declined over the next 15 years. The decline can be attributed to maintenance of a vegetation-free area which has: (1) Reduced or eliminated areas where Barton Springs salamander can hide from predators; and (2) adversely affected the Barton Springs salamander's prey, particularly amphipods.

Within the Barton Springs segment, the distribution of Barton Springs salamander is limited by physical, chemical, and biological factors. Physical factors that define the distribution include the water level in the Barton springs segment and size and pattern of water filled openings or pores in the limestone skeleton of the aquifer. Pertinent chemical factors range form the nutrient content necessary to sustain the aquifer community to factors that may adversely affect the community, such as high levels of total dissolved solids or contaminants in toxic amounts. One of the important biological factors is the distribution and availability of prey items (Samuel Sweet, University of California at Santa Barbara, pers. comm., 1992).

Attempts to propagate captive Barton Springs salamander have not succeeded (Andrew Price, pers. comm., 1992). Similarly, attempts to achieve laboratory reproduction in the San Marcos salamander (*Eurycea nana*) have been unsuccessful (Janet Nelson, Southwest Texas State University, pers. comm., 1992).

Threats to Barton Springs Salamander

Barton Springs salamander faces two principal threats: a deterioration of water quality and a decline in aquifer level in the Barton Springs segment. The restricted range of the Barton Springs salamander increases the immediacy of these threats because a single incident (e.g., a pollution event) could impact the entire known population.

Water Quality Threats

The Edwards Aquifer along the Balcones Fault Zone in the Austin Region has been identified as having the highest pollution potential among all the major aquifers in Texas (Texas Water Commission 1989). This is based on a combination of geologic, hydrologic, geomorphologic, and meteorologic factors (Texas Water Commission 1989). Austin, and the surrounding area, is rapidly developing (City of Austin 1988, U.S. Geological Survey 1990). The watershed of the Barton Springs segment is a mosaic of urban, suburban, and rural land uses. Further development in the recharge area and watershed of the Barton Springs segment is likely to increase the levels of pollutants reaching Barton Creek, other creeks serving as recharge paths, and Barton Springs.

Urbanization has already affected surface water quality (USGS 1990). Analyses of surface water has found increased levels of suspended solids, biochemical oxygen demand, total organic carbon, total nitrogen, total phosphorus, and fecal-group bacteria. Fecal-group bacteria contamination at Barton Springs has occurred (USGS 1986). The conveyance and treatment of sewage in the watershed, particularly in the recharge zone, may result in an impaired local water quality. However, other than fecal-group bacteria, the water quality in the Barton Springs segment has been good (USGS 1986).

Potential contaminants of surface water and groundwater are: nutrients (nitrogen and phosphorous compounds), man-made organic contaminants including petroleum-related hydrocarbons, halogenated hydrocarbons, insecticides (organochlorine, organophosphate, carbamates, and pyrethroids), herbicides, and inorganics (such as cadmium, copper, lead, mercury, and zinc). These contaminants are of concern because: (1) They are stored, present, transported, or used in the watershed; (2) they affect acquatic life typically at trace levels; and (3) some contaminants may be present in pulses that are missed by periodic or regular contaminant sampling.

Barton Springs salamanders feed on amphipods and other similarly sized invertebrates inhabiting the Barton Springs segment of the Edwards Aquifer (Hillis and Chippindale 1992). Crustaceans, particularly amphipods, are sensitive to several organic chemicals (Fish and Wildlife Service 1986).

The Environmental Protection Agency has developed acute and chronic toxicity criteria for freshwater aquatic life for a number of contaminants (U.S. Environmental Protection Agency 1986). Data published by the U.S. Geological Services (USGS) (1986, 1990) indicate that some samples of water from streams in the Austin area, and groundwater in the Barton Springs segment, approach or exceed acute and/or chronic criteria for freshwater aquatic life. These contaminants include dissolved cadmium, copper, lead, mercury, and zinc.

Although the percentage of water samples that exceed these criteria for any particular contaminant has been small, contaminants may be present at values and durations capable of impacting Barton Springs salamander and/or its prey base. The availability/toxicity of these metals is decreased in water with high values of hardness and Barton Springs water is considered to be very hard, with a hardness greater than 180 mg/l as $CaCO_3$. However, these metals may be more toxic when they occur in mixtures and with certain organics, such as ammonia. Additionally, the levels of detection used by USGS (1990) appear to be higher than the chronic lead and mercury toxicity criteria for freshwater aquatic life.

Threat From Decline in Aquifer Level

Reduced water levels in the Barton Springs segment would adversely impact the Barton Springs salamander by causing direct loss of habitat. Ground water pumping in the area is expected to increase due to further urbanization of the outlying areas of Austin. Currently, the amount of water discharged from the Barton Springs segment (both through pumping and springflow) is roughly equal to recharge (BS/EACD 1990). Aquifer water levels rise and decline in relation to rainfall. Artificial recharge enhancement in Onion Creek is being studied (BS/EACD 1990). Since aquifer water levels respond rapidly to differences between recharge and discharge, a combination of intense pumping and drought would result in reduced flows from Barton Springs. Barton Springs has always been recorded as flowing and one of the Barton Springs/Edwards Aquifer Conservation District's (BS/EACD) goals is to assure Barton Springs springflow "does not fall appreciably below historic low levels" (BS/EACD 1990). For this purpose, BS/EACD has developed a drought contingency plan.

Additional ground water pumping may exceed the resources of the Barton Springs segment and result in a change from the "existing dynamic equilibrium" to declining ground water levels and a decrease in (or cessation of) discharge at Barton Springs (USGS 1986). Barton Spring's long-term mean discharge is about 50 cubic feet per second (cfs), with a recorded minimum discharge of 10 cfs (USGS 1986). In 1982, estimated pumping from the Barton Springs segment was about 5 cfs (USGS 1986). Water well production in the higher elevations of the Barton Springs segment has been limited during periods of lower aquifer levels in recent years (Bill Couch, Barton

Springs/Edwards Aquifer Conservation District, pers. comm., 1992).

When aquifer levels are low, the potential exists for the movement of water with high levels of total dissolved solids from a "bad-water" zone to the freshwater zone of the Barton Springs segment, including Barton Springs (USGS 1986). The "bad-water" zone is an area of groundwater with total dissolved solids greater than 1000 mg/l. The "bad-water" zone occurs along the eastern boundary of the Barton Springs segment. The higher concentration of dissolved solids that would result from an encroachment of "bad-water" would likely adversely affect wildlife found in the aquifer supplying Barton Springs. The potential for "bad-water" encroachment is increased with pumping of the aquifer and extended low recharge or low flow conditions (USGS 1986). Under low flow conditions, Barton Springs, and a well near the "bad-water" line (YD–58–50–216), show increased dissolved solid concentrations, particularly sodium and chloride, indicating encroachment from the "bad-water" zone (USGS 1986).

After a review of the petition, the references cited, and information otherwise available to the Service, the Service found that the petition presented substantial information indicating that listing the Barton Springs salamander (*Eurycea* sp.) may be warranted. The Service will consider the request for designation of critical habitat. If the Service determines designation of critical habitat is prudent and determinable, it will be included if a proposed rule is published.

This finding initiates a status review for the Barton Springs salamander as required under section (4)(b)(3)(A) of the Act. The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the Barton Springs salamander.

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Author

This notice was prepared by Patrick Connor, See **ADDRESSES** above, (512/482–5436).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: November 25, 1992

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30177 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 921106–2306]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to amend the regulations implementing Amendment 3 to the American Lobster Fishery Management Plan (FMP). This rule would modify the language of the existing regulations to allow lobster traps not constructed entirely of wood to contain a ghost panel with a specified degradable door fastener. The intent is to provide codified regulations to replace an interim action that is effective only through July 1, 1993.

DATES: Comments on the proposed rule must be received on or before January 11, 1993.

ADDRESSES: Comments on the proposed rule should be sent to Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Lobster Regulations." Copies of Amendment 3, which contains an environmental assessment and the regulatory impact review, are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rt. 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones (Resource Policy Analyst, Northeast Region, NMFS), 508–281–9273.

SUPPLEMENTARY INFORMATION: The American Lobster Fishery is managed under the FMP prepared by the New England Fishery Management Council (Council) and its implementing regulations at 50 CFR part 649 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP require that lobster traps contain a ghost panel to allow for the escapement of lobster after

a trap has been abandoned or lost. Section 649.21(d)(1)(iii), allows the use of the door of the lobster trap to serve as the ghost panel if fastened with a degradable material described in § 649.21(d)(1)(ii); and § 649.21(d)(2) provides the Director, Northeast Region, NMFS (Regional Director) with the authority to approve alternative designs and/or materials, at the request of, or after consultation with, the Council's Lobster Oversight Committee (Committee).

At the April 23, 1992, Committee meeting, alternatives to this ghost panel specification were discussed and the Committee agreed to request that the Regional Director approve the use of a bungee cord attachment in those instances when the bungee cord is attached with material approved under § 649.21(d)(1)(ii). At its May 20–21, 1992, meeting, the Council endorsed the Committee recommendation.

After consideration of the comments from the Committee, the Regional Director determined that the Council's recommendation was consistent with § 649.21(d)(1)(iii) and the intent of the requirement and published a notice in the **Federal Register** on July 10, 1992 (57 FR 30684), effective through July 1, 1993, approving use of this fastening alternative to the ghost panel regulations. This proposed action is necessary to codify the fastening alternative before July 1, 1993. This alternative would allow lobster fishermen to comply with the degradable escape panel requirements and allow escapement of lobster after a trap has been abandoned or lost.

Classification

The Regional Director has initially determined that this rule is necessary for the conservation and management of the American lobster fishery and is consistent with the Magnuson Act and with other applicable law.

The Regional Director has determined that this rule is consistent with the FMP and the economic effects of this rule on fishermen are contained within the Regulatory Impact Review (RIR) for Amendment 3. This proposed rule further clarifies the intent of the regulations that implemented Amendment 3. A determination was made for the final rule for Amendment 3 from review of the RIR that the rule was not a major rule under Executive Order 12291.

An Environmental Assessment (EA) was prepared which concluded that the final rule for Amendment 3 will not have a significant impact on the human environment. This rule does not alter the scope or intent of Amendment 3 and the effects of this rule are contained in the EA for Amendment 3. Therefore, this action is categorically excluded from the requirement to prepare an EA by NOAA Administrative Order 216–6.

The General Counsel of the Department of Commerce concluded that this regulation would not have a significant economic impact on a substantial number of small entities.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Regional Director has determined that this rule would be consistent to the maximum extent practicable with the approved coastal zone programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The reason for this determination is that this proposed rule agrees with the intent of the final rule for Amendment 3 implementing the ghost panel requirements. Thus, it was not necessary to submit this rulemaking for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act.

This rule does not contain regulatory provisions with federal implications sufficient to warrant preparation of a federalism assessment.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: December 7, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 649 is proposed to be amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.21, paragraph (d)(1)(iii) is revised to read as follows:

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

* * * * *

(d) * * *

(1) * * *

(iii) The door of the trap may serve as the ghost panel if fastened with:

(A) A bungee cord that is attached with untreated nonstainless/uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter can serve as the fastener of the trap door. The bungee cord must be attached so that when the untreated material degrades, the door of the trap will pivot open freely; or

(B) A material specified in paragraph (d)(1)(ii) of this section.

* * * * *

[FR Doc. 92–30068 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 669

Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Public hearings on Amendment 2 to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input on proposed changes to exiting regulations affecting the shallow-water reef fish fishery contained in Amendment 2 to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The proposed actions address continuing and growing concerns by the Council over scarce resources, the need to protect important species when they aggregate for spawning, and the need to extend protection to other reef-associated species not presently in the management unit.

DATES: Written comments must be submitted by January 25, 1993. See **SUPPLEMENTARY INFORMATION** for times and dates of public hearings.

ADDRESSES: Written comments on the proposed actions should be addressed to Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918. Further details on each meeting and additional documents will be available at Council headquarters. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; phone (809) 766–5926.

SUPPLEMENTARY INFORMATION: The FMP for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act became effective in September 1985. The FMP established a management program for shallow-water reef fish

resources within the exclusive economic zone (EEZ) of the Council's area of jurisdiction.

The FMP established regulations to rebuild declining reef fish species in the fishery and reduce conflicts among fishermen. It established criteria on mesh size, escape panels and degradable fasteners for the construction of fish traps; required owner identification and marking of gear and boats; prohibited the hauling of or tampering with another person's traps without the owner's written consent; prohibited the use of poisons, drugs, other chemicals and explosives for the taking of reef fish; established a minimum size limit on the harvest of yellowtail snapper and Nassau grouper; and established a spawning season closure of the taking of Nassau grouper.

The measures proposed under Amendment 2 would: Expand the management unit to include the major components of the deep-water reef fish fishery and the marine aquarium trade; restrict the collection of marine aquarium fishes to hand-held dip nets and slurp guns; modify existing fish trap construction characteristics; prohibit the harvest or possession of jewfish in waters around Puerto Rico and the U.S. Virgin Islands; recommend a permitting and reporting system by local governments; close two additional red hind aggregation areas during the December through February spawning season; prohibit the harvest of mutton snapper in a spawning aggregation area off St. Croix, from March through June of each year; establish marine coral reef reserves at strategic locations within the management area; and prohibit the unauthorized introduction of exotic spcies into marine waters.

The public hearings are scheduled to begin at 7 p.m. on the following dates and at the following addresses:

Monday, December 21, 1992—Salon Bahia, Parador Villa Parguera, La Parguera, Lajas, Puerto Rico;

Tuesday, December 22, 1992—Conference Room, Fisheries Research Laboratory, Department of Natural Resources, Road 102, 8.6 Km Interior, Punta Arenas (Joyuda) Cabo Rojo, Puerto Rico;

Wednesday, December 23, 1992—El Meson Criollo, Road 987, 3.2, Km Las Croabas, Fajardo, Puerto Rico;

Monday, December 28, 1992—Conference Room, Legislature Building, Charlotte Amalie, St. Thomas, U.S. Virgin Islands;

Tuesday, December 29, 1992—Conference Room, Legislature Building, Christiansted, St. Croix, U.S. Virgin Islands.

Council meetings are open to the public.

Dated: December 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30157 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

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

Food and Nutrition Service

Food Distribution Program; Level of Assistance from October 1, 1992 to September 30, 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the initial level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1993. The initial level of assistance is set at $.5780 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992, Public Law 102–375.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Legislative Background

Under section 311(a)(4) of the Older Americans Act of 1965, 42 U.S.C. 3030a(a)(4), the level of suport to be provided by the Department of Agriculture for each eligible meal claimed under the Nutrition Program for the Elderly (NPE) was fixed at $.5676 for each of Fiscal Years 1986 through 1991. This rate is reflected in the NPE regulations at 7 CFR 250.42. On September 30, 1992, the President signed Public Law 102–375, the Older Americans Act Amendments of 1992. Section 310 of this law amended section 311(a)(4) of the Older Americans Act to require the Secretary of Agriculture to maintain an annually programmed level of assistance equal to the greater of: (1) The current appropriation divided by the number of meals served in the preceding fiscal year; or (2) 61 cents per meal adjusted annually beginning with Fiscal Year 1993 to reflect changes in the Consumer Price Index (CPI). Section 311(c)(2) of the Act was amended to provide that the final reinbursement claims shall be adjusted to use the full amount appropriated for the fiscal year.

However, Congress appropriated funds for NPE for Fiscal Year 1993 in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993 (Pub. L. 102–341), on August 14, 1992, prior to enactment of the Older Americans Act Amendments of 1992. Therefore, the Fiscal Year 1993 NPE appropriation was established on the basis of the per-meal rate in effect at that time, i.e., $.5676, rather than the rate that was subsequently established by the 1992 amendments to section 311. Given current estimates of participation projected for NPE in Fiscal Year 1993, the appropriation provided by the Congress in Public Law 102–341 cannot support the newly established reimbursement rate.

Notwithstanding the initial rates established by the Older Americans Act, the Department must comply with the spending clause of the U.S. Constitution and 31 U.S.C. 1341(a)(1)(A) (known as the Antideficiency Act) which prohibit the obligation or expenditure of funds in excess of the available appropriation. Thus the Department is required to establish (and, if necessary, adjust) rates in such a manner as to fully expend, but not exceed, the program appropriation.

Alternatives

The Department has identified two alternatives for providing NPE per-meal support for meals served in Fiscal Year 1993 that would comply with the aforementioned statutory requirements. The first alternative would be to reimburse initially at the rate established by the Older Americans Act, which would be 61 cents per meal adjusted to reflect changes in the CPI. However, it would mean that the Department would not be able to pay claims for reimbursement received after the Fiscal Year 1993 appropriation was exhausted.

Under the second alternative, the Department would establish the initial per-meal reimbursement rate of $.5780, which, assuming that the Department's participation estimates are accurate, could be sustained throughout the year. The Department derived this lower initial rate by dividing the Fiscal Year 1993 appropriation ($142,912,000) by the current participation estimate of 247,210,805 meals. This projected meal count represents a growth factor of almost 1 percent for Fiscal Year 1993, which is consistent with participation trends in recent years.

Fiscal Year 1993 Rate and Procedures

In order to best serve the interests of State and local level program operations, the Department has chosen the latter alternative, which will provide a more consistent approach to the reimbursement process. Assuming accurate participation projections, the rate of $.5780 can be maintained throughout the fiscal year. Thus, State agencies can better plan and budget their program operations, and local project operators can, in turn, depend on a steady, uniform flow of meal service support during the fiscal year.

Implementation of the first alternative would not be consistent with responsible program stewardship because the appropriation could not sustain the higher per-meal reimbursement rate throughout the fiscal year. This alternative would inevitably raise false expectations at the local project site level. Site operators who planned and managed their programs based on the higher initial rate would be forced to curtail program services abruptly and significantly later

in the fiscal year in response to the depletion of the Fiscal Year 1993 appropriation. Sudden reductions in program participation and/or meal quality could prove necessary. Such changes would have both immediate and long-range negative impacts on the program.

Therefore, the Department intends to reimburse each NPE meal served in Fiscal Year 1993 at $.5780. However, if it appears that due to changes in projected participation levels that funds would be insufficient to support the $.5780 per-meal reimbursement rate or that funds would remain unspent, the Department will adjust the rate at which all meals claimed for the fiscal year are reimbursed. In any event, pursuant to section 311(c)(2)(B) of the Older Americans Act, a final rate adjustment will take place after the fiscal year close-out, when the actual number of meals claimed for the fiscal year has been firmly established. The final rate will be derived by dividing this actual meal count into the program appropriation for the fiscal year, and final payments to States will be made accordingly. Thus each State will receive support in the amount of this final rate for each meal claimed during Fiscal Year 1993. State agencies will be notified directly of any further changes in the rates for Fiscal Year 1993.

Dated: December 7, 1992.

Phyllis Gault,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 92–30107 Filed 12–10–92; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Management Guidelines and Inventory and Monitoring Protocols for the Mexican Spotted Owl in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice: Adoption of Interim Policy.

SUMMARY: The Regional Forester, Southwestern Region of the U.S. Forest Service, is issuing new management direction to provide protection for the Mexican spotted owl (MSO). Because of concern for the habitat needs of the Mexican spotted owl (*Strix occidentalis lucida*) and to provide for regulatory mechanisms. This direction is being issued as an interim directive to the Forest Service Manual at 2676.2, Spotted Owl. This interim directive replaces MSO Interim Directive No. 2 (**Federal Register** Vol. 55, No. 127 27278–27287), which officially expired December 26, 1991 but was extended as policy by the Regional Forester on December 4, 1991 until replaced.

This interim directive implements the conservation strategy developed by the Forest Service over the past year. The conservation strategy has two parts. The first part develops and implements short term spotted owl habitat management direction to provide the protection necessary to ensure the owl remains viable throughout its range until a long-term strategy is developed. The second part of the strategy identifies a Scientific Team to develop a program to evaluate the effects various management activities would have on the owl and its habitat. The team would also develop a monitoring program to estimate the effects of these activities, to identify any instances when the strategy was not implemented as designed, and to ensure the strategy removes the threats identified by the U.S. Fish and Wildlife Service (FWS) (1991) for the Mexican spotted owl.

Implementation of the supplement prescribes management activities, including but not limited to prescribed fire and silvicultural treatments. These activities are designed to maintain or improve the characteristics of suitable habitat for the Mexican spotted owl. Some of the modifications prescribed in suitable habitat reduce the canopy closure below the minimum level of suitability identified for the forest cover type being modified. These modifications would be designed to improve the tree species composition and distribution in the diameter classes present. They would also be designed to maintain or increase the number and/or vigor of desired shade intolerant hardwood and conifer species. These lowered levels of canopy closure are expected to return to the suitable habitat canopy closure range in 5–7 years as trees grow taller and crowns grow wider.

Surveyed but unoccupied suitable habitat would be managed under the strategy to ensure a linkage is maintained between the blocks of occupied habitat. Management prescribed in capable habitat would speed its return to a suitable condition to meet the long term needs of the species.

Although these guidelines are being issued as policy in the form of a interim directive, the Southwestern Region will continue the administrative study and research program we jointly began in 1989 with the Rocky Mountain Forest and Range Experiment Station (RMS) to collect more information on this species. These data would provide a better understanding of habitat preferences, diet, home range size, demographics, and other characteristics of the MSO population. The intent of this data gathering program was to increase the understanding of the owl and its habitat for future development of a long-term stragegy to conserve the Mexican spotted owl, planned for fiscal year 1995/1996.

Besides issuing management direction, this interim policy also provides inventory and monitoring protocols to standardize methods used during inventory work in suitable MSO habitat and when conducting variability and population monitoring. The inventory protocol ensures consistency across the Region in the effort necessary to obtain complete coverage of all suitable habitat while still providing reasonable assurance all occupied Mexican spotted owl habitat is identified. The monitoring protocols identify the procedures to be used to monitor Management Territories to ensure consistency in data collection so the information can be compared from one Territory to another and from one year to next.

The directive identifies that a Mexican spotted owl Management Territory should be established whenever and wherever a Mexican spotted owl is located. It provides the methodology to use to establish and manage a Mexican spotted owl territory. It also provides standard definitions to use when determining habitat suitability and owl occupancy.

This interim policy is being published under Forest Service regulations at 36 CFR part 216, Involving the Public in the Formulation of Forest Service Directives. It is being published in advance of giving the public an opportunity to comment because of the immediate need to protect occupied Mexican spotted owl habitat. However, the Forest Service welcomes comments on this interim policy. These comments will be used to develop a final policy for incorporation into the Forest Service Manual as a Regional Supplement. This Regional Supplement, along with any appropriate National Environmental Policy Act (NEPA) documentation and a biological evaluation, should be completed shortly after the end of the comment period.

DATES: This policy is effective January 1, 1993. Comments on the guidelines must be received on or before January 10, 1993.

ADDRESSES: Direct comments to: Larry Henson, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: James Lloyd, Director, Wildlife and Fisheries or Keith W. Fletcher, Mexican Spotted Owl Program Manager (505) 842-3261 or 842-3267. Direct requests for a complete copy of the manual supplement or the conservation strategy to Keith W Fletcher at the above address.

SUPPLEMENTARY INFORMATION:

Background and Need for Guidelines

The Mexican spotted owl is one of three subspecies of spotted owls. This subspecies can be found in the forested mountains and canyons of central Colorado and southern Utah south through Arizona and New Mexico into central Mexico. The other two subspecies include the northern (*S.o. caurina*) and the California (*S.o. occidentalis*) spotted owls. The northern subspecies occurs in the forested mountains of the coastal and Cascade ranges of northern California, Oregon, Washington and southern British Columbia. The California spotted owl inhabits the forested mountains and canyons and oak woodlands of the Sierra Nevada and coastal mountain ranges of central and southern California.

The Mexican spotted owl is historically known from only a few records and occasional observations. Johnson and Johnson (1985), Ganey and others (1986), Skaggs (1988) and Webb (1982) summarized the historical occurrences in the Southwest. The current range coincides very well with the range of historic sightings except where the low elevation riparian habitat in southeastern Arizona and adjacent southwestern New Mexico no longer exists.

Current surveys have shown Mexican spotted owls occur primarily in forested mountains containing dense, multi-layered stands with a moderately-closed to closed canopy (Bent 1938, Forsman 1988, Ganey and Balda 1989a) and rock-walled canyons often containing little or no tree cover (Kertell 1977, Reynolds 1990 and Rinkevich 1991). The forested stands inhabited by the owl are typically comprised of mixed conifer forest types, but ponderosa pine and pine/oak forest types as well as evergreen hardwood forests and woodlands, oak woodland, and canyons, often with riparian deciduous broadleaf communities, are also used by the owl (Bent 1938, Ganey 1988, Ganey and Balda 1989a, Ganey et al. 1988, Ligon 1926, Marshal 1957, Reynolds 1990 and Rinkevich 1991).

On November 4, 1991, the U.S. Fish and Wildlife Service proposed to list the Mexican spotted owl as threatened under authorities contained in the Endangered Species Act of 1973, as amended (USFWS 1991). No critical habitat was proposed because the FWS found that it is "not prudent" to do so. Once the owl was proposed for listing, the U.S. Forest Service (FS) was required to review its actions to determine if any action is likely to jeopardize the continued existence of a proposed species (Jeopardy is defined in 50 CFR 402.02 as follows: " 'Jeopardize the continued existence of' means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers of distribution of that species."). Other Federal Agencies are also required to conduct this review.

Section 4(a)(1) of the Endangered Species Act, and the regulations published to implement the listing provisions of this Act, set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species because of one or more of the five factors described in section 4 of these regulations. These factors include: (1) The present or threatened destruction, modification or curtailment of its habitat or range; (2) Overutilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) Inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence.

In addition to the Endangered Species Act, the National Forest Management Act (NFMA) and its implementing regulations call for maintaining well-distributed populations of native and desired non-native vertebrates. Forest Service policy based on NFMA calls for maintaining populations throughout their geographic range (FSM 2670.22) and avoiding adverse impacts on species while their Federal status is being determined (FSM 2670.31).

The FWS's November 4, 1991 decision to propose the Mexican spotted owl as a threatened species, focused primarily on concerns related to listing factor 1, modifications in stands of suitable habitat, and listing factor 4, inadequacy of regulatory mechanisms. Their primary concerns included: (1) Regulatory mechanisms do not exist for most federal and state agencies and Indian nations that would prevent adverse modification of suitable Mexican spotted owl habitat; (2) Existing regulatory mechanisms in place for National Forests in Arizona and New Mexico are interim and expire December 1991; (3) Regulatory mechanisms in place in Arizona and New Mexico allow the potential for adverse modifications of un-occupied suitable habitat thus increasing fragmentation between population centers which may increase predation on dispersing owls; (4) Forest Plans in Arizona and New Mexico project a 30 percent increase in the 444 million board foot (MMbf) maximum annual sale quantity (ASQ) over the next few decades; and (5) Forest plans on five National Forests in Arizona and New Mexico and several in Utah and Colorado allow logging on steep slopes, which would increase the amount of suitable habitat modified in the future.

These concerns lead the FWS to the assumption the Mexican spotted owl would become threatened at some time in the future because of a lack of regulatory mechanisms and the present and future levels of modifications in suitable owl habitat.

Forest plans provide umbrella direction that sets out goals, objectives, standards, guidelines and are permissive in nature for a 10–15 year period. For example, all Forest plans have an objective for sensitive species habitat protection. However, detailed guidelines for Mexican spotted owl habitat management are provided by direction in the the Forest Service Directives System. The directives which describe official agency policy and official correspondence gives us the capability to act quickly when new information comes to light.

The need for spotted owl protection has been a good example of how this works. Since little was known about owl habitat needs, Forest plans contained few detailed guidelines about owl habitat management. The body of knowledge grew quickly after Forest plans were approved. Subsequently, our Interim Directive No. 1 was issued in June 1989. Additional new information was the basis for issuing Interim Directive No. 2 in June 1990 to replace Interim Directive No. 1. The body of information has continued to grow exponentially, resulting in this new management directive which replaces Interim Directive No. 2. Forest Supervisors and District Rangers are obligated to address these guidelines in site specific project design. These directives supersede Forest plan guidelines where there is a conflict.

We have issued a Notice of Intent to prepare an environmental impact statement and decision which will amend Forest plans to include the latest management guidelines. This will close

the loop and all of our control mechanisms will be included in the Forest plans.

In January of 1992, representatives from the Wildlife and Fisheries and Timber Management Staffs of the Southwestern Region (Arizona and New Mexico) in conjunction with representatives of the Wildlife and Fisheries staffs of the Rocky Mountain (Colorado) and Intermountain (Utah) Regions began developing a strategy to conserve the Mexican spotted owl. After intensive review, revision and re-review by members of the spotted owl scientific research community, a strategy was adopted by the Forest Service.

The intent of this conservation strategy is to ensure there are no future declines in the amount of occupied suitable habitat, no long-term declines in the amount of surveyed but unoccupied suitable habitat. It is also the intent of this strategy to improve both the quantity and quality of the habitat used by the Mexican spotted owl. This would remove any threats to the continued survival of the species on National Forest lands throughout its range, as identified by the U.S. Fish and Wildlife Service in their proposal to list the subspecies as threatened under the Endangered Species Act (USFWS 1991b).

The removal of threats provided by this strategy would be accomplished by cessation of practices the FWS believed would cause widespread modification of suitable habitat (USFWS 1991b) and replace these practices with ones that maintain or improve the condition of suitable spotted owl habitat and return capable habitat to suitable conditions. These proposed management practices range from no action to active habitat manipulation of habitats now delineated as suitable, capable, potential foraging, and unsuitable. To that end, management strategies and habitat conditions considered necessary for the conservation of the species have been identified, based upon the best scientific data currently available. These data include information gathered primarily by the Forest Service, but also include what information was available from other agencies, and independent researchers.

During the course of the inventory work conducted in 1988 it became evident a consistent method of inventorying Mexican spotted owl habitat throughout the Region was needed. An inventory protocol was developed by a team of spotted owl biologists and research scientists. This protocol is included in the interim directive, was included in ID No. 2 and has been used to inventory all activities since the 1989 field season. The protocol remains in effect and provides a consistent, efficient and economical method of searching potential Mexican spotted owl habitat to determine the presence or absence of Mexican spotted owls prior to management activities occurring in an area.

Under the interim directive being incorporated into the Forest Service Manual, inventories would continue to follow this protocol and would continue to be conducted in suitable habitat not known to be occupied by spotted owls prior to management activities occurring in an area.

It is assumed in the conservation strategy that Mexican spotted owls would be detected in future inventories at approximately the same rates they have been found during past inventories. Much of this assumption is based on the fact that most inventories conducted through 1992 have not targeted the habitat with the highest potential for detecting owls. Rather, the location for inventories has been determined by the location of the proposed activity. These activity areas do include some of the best habitat, but these locations also include many areas where detecting owls is less likely. Future inventories, at least for the next 3–5 years, should continue to include a mixture of habitat quality, and thus owls should continue to be detected at approximately the same rates as they are being found today.

Conservation of Mexican Spotted Owl Habitat

Any standards developed to manage Mexican spotted owl habitat must be based on the best available data describing the needs of the owl to ensure they would remove the threats identified by the FWS in their Proposed Rule to list the owl as threatened. However, the information needed to develop decisions to best meet the long-term needs of the owl is limited. For this reason, it is a priority of the conservation strategy to continue gathering information to use in making future decisions on managing owl habitat. This will be achieved through a scientific program that will recommend various land management activities to evaluate their effects on providing for the owl's needs. We expect it to take a total of 5 or more years to obtain this information. Long-term management direction will be developed once the results of this program are available. During the time it is expected to take to set up the experimental program, short-term direction has been designed to guide the 1993 forest activities to maintain and/or improve spotted owl habitat.

The short-term direction applies to all national forests within the range of the owl. This direction will be in effect through 1993 or until the scientific program replaces it. Changes to this direction could also be recommended from other spotted owl studies if their results identifies there is a need to change the prescribed management.

No changes will be made to an activity once it is awarded or the appropriate NEPA document is signed, unless the change is necessary to protect the owl's population viability, or to implement the evaluation program.

The Region 3 Biological Evaluation of the 1992 Actions (FY 1992 and first quarter FY 1993) (USFS 1992) evaluated the effects activities would have on the continued existence of the Mexican spotted owl. Any activity that was not included in this evaluation that modifies suitable owl habitat and that has not been harvested or completed by the date the FWS determines if listing is or is not warranted, would be reviewed. This review would follow the process used in the Regional Biological Evaluation.

Once the evaluation program is designed and ready to be implemented, it will provide the primary focus for management of spotted owl habitat. The short-term direction identified below will continue only where it does not conflict with this evaluation program.

Use the spotted owl strategy when suitable or capable Mexican spotted owl habitat overlaps northern goshawk habitat. The owl strategy will meet or exceed stand conditions for multi-story goshawk management. Under the owl strategy, goshawk foraging habitat would not provide the high levels of prey numbers for the wide variety of species identified in the goshawk management recommendations (Reynolds, et al. 1991). But, the owl strategy should provide optimum or near optimum conditions for several prey species used by the goshawk. Thus, the total number of individual prey animals available for the goshawk under the owl strategy should not be any different in most years than would be provided by the goshawk strategy, just the number of prey species would be different (Reynolds, personal communication).

Where suitable or capable habitat overlaps critical or essential habitat of a listed species, the management of this critical or essential habitat will follow the guidelines identified in the recovery plan for the listed species.

In certain instances, based on concurrence between wildlife biologists

and silviculturists, compelling reasons may exist to deviate from the following guidelines to prevent large-scale losses of suitable habitat from insect or disease epidemics. When this occurs, the evidence of the epidemic conditions, reasons for deviation from the guidelines and conditions to help mitigate the effects of deviating from the guidelines shall be included in the documentation for the project.

Short-term Direction for Management of Suitable Habitat

The objective of managing suitable spotted owl habitat is to maintain or improve the condition of this habitat. The condition of this habitat would be based on the description of suitable habitat identified in the owl strategy, or a revised description based on modifications recommended by the scientific committee. A variety of uneven-aged silvicultural treatments can be used to maintain or improve spotted owl habitat. Some of these treatments include single tree selection, thinning from below, free thinning, small group selection, and intermediate cuts including improvement, salvage, sanitation, thinning, etc.

All activity areas containing suitable habitat would be inventoried according to the inventory protocol prior to authorizing any proposed activity that modifies suitable habitat or would occur during the spotted owl's breeding season.

The existing Management Territories established under ID No. 2 will continue to be used. New Management Territories, with the same minimum of 2,000 acres, will be identified wherever and whenever an owl is found during spotted owl inventories. Under the new interim directive, this 2,000 acre Territory represents the mean plus two standard deviations of the 80 percent contour core area identified from home range studies in mixed conifer (Ganey and Balda 1989b and Kroel and Zwank 1991). (The 80 percent contour is the area where 80 percent of the radio locations were found during a telemetry study. It represents the area in which an owl pair would likely spend 80 percent of its time.) This contrasts with the definition used in ID No. 2 where the average home range size was used to determine the Management Territory size. Since the acreage figures for the areas being used to identify where differences in management may occur are the same for the two strategies the term "Management Territory" will continue to be used during the short-term program to reduce confusion. The Scientific Team will recommend whether this term should continue to be used or a new term applied to the area where occupied habitat would be managed.

Inside all Territories there will be a 450 acre "NO TREATMENT CORE AREA" around the nest or day roost. This represents the average of the 60 percent contour core area identified from the home range studies in mixed conifer cover types. Use the core area acreage figures (based on a minimum size core area of 450 acres) currently identified for existing territories. Allow no management activities in the no treatment core area unless prescribed in the scientific evaluation program, or allowed elsewhere in this document.

Stands meeting suitable habitat conditions should have at least a moderately closed canopy with a range of canopy closure from 60 to 100 percent in mixed conifer and 50 to 100 percent in Ponderosa pine and pine/oak, and have a multi-storied canopy, generally with three or more layers in mixed conifer stands and two or more layers in pine/oak, Ponderosa pine and other pine, oak or hardwood stands. (The habitat section of the conservation strategy has a more detailed description of suitable habitat).

Limit the extent of management activities in existing Management Territories, or newly created ones in future activities, to no more than 10 percent of the total number of Management Territories on a forest the year the activity is proposed. This percentage limit does not apply to any activities prescribed by the evaluation program.

To implement the following guidelines, it will be necessary to identify the relationship between canopy closure and basal area and/or stand density index by diameter classes. Canopy closure will be measured using a convex densiometer on a tripod to measure foliage cover or line intercept transects using a clinometer during development of this relationship. Use a sufficient number of plots to provide a statistically reliable relationship between canopy density and basal area.

Specific Short-term Direction To Manage Suitable Habitat Inside Management Territories

Conduct no stand modifying activities within the no treatment core area unless prescribed by the evaluation program, or unless allowed by other items in these guidelines.

Apply the following guidelines in the remainder of the Management Territory.

1. Maintain the existing multi-layered structure and species composition of any stand entered.

2. From the stands of suitable habitat with the highest canopy closure, select at least 20 percent to provide the best long-term, forested nesting and day roosting habitat available. Conduct no stand modifying activities within these stands. These stands should be selected or reviewed by a journey level biologist. Selection criteria should be based on canopy closure, topography, forest health and location. Generally, the stands making up this 20 percent area should exceed 80 percent canopy closure in mixed conifer and 70 percent in Ponderosa pine and pine/oak for types. Use stands with less than 80 percent canopy closure when these dense stands are not available in a Management Territory or it is desirable to select a less dense stand because of location, topography, or other reasons. Document reasons why the 20 percent was selected in the biological evaluation, especially where there is more than 20 percent of the area in stands with greater than 80 percent canopy closure or where there is a valid reason(s) relating to the owl why other stands with a lower canopy closure should be substituted for ones with a higher canopy closure in an individual Territory.

3. Identify an additional 40 percent of the suitable habitat in the core area to provide for high use foraging areas. Select this 40 percent from those stands with the next highest canopy closure. Use stands with a lower canopy closure than other stands when it is desirable to select a less dense stand because of location, topography, or other reasons. Limit stand modifying activities in these stands so that there is a minimum of a 65 percent average stand canopy closure remaining after the activity in mixed conifer forest type and 55 percent in pine and pine/oak types (Ganey and Balda 1989b). Generally, it is not expected to be economically feasible to treat stands with an average canopy closure of less than 70 percent in mixed conifer and 60 percent in pine and pine/oak. Document stand selection as in #2 above.

4. In the remaining 40 percent of the suitable habitat, limit stand modifying activities to a minimum average stand canopy closure of 50 percent in mixed conifer and 40 percent in pine and pine/oak after the activity. These will provide additional areas for foraging (Joe Ganey, Jared Verner, and Eric Forsman, personal communication) and improve stand structure and condition to maintain longterm habitat suitability.

5. Manage ponderosa pine forest types within the Management Territory boundary according to the type of

spotted owl habitat they provide, i.e. suitable, capable or potential foraging.

6. Use a reverse "J" curve and a "Q" factor that favors retaining large trees in regulating the diameter distribution for all stand modifying activities where single tree selection is used.

7. Limit openings created by group selection cuts to 1 acre, with most being less than ¼ acre in size.

8. Conduct no stand modifying management activities within ¼ mile of a nest area, except as prescribed by the evaluation program or identified elsewhere in these guidelines. Limit other prescribed activities that may affect the reproductive output of the Management Territory to outside the breeding season within this same ¼ mile distance.

9. Limit harvest activities to two seasons within each Management Territory.

10. Do not construct roads within ¼ mile of the nest area unless there is no environmentally-feasible alternative route. Conduct no road building within ¼ mile of the nest area during the breeding season (February 1–August 31). Close newly-constructed roads within ¼ mile of the nest area during all breeding seasons following construction. Close and rehabilitate unnecessary roads. Minimize road construction and use. Use dedicated skid trails. Protect rub trees where necessary to ensure average canopy closures are met.

11. Maintain a stand average of 10 square feet of basal area per acre of snags in mixed conifer and 6 square feet in pine and pine/oak. Select snags from the larger diameter classes first until the desired level is reached. Snags should be greater than 18 inches in diameter and more than 30 feet tall. Substitute smaller diameter snags only when large ones do not exist and cannot be created. Substitute shorter snags only when taller ones do not exist. Do not count any snag less than 12 inches diameter at breast height (DBH) or less than 15 feet tall. Retain sufficient cull trees to ensure replacements are available for the large snags. Girdle or kill by other means cull trees when prescribed to meet the snag density.

12. Maintain a stand average of down logs sufficient to provide an equivalent of 10 square feet of basal area per acre in mixed conifer and 6 square feet in pine and pine/oak. Measure all logs at the mid point. Down logs should be greater than 10 inches diameter at the small end and more than 12 feet long to be counted. Treat small sized down material or leave it untreated depending on other resource needs. Do not include large material when piling. Large piles of slash (5 foot by 10 foot by 5 foot tall or larger) may be substituted for down logs on a 2 foot per slash pile rate if down logs are not available. Leave slash piles unburned unless necessary to burn for other resource needs. Do not burn slash piles substituted for down logs.

13. Retain the existing hardwood component, especially oak. Also ensure the hardwood component is maintained throughout time. Each large oak tree is important. They take a long time to attain the size and structure used for nesting and roosting by the owls.

14. Prescribed fire will be designed to meet the conditions identified in 1–13 above. Limit prescribed fire to no more than 25 percent of the Management Territory in a burn year and leave a minimum of 2 full years between burn years in a Management Territory (burn year 1, wait years 2 and 3, burn year 4, etc.).

Management of Suitable Habitat Outside Management Territories

Apply the following guidelines to the suitable habitat outside of the Management Territory. Use a 5,000 to 10,000 acre analysis area for the area to consider for treatment.

1. Same as No. 1 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

2. Same as No. 2 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

3. Same as No. 3 for inside the Management Territories, except it applies to the analysis area and not the Management Territory. In addition, the minimum average stand canopy closure remaining after the activity is 60 percent in mixed conifer forest types and 50 percent in pine/oak types.

4. Same as No. 4 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

5. Manage ponderosa pine outside of the Management Territory under the 50–9–40 rule identified for potential foraging habitat. That is, 50 percent of the area has at least a 40 percent canopy closure of 9 inch DBH or larger trees.

6. Same as No. 6 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

7. Same as No. 7 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

8. Same as No. 11 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

9. Same as No. 12 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

10. Same as No. 13 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

11. Prescribed fire will be designed to meet the conditions identified in 1–10 above. Limit prescribed fire to no more than 35 percent of the Management Territory in a burn year and leave a minimum of 2 years between burn years in the analysis area.

Specific Short-term Direction to Manage Capable Habitat in Arizona and New Mexico

Manage capable habitat such that suitable habitat conditions will be attained as or more quickly than if no activity were prescribed. Even and uneven-aged techniques can be used in capable habitat as long as it can be demonstrated it would return to a suitable condition more quickly.

Manage snags and down logs as identified in numbers 11 and 12 in the section describing the short-term direction inside Management Territories.

Manage hardwoods as described in number 13 in the section describing the short-term direction inside Management Territories.

Management of Suitable, Capable, and Unsuitable Habitat in Colorado and Utah

Follow existing Forest Plan management direction, except allow no even aged management in suitable habitat.

Long-term Program

The second objective of the conservation strategy is to begin designing long-term management recommendations and standards needed to provide for the Mexican spotted owl and thus avoid the need to list the owl throughout its range. Part of this will be to expand the existing monitoring and study program to collect the information necessary to develop a long-term strategy. Throughout the stages of implementation of this program, the monitoring and research studies will have a vital function producing the information needed to improve management of MSO habitat. The process of using such information to refine management over time is referred to as adaptive management (Holling 1978 and Walters 1986). In this strategy, the objective of adaptive management is to improve the biological and economic efficiency through the continual gain of

knowledge about the owl and its habitat. This is to occur while providing the level of protection necessary for maintaining the viability of the owl over time.

Since it has been identified there is a lack of sufficient information on the owl, a scientific program will be established to obtain the needed information. Specific objectives of this program will be to use existing knowledge, on-going research and monitoring efforts to provide the forests the necessary guidelines for managing the resources. Through this effort, scientists will be able to evaluate the effects silvicultural and other management activities can have on owl habitat. From this research, a future, long-term conservation strategy and management direction will be developed.

The scope of this research program will incorporate the timber program as well as other programs for those national forest lands within the range of the owl. This program would be of sufficient size to provide a statistically valid sample with a high level of reliability. A full range of management activities will be included in the research programs. Through adaptive management, the conservation strategy will be subject to continual review by the team as new information becomes available. The research program will be amended, as necessary, to ensure the needs of the owl are continually being met.

A Scientific Advisory Team (Team) will be formed no later than Janury 1993 to evaluate the effects various management activities can have on owl habitat. Once formed, the Team will meet to begin setting up the scientific program by the end of February 1993. The short-term guides will prevail until the Team recommends alternative viable sale designs. These designs are intended to be completed by the end of FY 1993.

The Team will be made up of Forest Service scientists. Additional members may be appointed as appropriate. The Team should include individuals with research experience with spotted owl and/or Southwestern forest ecosystems and include avian ecology, forest ecology, and/or silviculture. The scientific program for the MSO will be each member's highest work priority and the Forest Service will provide the necessary support to help achieve their objectives. The Team would be terminated at the earliest time possible. Its needs would be reviewed periodically, but within 5 years. The term of the Team may be adjusted by the Regional Forester as necessary or needed.

Responsibilities of the team will include:

1. Design a strategy to evaluate the effects of management activities on spotted owl habitat and the owls' primary prey species. Develop a program to monitor populations of the owl. Based on their recommendation, the Regional Forester would develop implementation guidelines for incorporation into the Forest Service Manual. The forests would then develop a program of work to implement this strategy. The Team would review the programs developed by the forests and recommend necessary modifications to the Regional Forester.

2. Provide technical information on Mexican spotted owl adaptive management to the Regional Forester (Southwestern Region) and Station Director (Rocky Mountain Station).

3. Consult with and involve experts from FWS, New Mexico Department of Game and Fish, Arizona Game and Fish Department, Utah Division of Wildlife Resources, and Colorado Division of Wildlife. Consultation will also involve appropriate expertise from universities and other researchers.

4. Develop a summary of the current state of knowledge on Mexican Spotted Owls.

5. Prepare a comprehensive research program on population ecology and habitat requirements of Mexican Spotted Owls; establish research priorities.

6. Coordinate research and monitoring activities within and between agencies. Evaluate and incorporate results of non-federal research efforts.

7. Provide technical review of management guidelines based on the best available scientific information.

Summary of the Inventory Protocol

The objectives of the Southwestern Region's Mexican spotted owl inventory and monitoring protocols are to: Standardize the survey and monitoring methods used in the Region; ensure an adequate search effort is conducted in suitable Mexican spotted owl habitat to identify general areas where territories would be placed and to locate nest and roost sites to aid in identifying core areas; provide reasonable assurance of the absence of Mexican spotted owls prior to any management activities occurring in an area; provide standard forms for collection and compilation of inventory, monitoring and suitable habitat stand characteristic data; and, to coordinate a Regional Mexican spotted owl data base.

The protocols provide standard definitions of terms used during inventory and monitoring work. They provide the methods used to design survey routes, conduct the field outings, complete follow-up visits and complete all record keeping. The inventory protocol also requires a second year of inventory be completed in unoccupied habitat for all activities where no owl(s) was found during the first year of inventory.

Summary of Management Direction and Inventory and Monitoring Protocols

This management direction and the inventory and monitoring protocols, issued through an Interim Directive to the Forest Service Manual at 2676.2, provide the regulatory mechanism and remove the threat to Mexican spotted owl habitat identified by the Fish and Wildlife Service in their proposal to list the subspecies as threatened. They are also in keeping with the provisions of the National Cooperative Agreement on Spotted Owl Management signed December 1987 between the Forest Service and the U.S. Fish and Wildlife Service, and later signed by the Bureau of Land Management and National Park Service. Analysis by the Forest Service indicates there will be little or no reduction in the amount of suitable habitat during the 1 to 2 year life of the short-term direction.

Dated: December 4, 1992.

R. Forrest Carpenter,

Deputy Regional Forester.

[FR Doc. 92–29978 Filed 12–10–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–92]

Proposed Foreign-Trade Zone—Marysville, Michigan (Port Huron Customs Port of Entry); Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign Trade Zone, Inc. (GDFTZ), requesting authority to establish a general-purpose foreign-trade zone in Marysville, St. Clair County, Michigan, adjacent to the Port Huron Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 1, 1992. The applicant is authorized to make the proposal under Act No. 154 of the Public Acts of 1963 of the State of Michigan.

GDFTZ is the grantee of Foreign-Trade Zone 70, Detroit, Michigan, which was approved in July 1981 (Board Order 176, 46 FR 38941, 7/30/81). It is now requesting authority to establish a new general-purpose zone in the Port Huron area.

The proposed zone would consist of two contiguous parcels (32 acres) located in Marysville, some seven miles south of Port Huron and 50 miles north of Detroit. Parcel A (9 acres) includes a 130,000 square foot building and Parcel B (23 acres) consists of undeveloped land. Both parcels are owned by Wilkie Brothers Conveyors, Inc., which operates a manufacturing plant on site in which public warehouse space will be available. Metro International Trade Services, Inc., an operator of certain FTZ 70 warehouses, will operate the proposed zone.

The application indicates there is a need for zone services in the Port Huron area. The first user will be Wilkie Brothers, whose zone activity would be limited to warehousing. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 9, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 24, 1993.

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 526 Water Street, room 301, Port Huron, Michigan 48060–5471.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: December 4, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–30159 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–817]

Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor From Japan; Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review and consideration of revocation of antidumping duty order.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna, Michael Diminich, or Breck Richardson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 43741) an antidumping duty order on active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan (the order). On November 3, 1992, Guardian Industries, on behalf of OIS Optical Imaging Systems (OIS), one of the petitioners, submitted a request for a changed circumstances review and revocation of the order. Guardian is the controlling shareholder of OIS, and OIS is the only petitioner that manufactures active-matrix LCDs.

Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order

Pursuant to sections 751(c) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping duty order if the Department determines, based on a review under section 751(b) of the Act, that changed circumstances exist sufficient to warrant revocation. Section 353.25(d) of the Department's regulations provides that, if the Department finds that the order under review is no longer of interest to domestic interested parties, such finding constitutes a changed circumstance sufficient to warrant revocation.

The changed circumstance cited by OIS and Guardian as the basis for the request for review is the absence of any further interest in maintaining the order. The Department has determined that the petitioner's affirmative statement of no interest constitutes "good cause" for conducting a changed circumstances review, as provided in section 751(b)(2) of the Act, and 19 CFR 353.22(f)(3).

Scope of the Review

Imports covered by this review are shipments of active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan, which are defined as large area, matrix addressed displays, no greater than four inches in depth, with a picture element (pixel) count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. These products are currently classified under items 8471, 8531.20.00, 8531.90.00, 9013.80.60, 9230, and 9240 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. This changed circumstance administrative review covers all producers/exporters of the subject merchandise produced in Japan and all shipments of subject merchandise entered, or withdrawn from warehouse for consumption on or after February 21, 1991.

Request for Comments

The Department requests written comments from interested parties regarding this review and the grounds for revocation. Comments may be submitted not later than 30 days after the date of publication of this notice. Rebuttal to written comments, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication. All written comments shall be submitted in accordance with 19 CFR 353.31(e) and shall be served on interested parties in accordance with 19 CFR 353.31(g). The Department will publish the preliminary results of this administrative review after its analysis of any written comments.

This review and notice are in accordance with sections 751 (b) and (c) of the Act and 19 CFR 353.22(f) and 353.25(d) (1992).

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–30160 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–805]

Sodium Thiosulfate From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Calabrian Corporation, the Department of Commerce has conducted an administrative review of the antidumping duty order on sodium thiosulfate from the People's Republic of China (the PRC). This review covers China National Chemicals Import and Export Corporation (Sinochem), and Shanghai Chemicals Import and Export Corporation (Shanghai), and the period December 12, 1990, through January 31, 1992. Since Sinochem failed to respond to our questionnaire, we have reviewed this firm using the best information available (BIA) for purposes of these preliminary results of review. We preliminarily determine that there were no shipments of this merchandise to the United States by Shanghai during the period of review. Although we initiated reviews for Henan Provincial Chemical Plant (Henan) and Eeyer Hat Oil Chemical Plant (Eeyer), based on petitioner's request, we were unable to locate these firms. Therefore, Henan and Eeyer are not included in these preliminary results. The estimated antidumping cash deposit rates for Shanghai, Henan, and Eeyer will be the "all others" rate to be established in the final results of this administrative review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 3740) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sodium thiosulfate from the PRC. On February 19, 1992, the petitioner, the Calabrian Corporation, requested administrative review of Sinochem, Shanghai, Henan, and Eeyer, four manufacturers/exporters of this merchandise to the United States. We initiated these reviews covering the period December 12, 1990, through January 31, 1992, on March 16, 1992 (57 FR 9104). The Department has now conducted these reviews for Sinochem and Shanghai in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). Henan and Eeyer could not be located and are not included in these preliminary results.

Scope of the Review

Imports covered in this review are shipments of all grades of sodium thiosulfate, in dry or liquid form. The chemical composition of sodium thiosulfate is $Na^2S^2O^3$. Sodium thiosulfate is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 2832.30.1000. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters of sodium thiosulfate from the PRC and the period December 12, 1990, through January 31, 1992 (the POR).

United States Price and Foreign Market Value

We forwarded the antidumping questionnaire to Sinochem and Shanghai, two manufacturers/exporters of this merchandise to the United States.

With respect to Sinochem, since the firm failed to respond to our questionnaire, the Department used the best information available (BIA) to review its sales during the POR, in accordance with section 776(c) of the Tariff Act. When a company fails to provide requested information in a timely manner, or otherwise significantly impedes the Department's review, the Department normally considers the company uncooperative and generally assigns to that company as BIA the higher of: (a) The highest rate assigned to any company in a previous review or the investigation or (b) the highest rate for a responding company with shipments during the review period. This practice is consistent with Commerce's long-standing position that BIA is not necessarily the most accurate information on the record but a choice of information on the record which is usually adverse to respondents who fail to comply with the Department's requests for information. See 19 CFR 353.37(b); Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., 57 FR 8360 (June 24, 1992); Final Results of Antidumping Administrative Review: Potassium Permanganate from the People's Republic of China, 56 FR 19640 (April 29, 1991).

With respect to the above, the highest previous rate was 25.57 percent, calculated in the investigation using price and cost information submitted by petitioner. However, petitioner submitted information on the record in this review indicating that because costs and prices in the industry have changed substantially since the investigation, 25.57 percent was no longer sufficiently adverse to induce respondents to submit timely, accurate, and complete responses. Therefore, we have preliminarily determined to revise the investigation BIA calculation, based on the information submitted by petitioner, for purposes of this review.

In this review, we again based our BIA calculation upon the price and cost information submitted by petitioner in the investigation, as revised according to the information submitted on the record of this review. United States Price (USP) was based on the average 1991 price of sodium thiosulfate imported from the PRC, as derived from official Commerce import statistics. Foreign Market Value (FMV) was based on petitioner's 1991 cost of manufacturing sodium thiosulfate, adjusted for known differences in labor costs and the labor cost in Pakistan, the country selected in this administrative review as a surrogate for the PRC. Pakistan was selected as a surrogate because of its comparability to the PRC in terms of per capital gross national product and the availability of current Pakistani labor rate statistical data.

The increase in the cost of manufacture of sodium thiosulfate coupled with the decline in U.S. sales prices result in a dumping margin of 148.42 percent.

With respect to Shanghai, since the firm reported that it made no shipments of this merchandise to the United States during the POR, and Shanghai also had no prior company-specific estimated deposit rate, the Department will use as the estimated deposit rate for Shanghai the "all others" rate to be established in the final results of this administrative

review based on our analysis of Sinochem.

Preliminary Results of the Review

As a result of our comparison of USP to FMV, we preliminarily determine that a dumping margin of 148.42 percent exists for all manufacturers/exporters during the period December 12, 1990, through January 31, 1992.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of sodium thiosulfate, from the PRC, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 571(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "All others" rate established in the final results of this administrative review based on our analysis of Sinochem. Although the "all others" rate is normally based on the highest non-BIA rate from the current review (or from a prior review if there is no non-BIA rate in the current review), in this case there have been no non-BIA rates. Therefore, it is anticipated the current Sinochem rate will be the "all others" rate. These deposit requirements when imposed shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated December 4, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–30161 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Olga Vélez-Lugo From an Objection and by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

By letter dated July 9, 1992, Ms. Olga Vélez-Lugo (Appellant), through her chosen representative, filed with the Department of Commerce a notice of appeal. The Appellant is appealing to the Secretary of Commerce (Secretary) under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification that the construction of a wood dock 50 feet long by six feet wide, the restoration of an existing boat ramp, and the emplacement of approximately 400 cubic yards of fill on her property in the Playitas Ward, Salinas, Puerto Rico, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with Puerto Rico's coastal zone management program.

The CZMA provides that a timely objection by a state, (including Puerto Rico), to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or section 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments will also be forwarded to the Appellant and the PRPB.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the PRPB and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235 at (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: December 4, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–30067 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–08–M

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public scoping meetings on an Atlantic bluefin tuna fishery environmental impact statement; request for comments.

SUMMARY: NMFS will hold three public scoping meetings in order to discuss preparations to develop an Environmental Impact Statement (EIS) to assess the potential impacts on the human environment of the western Atlantic bluefin tuna fishery in 1994–95. In addition, the analysis done in this EIS for the Atlantic bluefin tuna fishery will be used, as appropriate, in NMFS's preparation of a Fishery Management Plan for Atlantic tunas. A notice of intent to prepare an EIS was published in the **Federal Register** on November 4, 1992 (57 FR 52617). The EIS will evaluate the effects on stock size and harvest rates of possible actions for the 1994–95 fishing years. NMFS is responsible for managing the Atlantic bluefin tuna fishery and implementing the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

The purpose of this notice is to inform the interested public of EIS scoping meetings to solicit input to help NMFS scope issues and possible actions to be included in drafting the EIS. In addition, NMFS requests written comments on aspects of the bluefin tuna fishery that would be appropriate to include in the EIS.

DATES: Written comments on the issues for a proposed rulemaking must be received on or before January 15, 1993. See **SUPPLEMENTARY INFORMATION** for dates and times of the scoping meetings.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Bluefin Tuna EIS Suggestions."

See **SUPPLEMENTARY INFORMATION** for the addresses of the scoping meeting locations.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: Public scoping meetings will be held to provide an opportunity for informal discussion between the public and NMFS on the preparation of an EIS on the western Atlantic bluefin tuna fishery for the 1994–1995 season. In addition, the analysis done for this EIS will be used as appropriate, in preparing a Fishery Management Plan for all western Atlantic tunas. Additional discussion was provided in the notice of intent, and is not repeated here.071

The public scoping meetings are scheduled as follows:

January 5, 1992, Gloucester, Mass., 7–10 p.m.

NMFS Northeast Regional Office, One Blackburn Dr., Gloucester, MA 01930, (508) 281–9260 (contact Kevin Foster).

January 6, 1992, Silver Spring, Md., 1–30–6 p.m.

NMFS Headquarters, SSMC II, Second Floor Conference Rm., 1325 East-West Highway, Silver Spring, MD 20910, (301) 713–2347 (contact Aaron King).

January 7, 1993, Madeira Beach, Fla., 7–10 p.m.

Madeira Beach City Hall, 300 Municipal Drive, Madeira Beach, FL 33708, (813) 893–3161 (contact Rod Dalton).

Dated: December 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30158 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Permit Modification (P70E).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the regulations governing endangered fish and wildlife permits, Scientific Research Permit No. 765 issued to Dr. William A. Watkins, Senior Research Specialist, Woods Hole Oceanographic Institution, Woods Hole, MA 02543, on February 25, 1992, has been modified to allow sound playback experiments, at various levels, on up to five tagged whales, and to harass up to 60 additional sperm whales annually up to 10 times per payback test.

This modification becomes effective December 11, 1992.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: December 3, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30103 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification No. 1 to permit No. 772 (P475).

SUMMARY: On March 27, 1992, notice was published in the **Federal Register** (57 FR 10650) that Permit No. 772 had been issued to Ms. Dena Matkin, P.O. Box 22, Gustavus, Alaska 99826.

Notice is hereby given that on December 3, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the Regulations Governing Endangered Fish and Wildlife (50 CFR parts 217–222), the National Marine Fisheries Service modified Permit No. 772 to extend the effective date through March 31, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: December 3, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30104 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

National and Community Service Act, Subtitle B1, B2 & D Programs; Availability of Funds

AGENCY: Commission on National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Commission on National and Community Service hereby announces the availability of funds for new projects pursuant to the National and Community Service Act of 1990, as amended. The Commission has been appropriated $73 million for programs and activities in Fiscal Year 1993. The majority of these funds will be committed to continuing programs established in Fiscal Year 1992. However, a small portion of funds is available for specific types of new applicants and projects (programs funded under subtitles B1 (local applicants of North Dakota only), B2, and D). This notice pertains only to the availability of funds for these new projects, and does not pertain to existing grantees submitting requests for continuations. Existing grantees will be notified separately with respect to continuation requirements.

DATES: All grant applications under these three programs must be received by the Commission by 4:30 p.m., local standard time, February 16, 1993.

ADDRESSES: Applications should be submitted to the Commission on National and Community Service, 529 14th Street, NW., suite 452, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: The Commission on National and Community Service, (202) 724–0600: Ruby Anderson for questions concerning subtitle B1; Smita Singh—subtitle B2; Michael Camunez—subtitle D; and Mike Kenefick—grants and administration.

SUPPLEMENTARY INFORMATION: Funding is available for the following types of new applicants and projects:

1. Subtitle B1, Serve-America: Funds are available under this notice for local applicants of North Dakota only. Grants will be awarded on a competitive basis to public or private nonprofit organizations and local educational agencies working in partnership with nonprofit organizations. The Serve-America program provides support for school-age Americans who volunteer their services for the benefit of others, and aims to increase the number of adults who volunteer in schools. Projects may be school-based service-learning programs, community-based service programs or adult volunteer or partnership programs. Available funds total $43,000.

2. Subtitle B2, Higher Education: Institutions of higher education and consortia of such institutions are eligible to receive grants under this program. States, Indian Tribes and public agencies or nonprofit organizations in consortia with institutions of higher education may also apply for these funds. Higher Education programs should involve students in community service activities or train teachers in service-learning concepts. Approximately $1 million is available for awards under this notice.

3. Subtitle D, National and Community Service: States and Indian Tribes are eligible to apply for funds under this notice. Up to $10 million may be available in Fiscal Year 1993 to test one to three National Service programs. Programs should engage individuals ages 17 and older in full- or part-time service.

Application materials are available from the Commission on National and Community Service, 529 14th Street, NW., suite 452, Washington, DC 20045.

Authority: 42 U.S.C. 12501 *et seq.*

Dated: December 8, 1992.

Catherine Milton,

Executive Director.

[FR Doc. 92–30181 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–BA–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and a service previously furnished by such agencies.

EFFECTIVE DATE: January 11, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 21, September 11 and 25, October 16 and 23, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (57 FR 37598, 41730, 44364, 47453 and 48359) of proposed additions to and deletions from Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified workshops to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to Procurement List:

Commodities

Magazine, Cartridge
1005–00–921–5004

Charcoal, Activated, Technical
6810–00–726–7944

Can, Water, Plastic
7240–00–089–3827

Service

Administrative Services
Federal Supply Service
Tool Acquisition Division 1 (6FEP–CO)
Arlington, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity and service are hereby deleted from the Procurement List:

Commodity

Button, Insignia
8455–00–530–3700

Service

Janitorial/Custodial
Charles E. Boston USARC
Houma, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30148 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 11, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action does not appear to have a severe adverse impact on the current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Scouring Powder
7930–01–294–1115
Nonprofit Agency: Lifetime Assistance, Inc.
Rochester, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30149 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 11, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Paper, Toilet Tissue
8540–00–530–3770
(Requirements for the Palmetto, GA Depot only)
Nonprofit Agency: Duluth Lighthouse for the Blind, Duluth, Minnesota

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30150 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) for Realignment of Forces and the Restationing of the 513th Military Intelligence Brigade From Fort Monmouth, New Jersey and Vint Hill Farms Station, VA to Fort Gordon, GA and Restationing the 470th Military Intelligence Brigade From Panama to Fort Gordon, GA

AGENCY: Department of Defense, United States Army.

ACTION: Finding of No Significant Impact (FNSI).

SUMMARY: The proposed action is to withdraw two Military Intelligence Brigades from their present stations (elements of the 513th in Fort Monmouth, NJ, and Vint Hill Farms Station, VA, and the 470th from Panama) and restation them to Fort Gordon. This will be accomplished starting in FY93 and be completed during FY99. The two Brigades will be consolidated as the 513th MI Brigade. The Army considered consolidation and restationing at Fort Drum, NY, consolidation and restationing at Fort Polk, LA, the "no action" alternative, the proposed action, and the proposed action with the addition of a military remote operations facility (ROF).

No new buildings will be constructed as a result of this action. The activities conducted by the 513th MI Brigade are conducted primarily indoors. The type of training activities conducted by the 513th MI Brigade are similar to those conducted by other units at Fort Gordon.

It has been determined that the proposed action and the alternatives will not constitute an action significantly affecting the quality of the human environment. The alternatives will not significantly affect air or water quality or land use. There will not be significant impact on threatened or endangered species, nor other biotic resources. There will not be significant impact to socioeconomic conditions.

Because there would be no significant environmental impacts resulting from implementation of the Proposed Action, an Environmental Impact Statement (EIS) is not required and will not be prepared.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to: Headquarters, US Army Intelligence and Security Command, Public Affairs Office, Fort Belvoir, Virginia 22060–5370.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be directed to Mr. Paul Sutton, (703) 806–5326.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health) OASA (I, L&E).

[FR Doc. 92–30108 Filed 12–10–92; 8:45 am]

BILLING CODE 3710–08–M

Preparation of a Supplement to the 1989 Environmental Impact Statement for Proposed Actions at U.S. Army Kwajalein Atoll (USAKA)

AGENCY: Department of Defense, United States Army.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent is for the preparation of a Supplemental Environmental Impact Statement to the 1989 Draft and Final Environmental Impact Statement (DEIS and FEIS) on Proposed Actions at USAKA. The Supplemental EIS adds to the original EIS by modifying its Proposed Action in two respects. One Proposed Action of the Supplemental EIS would increase the level of strategic defense test and evaluation activities to support the development and deployment of a ballistic missile defense system. The other Proposed Action would adopt USAKA Environmental Standards that have been specifically designed to protect the unique environmental conditions of the Kwajalein Atoll. This supplemental EIS also addresses the adoption of the new environmental standards for USAKA activities. The development of these new standards was provided for in the Compact of Free Association between the United States and the Government of the Republic of the Marshall Islands (RMI).

LEAD AGENCY: U.S. Army Space and Strategic Defense Command (USASSDC)

COOPERATING AGENCY: Strategic Defense Initiative Organization (SDIO)

Alternatives to this Proposed Action to be analyzed:

- Low level of Test Activities—involving the continuation of strategic defense system individual component level tests at an accelerated frequency and intensity compared to that analyzed in the 1989 USAKA EIS, but not to the higher level assessed in the proposed action. Each flight test would consist of only a single vehicle launched from USAKA.
- High level of Test Activities—consisting of multiple launches and sensing from multiple locations, and related support activities associated with both systems integration, development and operational testing; and annual service practice. This action would bound the greatest amount of range activity which could be conducted at USAKA. Each test flight would consist of a maximum of ten launches from USAKA.
- No Action Alternative—continuing space and defense activities at USAKA as described in the 1989 USAKA EIS Proposed Action and Record of Decision.

The second category of Proposed Actions relates to the environmental standards that govern U.S. Army activities at USAKA. The USAKA Environmental Standards derive from existing United States and RMI statutes, but are tailored to protect the specific environmental conditions of the Kwajalein Atoll. The Proposed Action would have one alternative:

- No-Action Alternative—defined as continuing the use of current United States regulations for environmental protection and analyses of the Kwajalein Atoll.

Scoping

The scoping process will include announcements in the Hourglass and The Marshall Islands' Journal (published in USAKA and Majuro, respectively), as well as in the **Federal Register**. The scoping process is intended to determine the significant environmental issues to be analyzed in depth in the environmental documentation. Comments received, either in writing or through contacts with RMI and U.S. Government representatives, will be used to identify potential issues. Comments should be received by January 9, 1992.

All written and verbal comments will be considered in preparing the Draft Supplemental EIS.

Written comments and questions about the Proposed Action and Supplemental EIS may be forwarded to: D. Randy Gallien, U.S. Army Strategic Defense Command, ATTN: CSSD–EN–V, P.O. Box 1500, Huntsville, Alabama 35807–3801. Verbal comments and questions regarding this proposal may be directed to D. Randy Gallien at (205) 955–4890.

More detailed information is available from Randy Gallien at the address and telephone number listed above; Dr. Don Ott, USAKA, at telephone number (805) 238–7994, extension 4218; and Alele Museum in Majuro, RMI.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 92–30147 Filed 12–10–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.036A]

Library Education and Human Resource Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provides grants to assist in covering the cost of courses

of study or staff development through short term or regular session institutes.

Eligible Applicants: Institutions of higher education and library organizations or agencies.

Deadline For Transmittal of Applications: February 24, 1993.

Deadline for Intergovernmental Review: April 26, 1993.

Applications Available: January 8, 1993.

Available Funds: $992,000.

Estimated Range of Awards: $35,000–$125,000.

Estimated Average Size of Awards: $66,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80 (for public library organizations or agencies), 82, 85, and 86 (for institutions of higher education); (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(a) the Secretary gives an absolute preference to applications that meet one or both of the following priorities. The Secretary funds under this competition only applications that meet one or both of these absolute priorities:

Absolute Priority 1

To 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 and cataloging.

Absolute Priority 2

To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

Invitational Priority: Within absolute priorities 1 and 2 specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications for institutes that place particular emphasis on libraries and their contributions to achieving one or more of the following National Education Goals (1, 2, 3, 4, and 5):

Goal 1—Readiness for School: By the year 2000, all children in America will start school ready to learn.

Goal 2—High School Completion: By the year 2000, the high school graduation rate will increase to at least 90 percent.

Goal 3—Student Achievement and Citizenship: By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Goal 4—Science and Mathematics: By the year 2000, U.S. students will be first in the world in science and mathematics achievement.

Goal 5—Adult Literacy and Lifelong Learning: By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

SUPPLEMENTARY INFORMATION: Applicants interested in the invitational priority addressing libraries and their contributions to achieving the National Education Goals may request from the program office the complete text of the six goals, including the objectives supporting each individual goal.

FOR APPLICATIONS OR INFORMATION CONTACT: Yvonne B. Carter, or Louise V. Sutherland, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1021, 1032.

Dated: December 8, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–30144 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No 84.999F]

The National Assessment of Educational Progress (NAEP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To conduct data collection and prepare the sampling weights component for the 1994 National Assessment of Educational Progress (NAEP). NAEP supports the National Education Goals by providing measures of progress toward the Goals.

Eligible Applicants: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applicants: January 25, 1993.

Applications Available: December 11, 1992.

Available Funds: In fiscal year 1993, $1,400,000 will be available for the sampling, and data collection component. It is anticipated that in fiscal year 1994, a total of $5,000,000 will be available, and $900,000 in fiscal year 1995.

Estimated Number of Awards: 1.

Project Period: Up to 34 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; (b) The regulations in 34 CFR part 98 (Students Rights in Research, Experimental Activities, and Testing); and (c) 48 CFR part 31 (Contracts with Commercial Organizations).

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress (NAEP) is authorized by section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1), as amended by Public Law 100–297. This law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires the NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. The law further requires that the 1994 National Assessment of Educational Progress will assess 9-, 13-, and 17-year-olds and grades 4, 8, and 12 in reading, mathematics, science, U.S. history, and geography. A cooperative agreement is currently in operation to develop assessment instruments for the 1994 assessment.

This notice is limited to seeking applications for activities in connection with the National Assessment. The Secretary, however, continues strongly to support the idea of conducting assessments at the State level in 1994, as was done on a trial basis in 1990 and 1992. Although a consensus to authorize State assessments seemed to exist at the close of the last session of Congress, no law authorizing State assessments was enacted prior to adjournment. The Secretary remains hopeful that this

authority will be enacted promptly upon the return of Congress in early 1993. If legislation is approved, the Secretary intends an immediate and expeditious timetable to request applications or proposals and to make selections. This expedition will be required in order to execute the State assessments on a timely basis in 1994. Accordingly, those interested in submitting applications to do work on the State assessments are hereby placed on notice that they should be prepared to proceed at the fastest permissible speed if authorizing legislation is enacted upon Congress's return.

Priorities

Absolute Priority: 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 applications that meet this absolute priority:

Collection of 1994 National Assessment of Educational Progress Data: The data collection for the 1994 NAEP authorized by section 406(i) of GEPA must be performed in accordance with guidelines developed by the NAGB.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Conduct Transcript Study based upon graduating seniors in the 1994 NAEP sample.

SELECTION CRITERIA: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the selection criteria to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: Steve Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 308b, Washington, DC 20208–5653. Telephone: (202) 219–1937. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e–1.

Dated: December 4, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–30142 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.999G]

The National Assessment of Educational Progress (NAEP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To conduct the scoring, analysis, and reporting component for the 1994 National Assessment of Educational Progress (NAEP). This will consist of a national assessment. NAEP supports the National Education Goals by providing measures of progress toward the Goals.

Eligible Applicants: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applications: January 25, 1993.

Applications Available: December 11, 1992.

Available Funds: In fiscal year 1993, $600,000 will be available for the scoring, analysis, and reporting component. It is anticipated that in fiscal year 1994, a total of $8,000,000 will be available, and $2,800,000 available in fiscal year 1995.

Estimated Number of Awards: 1.

Project Period: Up to 34 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; (b) the regulations in 34 CFR part 98 (Students Rights in Research, Experimental Activities, and Testing); and (c) 48 CFR part 31 (Contracts with Commercial Organizations).

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress (NAEP) is authorized by section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1), as amended by Public Law 100–297. This law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires the NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. The law further requires that the 1994 National Assessment of Educational Progress will assess 9-, 13-, and 17-year-olds and grades 4, 8, and 12 in reading, mathematics, science, U.S. history, and geography. A cooperative agreement is currently in operation to develop assessment instruments for the 1994 assessment.

This notice is limited to seeking applications for activities in connection with the National Assessment. The Secretary, however, continues strongly to support the idea of conducting assessments at the State level in 1994, as was done on a trial basis in 1990 and 1992. Although a consensus to authorize State assessments seemed to exist at the close of the last session of Congress, no law authorizing State assessments was enacted prior to adjournment. The Secretary remains hopeful that this authority will be enacted promptly upon the return of Congress in early 1993. If legislation is approved, the Secretary intends an immediate and expeditious timetable to request applications or proposals and to make selections. This expedition will be required in order to execute the State assessments on a timely basis in 1994. Accordingly, those interested in submitting applications to do work on the State assessments are hereby placed on notice that they should be prepared to proceed at the fastest permissible speed if authorizing legislation is enacted upon Congress's return.

Priority

Absolute Priority: Under 34 CFR 75.105(c)(3), and section 406(i) of GEPA, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Scoring, Analysis and Reporting of Data from the 1994 National Assessment of Educational Progress.

The applicant must score, analyze and report data collected for reading, mathematics, science, geography and U.S. history in grades 4, 8, and 12 from a nationally representative sample. The data collected from the 1994 NAEP must be reported in order to increase the information available to educational policymakers and the general public regarding the educational achievement of American students. Section 406(i) requires the NAGB to develop the guidelines for the analysis and reporting of the NAEP results. The applicant must score, analyze and report in accordance with guidelines specified by the National Assessment Governing Board. Each report must be published and disseminated after completing the National Center for Educational Statistics (NCES) peer review procedure.

SELECTION CRITERIA: Under 34 CFR 75.210(c), the Secretary is authorized to

distribute and additional 15 points among the selection criteria to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: Steve Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 308b, Washington, DC 20208–5653. Telephone: (202) 219–1937. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e–1.

Dated: December 4, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–30143 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs: Closing Date for Institutions To File an Application for Institutional Eligibility and Certification for Participation in the Campus-Based Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Institutional Eligibility and Certification" (ED Form E–40–34P, OMB #1840–0098) to participate in the Federal Perkins Loan, Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs for the 1993–94 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the "campus-based programs" for the 1993–94 award year to submit to the Secretary an "Application for Institutional Eligibility and Certification" and all documents required for an eligibility determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by title IV of the Higher Education Act of 1965, as amended. The programs support AMERICA 2000, the President's strategy for moving the Nation toward the national Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. The 1993–94 award year is July 1, 1993 through June 30, 1994.

DATES: *Closing Date for Filing Application and Required Documents.* To participate in a campus-based program in the 1993–94 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Eligibility and Certification" on or before January 11, 1993. The application along with all documents required for an eligibility determination must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: *Applications and Required Documents Delivered by Mail.* An institutional eligibility application and required documents delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: IPD/IPOS/OPE, room 3633, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (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; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions that submit eligibility applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1993–94.

Applications and Required Documents Delivered by Hand. An institutional eligibility application and required documents delivered by hand must be taken to the U.S. Department of Education, Application Control Center, room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays and Federal holidays. An application for eligibility for the 1993–94 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1993–94 to any currently ineligible institution unless the institution files its "Application for Institutional Eligibility and Certification" and other required documents by the closing date. If the institution submits its institutional eligibility and certification application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1994–95 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary, but has previously filed a FISAP.

(2) An off-campus site of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution, but has been included in the institution's 1993–94 FISAP.

(3) A branch campus that is currently part of an eligible institution, but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Institutional Eligibility and Certification," should not be confused with the FISAP form that institutions were required to submit electronically by October 1, 1992, in order to be considered for funds under the campus-based programs for the 1993–94 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Perkins Loan Program, 34 CFR part 674.

(3) College Work-Study Program, 34 CFR part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(6) New Restrictions on Lobbying, 34 CFR part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(8) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact Diane Sedicum, Acting Director, Institutional Participation Division, Office of Postsecondary Education, U.S. Department of Education, room 3030, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5242. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Director, Campus-Based Programs Financial Management Division, room 4621, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202–5347. Telephone: (202) 708–9711. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern standard time. Program Authority: 20 U.S.C. 1807 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance, Federal Supplemental Educational Opportunity Grant Program, 84.007; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.037)

Dated: December 8, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education

[FR Doc. 92–30145 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2300–003, 2311–002, 1326–003, 2327–003, 2422–005, and 2423–002]

Notice of Application Accepted for Filing With the Commission

December 7, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project Nos.:* 2300–003, 2311–002, 2326–003, 2327–003, 2422–005, 2423–002.

c. *Date Filed:* November 16, 1992.

d. *Applicant:* James River-New Hampshire Electric, Inc. (licensee) James River Paper Company, Inc. (transferee).

e. *Name of Projects:* Shelburne, Gorham, Cross, Cascade Sawmill, and Riverside.

f. *Location:* On the Androscoggin River in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–824(r).

h. *Applicant Contact:* Ms. Jacquelyn E. Stone, McGuire Woods Battle & Boothe, One James Center, 901 East Cary Street, Richmond, VA 23219–4030, (804) 775–1000.

i. *FERC Contact:* Ms. Julie Bernt (202) 219–2814.

j. *Comment Date:* December 28, 1992.

k. *Description of Project:* Licenses were issued to the licensee to operate and maintain the Shelburn, Gorham, Cross, Cascade Sawmill and Riverside Project Nos. 2300, 2311, 2326, 2327, 2422, and 2423. The licensee intends to transfer the licenses to the transferee in order to facilitate a corporate merger. The transferee states that it would comply with all terms and conditions of the licenses.

1. The transfer application was filed within five years of the expiration of the licenses for Project Nos. 2300, 2311, 2326, 2327, and 2422. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Statues and Regulations, Regulations Preambles 1986–1990 ¶ 30,854 at 31,437), the Commission declined to forbid license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.* at p. 31,438 n. 318). Project Nos. 2300, 2311, 2326, 2327, 2422, and 2423 are subject to New License proceedings and the transfer will result in a substitution of the transferee for the licensee as applicant in the New License applications.

m. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30097 Filed 12–10–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 92–19 & 92–20; Certification Notice—111]

Filing Certification of Compliance: Indeck-Corinth Ltd. Partnership et al.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Indeck-Corinth Limited Partnership (C&E 92–19) and Turlock Irrigation District (C&E 92–20) have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Indeck-Corinth Limited Partnership, Buffalo Grove, Illinois
Operator: Indeck-Corinth Limited Partnership
Location: Corinth, New York
Plant Configuration: Combined cycle cogeneration
Capacity: 125 megawatts
Fuel: Natural gas
Purchasing Utilities: Consolidated Edison Company Edison Company
Expected In-Service Date: June, 1994

Owner: Turlock, Irrigation District, Turlock, California
Operator: Turlock Irrigation District
Location: Ceres, California
Plant Configuration: Combined cycle
Capacity: 49.9 megawatts
Fuel: Natural gas and L.P.G.
Purchasing Utilities: Turlock Irrigation District (100%)
Expected In-Service Date: November 1, 1994.

Issued in Washington, DC, on December 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30152 Filed 12–10–92; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 92–18; Certification Notice—110]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: KIAC Partners has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: KIAC Partners, c/o Airport Cogen Corp., Brooklyn, New York
Operator: CEA Kennedy Operators, Inc.
Location: JFK International Airport, Jamaica, New York
Plant Configuration: Combined cycle
Capacity: 100.7 megawatts
Fuel: Natural gas
Purchasing Utilities: The Port Authority—60%; Consolidated Edison Company—40%
Expected In-Service Date: April 30, 1994

Issued in Washington, DC on December 1, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30151 Filed 12–10–92; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decision of Orders

Office of Hearings and Appeals

During the Week of November 2 Through November 6, 1992

During the week of November 2 through November 6, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dale E. Wallace, 11/04/92, LFA–0247

Dale E. Wallace filed an Appeal from a determination issued by the Acting Director, Office of Communications, Department of Energy Field Office, Richland (DOE/RL), in response to a request for information submitted under the Privacy Act of 1974. In considering the Appeal, the DOE found: (1) Battelle Pacific Northwest Laboratories (Battelle), a DOE contractor who possessed the records sought by Wallace, is not an "agency" as defined in the Privacy Act; and (2) though Battelle is required under its contract to maintain three systems of records subject to the provisions of the Privacy Act, none of these systems of records contained documents responsive to Wallace's request. Accordingly, Wallace's Appeal was denied.

Haskell R. Brown, Jr., 11/06/92, LFA–0242

Haskell R. Brown, Jr. filed an Appeal from a Freedom of Information Act (FOIA) determination issued by the DOE's Office of Naval Reactors (ONR). In his Appeal, Mr. Brown challenged the adequacy of the search. In considering the Appeal, the DOE found that ONR's search was adequate under the FOIA and reasonably calculated to uncover responsive documents. The Appeal was therefore denied.

Knolls Action Project, 11/06/92, *KFA–0287*

The Knolls Action Project (KAP) filed an Appeal from a determination issued by the DOE's Office of Naval Reactors (ONR). In that determination, the ONR denied the KAP's request for information filed pursuant to the Freedom of Information Act (FOIA). The ONR denied portions of the KAP's request for information related to activities at the Knolls Atomic Power Laboratory pursuant to FOIA Exemptions 1, 3, 4, 5, and 6. In considering the Appeal, the DOE found that the determination to withhold the requested documents was consistent with the provisions of Exemption 5 and current classification guidelines. Accordingly, the DOE denied the KAP's Appeal.

Marylia Kelley, 11/06/92, *LFA–0244*

Marylia Kelley filed an Appeal from a Freedom of Information Act (FOIA) determination issued by the DOE's Office of Administrative Services (DOE–AS). In that Appeal, Ms. Kelley challenged the adequacy of the search. In considering the Appeal, the DOE found that the DOE–AS search was adequate under the FOIA and reasonably calculated to uncover responsive documents. The DOE also found that Ms. Kelley impermissibly broadened the scope of her initial request on Appeal. The Appeal was therefore denied.

Paul G. Richards, 11/05/92, *LFA–0145*

Paul G. Richards filed an Appeal from a denial by the Director of the Office of Classification, DOE Office of Security Affairs, of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Dr. Richards challenged the Director's withholding of the yields of five underground nuclear tests conducted at the Nevada Test Site during 1979–1986. The test yields had been provided to the Soviet Union pursuant to the information exchange requirements under which the Joint Verification Experiment was conducted. Because the JVE Agreement precludes unilateral public dissemination of exchanged information, the requested data were classified as National Security Information under section 1.3(a)(5) of Executive Order 12356 (information concerning foreign relations or foreign activities), and therefore are exempt from mandatory disclosures under Exemption 1 of the FOIA. Accordingly, the Appeal was denied.

Refund Applications

Gulf Oil Corporation/Stewart & Stevenson Services, Inc., 11/02/92, RF300–20198

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application was filed by LK, Inc., a filing service, which had improperly submitted the Application without the applicant's written consent. Accordingly, the Application for Refund was denied.

Murphy Oil Corporation/Armstrong & Troutwine, Inc., 11/02/92, RF309–1147

This Decision and Order concerns the Application for Refund filed by F.P. Troutwine on behalf of Armstrong & Troutwine, Inc., in the Murphy Oil Corporation (Murphy) special refund proceeding. This closely held corporation, a retailer of Murphy gasoline and distillates during the refund period, was dissolved after the refund period, and the DOE was unable to locate Mr. Armstrong, Mr. Troutwine's partner. The Decision and Order determined that the refund should be divided equally between the two parties because Mr. Troutwine was unable to provide the firm's Articles of Dissolution or other documents detailing its stock ownership. Therefore, Mr. Troutwine was granted half the refund due to Armstrong & Troutwine, Inc. Mr. Armstrong is eligible to file a refund application for the other half of the refund. The total refund granted in this Decision and Order was $516 (comprised of $351 in principal and $165 in interest) based on 429,397 gallons of Murphy product.

Texaco Inc./BBS Construction, Inc., 11/06/92, RF321–19392

The DOE issued a Decision and Order rescinding an August 14, 1992 grant of an application for refund filed by Jim Pusley on behalf of BBS Construction, Inc., a consumer of Texaco products. Subsequently, on November 2, 1992, Wilson, Keller & Associates, a private filing service that submitted the application on behalf of Mr. Pusley, submitted evidence that the corporation was dissolved in 1985 and that Mr. Pusley was not the owner at the time of dissolution. The DOE found that Mr. Pusley was not entitled to a refund with respect to purchases made by BBS Construction, and accordingly rescinded the refund that has been granted to BBS.

Texaco Inc./Cook & Cooley, Inc., 11/02/92, RF321–14447

The DOE issued a Decision and Order denying an Application for Refund filed by Cook & Cooley, Inc. in the Texaco Inc. special refund proceeding. Subsequent to the filing of the application, the corporation sold its assets to Triton Fuel Group, Inc. The agreement regarding the sale transferred the right to any potential refunds in the Texaco proceeding. Consequently, the DOE determined that Cook & Cooley, Inc. was no longer eligible for a refund based on its purchases of Texaco products during the consent order period.

Texaco Inc./Wristen Texaco, Merced Mall Texaco, 11/05/92, RR321–55, RF321–18361, RF321–18362

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Chester Bradley, an owner of Wristen Texaco. The DOE had previously denied two duplicate Applications for Refund filed by Bradley on behalf of Wristen Texaco because he had wrongly certified that he had not filed a duplicate application in the Texaco proceeding. The DOE found that Bradley was confused by the multiple application forms that he had received from Texas and from Federal Refunds, Inc., a private filing service, and that he did not intend to file duplicate applications. Consequently, the DOE granted the Motion for Reconsideration. For part of the time period that he operated Wristen Texaco, Bradley was a partner with Lee Wristen. Accordingly, his refund was based upon 100% of the volume of Texaco purchases during the period that he was a sole proprietor and 50% of the volume of Texaco purchases during the period that he was a partner.

Bradley had previously been granted a refund with respect to Merced Mall Texaco. However, it was subsequently discovered that he owned that station in a partnership with Lee Wristen. The DOE found that with respect to Merced Mall Texaco, Bradley should repay 50% of the amount of the refund that was attributable to the period of time that Lee Wristen was a partner. The DOE offset this repayment obligation by the amount of the refund that was approved for Wristen Texaco.

The DOE also granted a refund to Lee Wristen based upon his share of the purchases by these two stations.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/John J. Lease Realtors	RF304–13235	11/03/92
Enron Corp./Pride Refining, Inc.,	RF340–21	11/03/92
Shell Oil Company	RF340–62	
George Community School District et al	RF272–81000	11/06/92
Gulf Oil Corp./Farmington Fruit & Gas et al	RF300–16015	11/05/92
Gulf Oil Corp./Sears, Roebuck and Co. et al	RF300–14631	11/03/92
Gulf Oil Corporation/St. Regis Corp./Champion et al	RF300–15502	11/06/92
Jasper-Newton Electric Coop	RF272–85873	11/05/92
Shell Oil Company/Lagen Shell Service et al	RF315–8709	11/03/92
Texaco Inc./Alva Concrete Materials Co. et al	RF321–15171	11/04/92
Texaco Inc./Benny's Texaco et al	RF321–6629	11/05/92
Texaco Inc./Burlington Industries, Inc. et al	RF321–12904	11/03/92
Texaco Inc./Franklin Logging et al	RF321–15625	11/05/92
Texaco Inc./Jack L. Vaughn Construction Company et al	RF321–16028	11/06/92
Texaco Inc./jim Hogg Road Texaco et al	RF321–1630	11/05/92
Texaco Inc./Midwest Handling, Inc.,	RF321–18969	11/06/92
Midwest Handling, Inc	RF321–19084	
Texaco Inc./Roberts Oil Company et al	RF321–9428	11/04/92
Town of Colchester et al	RF272–84304	11/06/92
Town of Sterling et al	RF272–83602	11/04/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson's Arco	RF304–8310
Arlington City Cab	RF321–16466
Austin Texaco	RF321–16446
Benson County, North Dakota	RF272–85537
Breton Village Texaco	RF321–18613
Cawthon Oil Company	RF321–19271
Commerce Gulf	RF300–17068
D.J. Shell	RF315–61
Durham Texaco	RF321–3213
E.C. Minit Stop	RF300–17048
Eagle Motor Lines	RF272–89119
El Monte Union High School District.	RF272–87184
Eldon R I	RF272–87185
Gill's Arco	RF304–12990
Goddard's Transportation	RF272–92702
Grant San Ann	RF321–3887
Lloyd's Texaco	RF321–18706
Northern Propane Gas Company	RF304–12984
Paul & Walt's Arco, Inc	RF304–13316
Perry's Garage	RF300–17224
R.C. Moore, Inc	RF272–93232
School Board of Polk County, FL	RF272–91882
Thome's Country Store	RF300–17055
Walker Oil Company, Inc	RF304–13289
Weis Markets, Inc	RF272–92814
Western Company Wire	RF321–17573

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–30153 Filed 12–10–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4544–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 23, 1992 though November 27, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–FHW–B40073–MA Rating EC2, MA–146/Massachusetts Turnpike Interchange Project, Improvements from MA–146 between I–290 at Brosnihan Square in Worcester and MA–122A in Millbury, Funding, COE section 404 Permit and EPA NPDES Permit, Cities of Worcester and Millbury, Worcester County, MA.

Summary: EPA expressed concern regarding wetland impact; water supply resources; hazardous wastes and air quality. EPA requested additional information be included in the FEIS.

ERP No. D–FHW–H40146–MO Rating EC2, Ozark Mountain Highroad Corridor Construction from existing US 65/MO–F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO.

Summary: EPA agreed in general with the preferred alternative, it requested additional information regarding water quality and secondary development impacts.

Final EISs

ERP No. F–BLM–K61119–CA Redding Resource Area, Land and Resource Management Plan, Implementation, Ukiah District, Butte, Shasta, Siskiyou, Tehama and Trinity Counties, CA.

Summary: EPA had no objections to the proposed project.

ERP No. F–BOP–E81033–MS Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U.S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE section 404 Permit, Yazoo City, Yazoo County, MS.

Summary: EPA concerns have been adequately addressed.

Dated: December 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–30171 Filed 12–10–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4544–3]

Supplemental Environmental Impact Statement; National Pollutant Discharge Elimination System Permitting of New Sources in the Eastern and Central Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: EPA anticipates issuance of a new source NPDES general discharge permit for effluent discharges from oil and gas operations to territorial waters of the United States in the Outer Continental Shelf (OCS) of the eastern and central Gulf of Mexico.

ADMINISTRATIVE HISTORY: In August 1990, Mineral Management Services (MMS) issued a final environmental impact statement (FEIS) as a result of the Proposed Western, Central and Eastern Gulf of Mexico OCS Oil and Gas Lease Sales 131, 135, and 137. Also, in November 1992, MMS issued a FEIS as a result of the Proposed Central and Western Gulf of Mexico OCS Lease Sales 142 and 143. EPA is a Cooperating Agency on this FEIS. This Cooperating Agency status will help to avoid duplication of effort in fulfilling National Environmental Policy Act (NEPA) responsibilities for permitting new sources in the eastern and central Gulf of Mexico.

SUMMARY: EPA will be issuing New Source Performance Standards for the offshore subcategory of the "Oil and Gas Extraction Point Source" category, in January 1993. Region IV EPA will prepare the SEIS on issuance of a NPDES General Permit for discharges within its jurisdictional areas in the OCS of the Gulf of Mexico areas of Florida, Alabama and Mississippi. The SEIS will address the effects of discharges from OCS oil and gas activities that are considered as "New Sources" thus requiring NPDES permits. In accordance with Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508) EPA intends to adopt portions of the 1992 MMS FEIS on Lease Sales 142 and 143 and will incorporate portions of the 1990 FEIS on Lease Sales 131, 135, and 137. EPA has conducted an independent review of both documents and will supplement adopted or incorporated sections as necessary. EPA will prepare, circulate, and file the SEIS in the same fashion (exclusive of scoping) as a draft and final EIS.

Alternatives

Possible outcomes of the NEPA process include General NPDES Permit issuance with NSPS, non-issuance of the permit, or permit issuance with other conditions.

Role of Public

Participation in the SEIS process is invited from individuals, organizations, and all governmental agencies. EPA will consider all comments concerning the scope of the SEIS and relevant issues will be addressed in the SEIS as appropriate. Written comments on the scope and issues of this action will be accepted by Heinz Mueller at the address listed below until January 19, 1993. For further information or to be placed on the mailing list contact David Melgaard, USEPA Region 4, FAB/4–OCSEIS, 345 Courtland Street, Atlanta, Georgia 30365; (404) 347–3776. Estimated Release Date of draft SEIS: March 1993. Responsible Official: Greer C. Tidwell, Regional Administrator.

Dated: December 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–30172 Filed 12–10–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4544–1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Availability of Environmental Impact Statements filed November 30, 1992 through December 4, 1992 pursuant to 40 CFR 1506.9.

EIS No. 920475, FINAL SUPPLEMENT, NOA, AK, Halibut and Sablefish Fixed Gear Fisheries Individual Fishing Quota (IFQ) Management Alternative, Additional Information on the specific IFO Program recommended by the Council in December 1991, Approval and Implementation, Gulf of Alaska and Bering Sea Aleutian Islands, AK, Due: January 11, 1993, Contact: William W. Fox, Jr. (301) 713–2239.

EIS No. 920476, DRAFT EIS, FTA, NJ, Hudson River Waterfront Transportation Corridor Improvements, Funding, Transportation Systems Management, Light Rail Transit, Hudson and Bergen Counties, NJ, Due: January 25, 1993, Contact: Catherine A. Scarpa (212) 264–8973.

EIS No. 920477, FINAL EIS, BOP, AR, Forrest City Federal Correctional Complex (FCC), Construction and Operation, St. Francis County, AR, Due: January 11, 1993, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 920478, DRAFT EIS, EPA, CA, San Francisco Bay Deep-Water Ocean Dredged Material Disposal Sites, (ODMDs) Site Designation, section 404 Permit, Long-term Management Strategy (LTMS), San Francisco Bay, CA, Due: January 25, 1993, Contact: Shelley Clarke (415) 744–1162.

EIS No. 920479, FINAL EIS, FHW, WA, I–90 Seattle Added Access Ramp, Construction to and from I–90 between I–5 and the west shore of Lake Washington, Funding, City of Seattle, King County, WA, Due: January 11, 1993, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 920480, FINAL EIS, COE, CA, ADOPTION—San Joaquin Hills Transportation Corridor Improvements, CA–73 Extension between I–5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and section 404 Permit, Orange County, CA, Due: January 11, 1993, Contact: Bruce Henderson (213) 894–0351. The US Army Corps of Engineers has adopted the US Department of Transportation, Federal Highway Administration's Final EIS filed with the Environmental Protection Agency on 5–1–92.

EIS No. 920481, DRAFT SUPPLEMENT, UMT, DC, Metropolitan Washington Regional Rapid Rail Transit System (Project DC–23–9001), Updated Information, Outer Branch Avenue Segment of the Green (F) Line Route (Sections F–6 thru F–11), Regional Metrorail System, Funding, District of Columbia and Prince George's County, MD, Due: February 1, 1993, Contact: A. Joseph Ossi (202) 366–0096.

EIS No. 920482, DRAFT SUPPLEMENT, NOA, PR, VI, Shallow—Water Reeffish Fishery Management Plan, Updated Information, Amendment 2, Puerto Rico and U.S. Virgin Island, Due: January 11, 1993, Contact: William W. Fox Jr. (301) 713–2239.

EIS No. 920483, DRAFT EIS, AFS, OR, Hen Moose Timber Sale, Implementation, Timber Harvesting in the Hensley subdrainage, Willamette National Forest, Sweet Home Ranger District, Linn County, OR, Due: January 25, 1993, Contact: Ken Schuetz (503) 367–5139.

EIS No. 920484, DRAFT SUPPLEMENT, COE, FL, Fort Pierce Harbor Navigation Improvement, Updated Information, General Design Memorandum, General Reevaluation Report, Indian River, City of Fort St. Lucie County, FL, Due January 25, 1993, Contact: Jonathan D. Moulding (904) 232–2286.

EIS No. 920485, DRAFT SUPPLEMENT, TVA, Control of Eurasian Watermilfoil, Implementation, Updated Information on Aquatic Plant Management Program, Due: February 8, 1993, Contact: Robert Pryor (605) 632–6695.

Amended Notices

EIS No. 920398, DRAFT EIS, AFS, MI, Grand Island National Recreation Area (NRA) Comprehensive Management Plan, Implementation, Hiawatha National Forest, Munising Ranger District, Alger County, MI, Due: January 15, 1993, Contact: Teresa Chase (906) 387–2512. Published FR 10–16–92—Review period extended.

EIS No. 920457, FINAL EIS, FHW, MI, U.S. 131 Improvement and Relocation, South of Cadillac to North of Manton, Funding and section 404 Permit, Wexford County, MI, Due: December 28, 1992, Contact; Norman Stoner (517) 377–1838. Published FR 11–27–92—Due to error EIS status was published incorrect.

Dated: December 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–30170 Filed 12–10–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4544–9]

Science Advisory Board, Radiation Advisory Committee, Open Conference Call Meeting

Under Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the Science Advisory Board of EPA will conduct a conference call meeting Thursday December 17, 1992 at 4:30 p.m. The meeting is open to the public.

At this meeting, the Committee will conduct a consultation on EPA's plans for a study addressing the "risk of adverse human health effects associated with exposure to various pathways of radon" as required under Safe Drinking Water Act Implementation, published in the Congressional Record September 25, 1992. The Committee plans to conduct a review of the final Agency product at an open meeting tentatively scheduled for April 26–27, 1993. This is the fourth in a series of conference call meetings on this subject and will concentrate on parameters for the uncertainty analysis. Members of the public who wish to receive a copy of the material prepared by the Agency should contact Nancy Chiu at (202) 260–7587.

For additional information concerning this meeting or to obtain an agenda, please contact Mrs. Dorothy Clark, Staff Secretary, Radiation Advisory Committee, Science Advisory Board (A–101–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 260–6552; Fax: (202) 260–7118. Anyone wishing to provide public comment for the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, Science Advisory Board, at the address and phone numbers given above, no later than December 14 and be prepared to fax their materials to the participants. Opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes it total. A fixed number of conference lines have been reserved for the meeting.

Dated: December 3, 1992.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 92–30293 Filed 12–10–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–77 FCC No. 92–465]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission.

ACTION: Statement of policy.

SUMMARY: This action directs AT&T to change its current practices by revising its network access instructions to holders of its proprietary calling cards. Specifically, the Order directs AT&T to educate its cardholders to check public phone notices and to use the 0+ form of access only at public phones identified as presubscribed to AT&T; to provide clear and accurate access code dialing instructions on every proprietary card issued; and make its 800 access code number easier to use.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202–632–6917.

SUPPLEMENTARY INFORMATION: On October 8, 1992 the Commission adopted a Report and Order and Request for Supplemental Comment (Report and Order) in CC Docket 92–77, Phase I, FCC No. 92–465, released November 6, 1992 In the Report and Order, the Commission considered certain interexchange carrier (IXC) calling card practices in the first phase of its "billed party preference" (BPP) proceeding. In Phase I, the Commission considered the need to take immediate action in response to alleged competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access, pending its consideration of the costs and benefits of a BPP-routing methodology for 0+ dialed interLATA calls. The Order directs AT&T to make certain changes in its dialing instructions to its proprietary cardholders, to educate its customers on access code dialing and to make its 800 access code number easier to use. The full text of the Commission's Order is available for public inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, suite 640, 1990 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–29927 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, city and state	File No.	MM docket No.
A. Russ Robinson; Richwood, LA.	BPH–910826ML	92–285
B. Barbara Dawson-Monk, d/b/a/ Urban Network Communications; Richwood, LA.	BPH–910826MM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Contingent Environmental—A
2. Comparative—A, B
3. Ultimate—A, B

3. If there are any non-standardized issues in this proceeding, the full text of

the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92–30179 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–947–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: November 17, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–947–DR), dated July 2, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 31, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–30133 Filed 12–10–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–968–DR]

Mississippi; 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 Mississippi (FEMA–968–DR), dated November 25, and related determinations.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi, dated November 25, 1992, 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 November 25, 1992:

The counties of Attala, Choctaw, Leake, and Noxubee for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–30134 Filed 12–10–92; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on the National Health Service Corps.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Dated: December 7, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–30131 Filed 12–10–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 25–26, 1993, in Building 31C, Conference Room 10, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8 a.m. to 10 a.m. on February 25, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until recess on February 25, and from 8 a.m. until adjournment on February 26. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Peter R. Jackson, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, room 4C13, Rockville, Maryland 20892, telephone 301–496–8426, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30093 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 25–26, 1993, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to adjournment on January 26 for general discussion and program presentations. A meeting of the National Advisory Dental Research Council Subcommittee on Minority Activities will be held on January 25 from 3 p.m. until adjournment at the same location. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on January 25 from 9 a.m. to recess for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30094 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 25–26, 1993. The meeting will be held in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on January 25 in Building 31, room 2A03.

The Council meeting will be open to the public on January 25 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, and a report by the Mental Retardation and Developmental Disabilities Branch, NICHD. The meeting will be open on January 26 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 25 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on January 26 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30095 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 11, 1993, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on January 11 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 11 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496–5708, will provide summaries of the meeting and rosters of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, Maryland 20892, Tel. 301/496–7030, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30096 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including ZIP code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; room 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; *Corps of Engineers:* Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Avenue, NW., room 4133, Washington, DC 20314–1000; (202) 272–0520; *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; *GSA:* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0067; *Dept. of Transportation:* Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh Street, SW., room 10319, Washington, DC 20590; (202) 366–4246; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C Street, NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; *Dept. of Agriculture:* Marsha Pruitt, Realty Officer, USDA, South Building, room 1566, 14th and Independence Aveune, SW., Washington, DC 20250; (202) 3338; (These are not toll-free numbers).

Dated: December 4, 1992.

Randall H. Erben,

Acting Assistant Secretary.

Title V, Federal Surplus Property Program Federal Register Report for 12/11/92

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, Attn: AFZW–RM (LTC Anderson), Fort Ord, California 93941–5000.

Suitable/Available Properties

Property Number: 329210039
Type Facility: Housing—1431 family houses; majority are 2-story.

Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.

Property Number: 329210041
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.

Property Number: 329210042
Type Facility: Recreation—53 facilities including bowling center, quest houses, community and youth centers, library, gym and recreation bldgs.

Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—10 facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower.

Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.

Property Number: 329210045

Type Facility: Mess/Dining Halls—95 buildings; wood, concrete and concrete block dining facilities.
Property Number: 329210046
Type Facility: Child Care—7 buildings; wood and concrete child care centers.
Property Number: 329210047
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.
Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.
Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.
Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.
Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.
Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.
Property Number: 329210053
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.
Property Number: 329210054
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.
Property Number: 329210055
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.
Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.
Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.
Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.
Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

Suitable/Available Properties

Connecticut

15 Family Houses
Portland CT 36
Portland Co: Middlesex CT 06484
Landholding Agency: COE–BC
Property Numbers: 319011218–319011232
Status: Excess
Base Closure
Comment: 1000–1300 sq. ft., 1 story wood frame residences

Hawaii—Kapalama Military Reservation Phase III

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The based comprises 21.22 acres and contains nine buildings which are currently being used for storage.

Suitable/Unavailable Properties

Property Numbers: 329210003–329210011
Type Facility: Nine buildings currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

Suitable/Available Properties

Illinois

12 Worth Family Houses
Fort Sheridan
Worth Co: Cook IL 60482
Landholding Agency: COE–BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

Suitable/Unavailable Properties

Illinois

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage IL 60101
Landholding Agency: COE–BC
Property Number: 329210001
Status: Excess
Base Closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216–5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI–IS, Fort Benjamin Harrison, Indiana 46216–5000; (317) 542–5382.

Suitable/Available Properties

Property Numbers: 329210068–329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.
Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.
Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court, bowling center, recreation buildings, basketball and handball courts, baseball fields, track, and playgrounds.
Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 & 14,457 sq. ft.
Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 1,075 to 31,439 sq. ft.
Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 68,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branchs, and service outlet.
Property Number: 329210075
Type Facility: Hospital, brick frame.
Property Number: 329210076
Type Facility: 2 Chapels; 3,747 & 16,587 sq. ft., brick and aluminum frame.
Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 & 3,835 sq. ft.; includes fire station and hose house.
Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.
Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.
Property Numbers: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.
Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.
Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters & general instruction buildings; training centers and detached garages.
Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077

Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210087
Type Facility: 1 Recreational Facility; within a floodway.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD has determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.

Property Number: 329210029
Type Facility: 404 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.

Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.

Property Number: 329210013
Type Facility: 27 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.

Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—7; six gas station bldgs. and pump stations; wood, steel or concrete block structures.

Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/ Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.

Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.

Property Number: 329210019
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.

Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.

Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.

Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.

Property Number: 329210026
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.

Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.

Property Number: 329210020
Type Facility: Chapel; 22,250 sq. ft.; brick frame.

Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including oxygen storage facilities and flammable materials storage.

Property Number: 329210028
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs.; training facilities, RG houses, reserve centers, garages.

Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210033, 329210038
Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.

Property Number: 329210031
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210034, 329210037
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.

Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable eplosive material.

Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

Suitable/Available Properties

Massachusetts

12 Bldgs., Burlington Housing
South Bedford
Burlington Co: Middlesex MA 01803–
Landholding Agency: COE—BC
Property Number: 329240005
Status: Excess
Base Closure
Number of Units: 12
Comment: 1100 sq. ft. each, 1-story wood frame residences.

Michigan

Pontiac Storage Facility
871 East South Boulevard
Pontiac Co: Oakland MI, 48054–
Landholding Agency: COE—BC
Property Number: 329240001
Status: Excess
Base Closure
Number of Units: 5
Comment: 607,202 sq. ft. warehouse w/steel frame, 4 other structures inc. well house, sentry station, heating plant & water tower located on 31.24 acres.

Minnesota

Coast Guard Family Housing
404 Eat Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Excess
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 5492300009
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 5492300010
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

North Carolina

Federal Building
301 East King Street
Kinston Co: Lenior NC 28501–
Landholding Agency: GSA
Property Number: 549230011
Status: Excess
Comment: 3950 sq. ft., 2-story building

GSA Number: 4–G–NC–706

New Jersey—Fort Dix

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for realignment on or about October 1, properties may be available for interim lease for use to assist the homeless prior to that date.

In particular, the Sheridanville Family Housing complex will be available on or about December 31, 1992. The Sheridanville complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68.

The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616 (Pemberton-Wrightstown Road). It is not available for homeless assistance use at this time. The majority of the base is being retained for Federal use.

Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD–EHP, Jean M. Johnson, Fort Dix, NJ 08640–5506.

Suitable/Available Properties

Sheridanville Family Housing Complex

Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/ brick veneer facing.
Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame.
Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings.
Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame.
Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters.
Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field

Note: An approved application for 125 units is being processed.

Suitable/Unavailable Properties

Kennedy Courts Family Housing Complex

Property Numbers: 329220005–329220009
Type Facility: Housing—2, 4, 6, 8 & 10-unit buildings; 1 to 4 bedrooms, wood frame w/ brick veneer facing.
Property Number: 329220010
Type Facility: Detached Sheds—48; wood frame, needs rehab.
Property Numbers: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services.
Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreational center, museums, community centers.
Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house.
Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs.
Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing.
Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story.
Property Numbers: 329220029–329220030, 329220047, 329220050,
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop.
Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—8 facilities; includes enlisted personnel dining, 1 story, concrete or cinderblock w/brick veneer facing.
Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story.
Property Numbers: 329220048,
Type Facility: Hazardous storage—3 buildings; 1 story.
Property Numbers: 329220049,
Type Facility: Communications/Electronics—2; 1 & 2 story.
Property Numbers: 329220012–329220013, 329220033, 329220042, 329220051–329220052
Type Facility: Miscellaneous—30 buildings; includes heat plant, waiting shelters, warehouses, and other specialized structures.
Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame.
Property Number: 329220011,
Type Facility: Recreational/land—2; basketball courts.

Unsuitable Properties

Property Number: 329220034
Type Facility: Sewage Pump.

Suitable/Unavailable Properties

New Jersey

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen, NJ 07430
Landholding Agency: COE–BC
Property Numbers: 319010734–319010757
Status: Excess
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences.

32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris, NJ 07936
Landholding Agency: COE–BC
Property Numbers: 319010758–319017789
Status: Surplus
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

New York

37 Nike Houses
New York 01
Tappan Co: Rockland, NY
Landholding Agency: COE–BC
Property Numbers: 319011049, 319011070–319011105
Status: Excess
Base Closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson, NY 13601
Landholding Agency: COE–BC
Property Numbers: 319030015–319030041
Status: Excess
Base Closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Suitable/Unavailable Properties

Pennsylvania

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S–101–Q
Finleyville Co: Washington PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE–BC
Property Numbers: 319011407, 319011409–319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos.

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2
Monroeville Co: Allegheny PA 15239
Landholding Agency: COE–BC
Property Numbers: 319030051–319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos.

Land (by State)

Pennsylvania

C.E. Kelly Support Facility
Finleyville Area Site 52
Finleyville Co: Washington PA 15332
Landholding Agency: COE–BC
Property Number: 319011408
Status: Excess
Base Closure

Comment: 11.63 acres, potential utilities, most recent use—playground area.

Suitable/Available Properties

Rhode Island

62 Bldgs., Davisville Housing
Navy Drive
Davisville Co: Kingston, RI 02852–
Landholding Agency: COE–BC
Property Number: 329240003
Status: Excess
Base Closure
Number of Units: 62
Comment: sq. ft. varies, 2-story wood frame residences.

16 Bldgs., Slaterville Housing
Pound Hill Street
N. Smithfield Co: Providence RI 02895–
Landholding Agency: COE–BC
Property Number: 329240004
Status: Excess
Base Closure
Number of Units: 16
Comment: 1,100 sq. ft. each, 1-story wood frame residences.

Texas

Marine Corps Reserve Center
208 South F Street
Harlingen Co: Cameron TX 78550–6475
Landholding Agency: GSA
Property Number: 549240002
Status: Excess
Comment: 4 Bldgs. and 0.82 acres of land; most recent use of bldgs—administration (4,708 sq. ft. brick); carport/storage (1,782/2,800 sq. ft. wood); storage (4,256 sq. ft. tin).
GSA Number: 7–N–TX–1032.

Washington

28 Bldgs., Youngslake Housing
Near 116th St., SE & 192nd St.
Renton Co: King WA
Landholding Agency: COE–BC
Property Number: 329240006
Status: Excess
Base Closure
Number of Units: 28
Comment: 1,184–1,392 sq. ft., 3-bedroom residences.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphia, Maryland 20783–1145.

Suitable/Available Properties

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.
Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.
Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.
Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

LAND (by State)

Georgia

Tracts 3, 16 and 33
Fort Gillem
GA Hwy 42
Forest Park Co: Clayton GA 30051–
Landholding Agency: GSA
Property Number: 219014293
Status: Unutilized
Comment: 11.19 acres, narrow strip of land, most recent use—railroad spur, access limitation
GSA Number: 4–D–GA–585–B

Idaho

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801–
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Comment: 48.42 acres, former railroad right-of-way
GSA Number: 9–GR(2)–ID–421C

Indiana

Land—Plant II
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base closure
Number of Units: 1
Comment: 858.63 acres, 34 acres subj. to flooding, access over private property by easement of roadway, manufac. facility on site note operative for 20 yrs., scheduled to vacated 11/92.

Portion, Cannelton Locks & Dam
Adjacent to Middle Creek Boat Lanching Ramp Co: Floyd IN
Landholding Agency: GSA
Property Number: 549240008
Status: Excess
Comment: 28.65 acres with pumphouse, no utilities, periodic flooding
GSA Number: 2–D–IN–569–C

North Dakota

US Army Reserve Center
SE intersection of US 83 & County Road 10A
Minot Co: Ward ND 58701–
Landholding Agency: GSA
Property Number: 549240001
Status: Excess
Comment: 5 acres; most recent use—agricultural
GSA Number: 7–D–ND–0492.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 21185
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Road, PT SAL Road; Miguelito CYN
Landholding Agency: Air Force
Property Number: 189240054
Status: Unutilized
Comment: 168 sq. ft., 1 story wood frame, needs rehab, most recent use—storage.

New Jersey

Bldg. P05605, Fort Dix
8th Street and Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210064
Status: Unutilized
Base closure
Number of Units: 1
Comment: 6137 sq. ft., 1 story, possible asbestos, most recent use—administration/classroom.

Bldg. P05602, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210065
Status: Unutilized
Base closure
Number of Units: 1
Comment: 40653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. P05603, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210066
Status: Excess
Base closure
Number of Units: 1
Comment: 40653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. P05604, Fort Dix
8th Street & Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210067
Status: Excess
Base closure
Number of Units: 1
Comment: 12194 sq. ft., 1 story, presence of asbestos, most recent use—admin/supply building.

Suitable/To Be Excessed

Buildings (by State)

Ohio

Michaels, Christine E. A–8881
T2NRSW part sec, 27 & 33 Co: Washington OH
Landholding Agency: Agriculture
Property Number: 159230001
Status: Unutilized

Comment: 1104 sq. ft., 1 story frame residence, disconnected utilities, off-site removal only.

Land (by State)

Arizona

LAND-APO-GR-12-26A-09
120 Street and Mountain View
Scottsdale Co: Maricopa AZ 85259–Location: South of Shea Boulevard and East of 120th Street
Landholding Agency: Interior
Property Number: 619240002
Status: Unutilized
Comment: 4.75 acres, easement restrictions, most recent use—acquired for construction of CAP canal.

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Iowa

C BAR J Ranch
¼ mile south of River Rd. on Stagecoach Rd.
Ames Co: Story IA
Landholding Agency: Agriculture
Property Number: 159230002
Status: Unutilized
Comment: 24.5 acres w/bldgs.—animal, shops, barn, storage; wood and metal frames; potential utils.; limestone quarry approx ¾ mi. north, perform some blasting; fenced area w/locked gate.

Unsuitable Properties

Buildings (by State)

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway.

Florida

Pyro & Paint Locker Bldgs.
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879240017
Status: Unutilized
Reason: Floodway; Secured Area.

Illinois

Bldg. 117, Hangar
Fort Sheridan Co: Lake IL 60037–5000
Landholding Agency: COE–BC
Property Number: 329230001
Status: Excess
Base closure
Number of Units: 1
Reason: Without airport runway clear zone.

Indiana

Loran Station DANA
Dana Co: Vermillion IN 47847–
Landholding Agency: DOT
Property Number: 879240016
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Kentucky

Bldg. 06862, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219240782
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Maine

Herron Neck Light
U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Burnt Coat Harbor Light
U.S. Coast Guard
Swans Island Co: Hancock ME 04685–
Landholding Agency: DOT
Property Number: 879240030
Status: Unutilized
Reason: Floodway.

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway.

Massachusetts

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway; Secured Area

Montana

Lolo Work Cntr. Messhall #1001
Highway 12—Approx. Mile Marker 15 Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Other
Comment: Extensive deterioration.

Lolo Work Cntr. Bunkhouse #2001
Highway 12—Approx. Mile Marker 15 Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220005
Status: Unutilized
Reason: Floodway; Other
Comment: Extensive deterioration.

New York

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area.

Bldgs. 607, 605 Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240021–879240022
Status: Unutilized
Reason: Secured Area, Other Comment: Extensive deterioration

North Carolina

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: NC 27902–0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area

Tennessee

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Wisconsin

Kapsey Property #3961, Co: Taylor WI
Location: Sec. 2, T31N, R3W from junction of State Hwy. 64 & 73, go north on Hwy. 73 1¾ miles—turn right on Co. Hwy. G—go 2¾ miles, turn right on FR 121, turn left on 1st road past Yellow River
Landholding Agency: Agriculture
Property Number: 1592220001
Status: Unutilized
Reason: Floodway

Land (by State)

Florida

Cape St. George Reservation Fort Rucker, AL Installation #12050
Apalachicola Co: Franklin G C FL 32320–
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Base closure Number of Units: 1
Reason: Floodway, Other Comment: Inaccessible

Montana

Sherryl Tap Point Site, 3 miles south of Drummond, MT Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other Comment: Inaccessible
GSA Number: 7–B–MT–0598

South Carolina

Land—2.66 acres Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway

The Following Properties Are Suitable/Available. They Were Published in Error as Unsuitable on 11/20/92

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT

Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence

Admin. Bldg.
Group Eastern Shores
Coast Guard Station, South Main Street
Chinoteague Co: Accomack VA 23336–1510
Landholding Agency: DOT
Property Number: 879230006
Status: Unutilized
Comment: 3795 sq. ft., 1-story wood structure, off-site use only, scheduled to be vacated 6/93

Repair Shop
Group Eastern Shores
Coast Guard Station, South Main Street
Chinoteague Co: Accomack VA 23336–1510
Landholding Agency: DOT
Property Number: 879230007
Status: Unutilized
Comment: 3025 sq. ft., 1-story wood structure, off-site use only, scheduled to be vacated 6/93

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Iowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monore WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414–
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Sections 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Sections 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized

Comment: 46 acres

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319010015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities
GSA Number: 9–2–CA–1308

Colorado

Portion/Curecanti Substation
Cimarron Co: Montrose CO 81220–
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: GSA
Property Number: 419030009
Status: Excess
Comment: 36.39 acres, easement restrictions
GSA Number: 7–B–CO–624

Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood Co: Jefferson CO 80215–
Landholding Agency: GSA
Property Number: 549120007
Status: Excess
Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions
GSA Number: 7–G–CO–441–Q

Georgia

Land—Fort Gordon
Between Windermere Dr. & Wyevale Rd.
Augusta Co: Richmond GA 30909–
Landholding Agency: GSA
Property Number: 219210382
Status: Excess
Comment: Approximately .54 acres, entire parcel under easement to State Hwy. Dept.

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Kansas

Parcel 1
El Dorado Lake
Sections 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Portion of VA Hospital Reserv.
2111 Southwest Randolph Street
Topeka Co: Shawnee KS 66603–
Landholding Agency: GSA
Property Number: 549220006
Status: Excess
Comment: 0.806 acre, utility easements, most recent use—recreation.
GSA Number: 7–GR–KS–419–I

Kentucky

Tract 2625
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres, rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; step and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.89 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE

Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; steep and wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; steep and wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tract 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co; Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.6 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized

Comment: 203 acres; wildlife/forestry; no utilities.

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres; heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010111
Status: Underutilized
Comment: 66.13 acres, most recent use—transmitter station.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham Co: Plymouth MA 02043–
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot
GSA Number: 2–GR–MA–591B

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, MN
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Sections 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE

Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

North Carolina

USCG Station—Land
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968–
Landholding Agency: DOT
Property Number: 879120087
Status: Unutilized
Comment: 10 acres, potential utilities.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: GSA
Property Number: 219013808
Status: Excess
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0004

Parcel No. 7
Fort Gibson Lake
Section 6 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Excess
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.
GSA Number 7–D–OK–0442E–0001

Parcel No 14
Fort Gibson Lake
Section 20 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Excess
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.
GSA Number 7–D–OK–0442E–0002

Parcel 15
Fort Gibson Lake
Section 22 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010871
Status: Excess
Comment: 7.51 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0003

Parcel 28
Fort Gibson Lake
Section 35 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Excess
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0005

Parcel 75
Fort Gibson Lake
Section 16 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0009

Parcel 88
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Excess
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0010

Parcel 89
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0011

Parcel 95
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Excess
Comment: 8 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0012

Pine Creek Lake
Section 27 Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Excess
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006

Parcel No. 49
Fort Gibson Lake
Section 15 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007

Parcel No. 61
Fort Gibson Lake
Section 13 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0008

Parcel No. 99
Fort Gibson Lake
Section 21 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0013

Parcel No. 102
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0014

Parcel No. 54/GSA No. 6
Lake Texoma Co: Marshall OK 73439–
Location: Section 17, 3½ miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess
Comment: 5.05 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No.63/GSA No. 8
Lake Texoma Co: Marshall OK 73439–
Location: Section 19, 3½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess
Comment: 40-32 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 66/GSA No. 9
Lake Texoma Co: Marshall OK 73439–
Location: Section 12 and 13, 2½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009

Status: Excess
Comment: 14.05 acres, potential utilities, most recent use—low density recreation/ natural gas well and pipelines.
GSA Number: 7–D–OK–0507–H

Parcel No. 78/GSA No. 11
Lake Texoma Co: Marshall OK 73439–
Location: Section 24, 1 mile east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess
Comment: 30.28 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 86/GSA No. 12
Lake Texoma Co: Marshall OK 73439–
Location: Section 1824, 3½ miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess
Comment: 13 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 125/GSA No. 14
Lake Texoma Co: Marshall OK 73439–
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess
Comment: 11.24 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 150/GSA No. 15
Lake Texoma Co: Marshall OK 73439–
Location: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess
Comment: 12.64 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 164/GSA No. 16
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 165/GSA No. 17
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 166/GSA No. 18
Lake Texoma Co: Love OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.89 acres; potential for utilities.

South Dakota

Por. of Pactola Dist. Ad. Site
803 Soo San Drive
Rapid City Co: Pennington SD 57702–
Landholding Agency: GSA
Property Number: 159130003
Status: Excess
Comment: 3.36 acres; potential for utilities
GSA Number: 7–A–SD–511.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: DOE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Parcel #222
Lake Texoma
(See County) Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy 121
Landholding Agency: COE
Property Number: 319140015
Status: Underutilized
Comment: approx. 92.81 acres in 3 parcels, most recent use—wildlife and low density recreation.

Peary Point #2
Navel Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V.

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/92, most recent use—parking lot.

Washington

Land
Goodnoe Hills Substation & Wind Study Site
Co: Klickitat WA 98620–
Location: 15 mi SE of Glodendale on S side of St. Hwy. 122
Landholding Agency: GSA
Property Number: 54921005
Status: Excess
Comment: 123 acres w/ a 20'x20' visitors center and a 6'x6' substation bldg. which has secured areas.
GSA Number: 9–B–WA–1017.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions.

[FR Doc. 92–29915 Filed 12–10–92; 8:45 am]
BILLING CODE 4210–29–M

Office of Administration

[Docket No. N–92–3549]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street,

SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 4, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: HOME Regulations-Interim Rule (Amendments) (FR–2937).

Office: Office of the Secretary.

Description of the Need for the Information and Its Proposed Use: This interim rule amends the December 16, 1991, HOME Program interim rule. The amendments provide additional guidance, make technical corrections and make substantive changes necessary for successful operation of the Program.

Form Number: HUD–40093, 40094/A, 40095/A, 40096/A, 40097/A, 40098/A, 40099, 40100/A and 40107.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: Annually and on occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	814		50		.8339		33,940
Recordkeeping	814		1		64.168		52,233

Total Estimated Burden Hours: 86,173.

Status: Revision.

Contact: Ginny Sardone, HUD, (202) 708–2470; Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 92–30182 Filed 12–10–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–5440–10 B021]

Availability of Draft Environmental Impact Report/Environmental Impact Statement for Rail-Cycle Bolo Station Landfill, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that a joint draft Environmental Impact Report/Impact Statement (EIR/EIS) has been prepared by the Bureau of Land Management and the County of San Bernardino for the proposed Bolo Station Class III landfill. The proposed federal action analyzes the environmental affects of a land exchange for 2.5 sections, a right-of-way and a plan amendment to the California Desert Plan.

SUPPLEMENTARY INFORMATION: Of the 2.5 sections of public land proposed for exchange, 1.5 sections is designated Multiple Use Class L (Limited Use) under the California Desert Plan. The proposed use of the 1.5 section for a landfill is not consistent with the guidelines of the Desert Plan, and the proposed amendment would designate the subject land, Multiple Use Class M, permitting an exchange. The proposed private lands (3 sections) to be exchanged for the Bolo Station public land contain tortoise habitat, recreational value and land in the East Mojave National Scenic Area.

Rail-Cycle, a partnership of Waste Management of North America and the Atchison, Topeka and Santa Fe Railroad Co., has proposed a waste-by-rail landfill facility. The proposed project would involve 4800 acres of which 2100 acres would be utilized for the landfill and ancillary facilities. Refuse would be sorted and recyclable material removed at Materials Recovery Facility (MRF), located in southern California. The remaining material would be packed into containers and transported by train to the Bolo Station facility, located between Amboy and Cadiz, south of US Route 66, and about 35 miles northeast of the City of Twentynine Palms. The proposed facility anticipates that within five to seven years, processed waste would total 21,000 tons per day and utilize seven trains. The proposed facility would be open 60 to 100 years and contain a maximum of 430 million tons of waste. Two alternatives beside the proposed action are considered. The EIS/EIR analyzes the effects of the proposed action on such environmental issues as water and air quality, minerals, and visual resources among other resources.

DATES: Owing to a proposed plan amendment, there is a 90 day public review period, and written comments will be accepted until March 3, 1993. Public hearings will be held on the following dates at 7 p.m.: February 8, 1993, Holiday Inn, 1511 E. Main St., Barstow, CA; February 10, 1993, Twentynine Palms High School, Multipurpose Room, 72750 Wildcat Way, Twentynine Palms, CA; February 11, 1993, San Bernardino County Government Center, Hearing Chambers, 385 North Arrowhead Ave., San Bernardino, CA.

ADDRESSES: Written comments will be accepted until March 3, 1993 and should be addressed to: County of San Bernardino, Planning Department, 385 N. Arrowhead Ave., Third Floor, San Bernardino, CA 92415–0182, Attn: Mr. Randy Scott.

Dated: December 4, 1992.

Bonnie R. Johnson,

Acting District Manager.

[FR Doc. 92–30083 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–40–M

[ID-943-4210-06; IDI-15597]

Notice of Proposed Continuation of Withdrawal; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 2,333.90 acre withdrawal for Powersite Reserve No. 521, continue for an additional twenty years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have been and will remain open to mineral leasing and mining.

EFFECTIVE DATE: Comments should be received on or before March 11, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384-3166.

The Bureau of Land Management proposes that the existing land withdrawal made by the Executive Order dated February 15, 1916, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

T. 3 N., R. 41 E.,
sec. 8, lots 1, 6 and 8;
sec. 9, lots 2, 3, 4 and 8, W½NW¼, NE¼SW¼ and SW¼SE¼;
sec. 10, lots 1 and 2 and SE¼SW¼;
sec. 11, lots 3 and 4;
sec. 14, lot 4;
sec. 15, lots 1, 2, 5, 6, 7 and 8, NW¼NW¼ and SE¼NE¼.
T. 3 N., R. 42 E.,
sec. 4, lot 5;
sec. 5, lots 8 to 10 inclusive;
sec. 7, lots 5 and 6;
sec. 9, lots 2, 3, 6 and 7 and SW¼NW¼;
sec. 10, lots 5 to 7 inclusive and SE¼SW¼;
sec. 13, lots 5 and 6;
sec. 14, lot 5, S½NE¼ and NE¼SE¼;
sec. 15, lots 1 and 2 and SE¼NE¼;
sec. 23, NE¼NE¼
sec. 24, lots 1 to 4 inclusive and S½N½.
T. 3 N., R. 43 E.,
sec. 19, lots 3, 6 and 7;
sec. 30, lots 3, 4, 5, 8 and 11, NE¼SW¼ and SW¼SE¼;
sec. 31, lots 2, 7 and 8, NW¼NE¼, SE¼SW¼, N½SE¼ and SE¼NE¼;
sec. 32, lots 2 and 5.

The areas described aggregate 2,333.90 acres in Bonneville County.

The withdrawal is essential for protection of potential waterpower development. The existing withdrawal closes the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Dated: December 4, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92-30084 Filed 12-10-92; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Adoption of the Page Avenue Extension Environmental Impact Statement

SUMMARY: This notice is published to advise interested parties of the National Park Service's (NPS) adoption of the Page Avenue Extension Final Environmental Impact Statement (FEIS), St. Louis and St. Charles counties, Missouri, pursuant to Council on Environmental Quality regulations § 1506.3(c), for use in a Land and Water Conservation Fund (L&WCF) Act, as amended, section 6(f)(3) conversion request from the Missouri Department of Natural Resources.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration recently completed the FEIS for the Page Avenue Extension project in St. Charles and St. Louis counties. The FEIS was filed with the Environmental Protection Agency and noticed in the Federal Register on December 4, 1992. This highway project, in addition to providing an additional crossing of the Missouri River, will also impact Creve Coeur Lake Memorial Park. In crossing the park, the proposed route will impact 183.4 acres, resulting in the conversion and necessary replacement of this land in accordance with section 6(f)(3) of the L&WCF Act of 1965, as amended. As a cooperating agency in the development of this FEIS and after an independent review of the statement, the NPS concludes that its comments and suggestions have been satisfied. Therefore, the NPS adopts this FEIS for use in the environmental evaluation requirements as identified in section 6(f)(3) of the L&WCF Act.

FOR FURTHER INFORMATION CONTACT: Clay McDermeit, Chief, Western Heartlands Division, Recreation Assistance Programs, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3203.

Dated: December 2, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92-30105 Filed 12-10-92; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES & TIME: February 1, 1993, 2:30 p.m. to 5 p.m. February 2, 1993, 8 a.m. until business completed.

ADDRESSES: Harry S. Truman State Office Building Conference Room 490, 301 West High, Jefferson City, Missouri.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 28, 1990.

Dated: December 3, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92-30106 Filed 12-10-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 55; Sub-No. 92]

Compliance Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Commission is reinstating its prior policy that an applicant for new motor, water, broker, or freight forwarder operating authority generally must comply with the applicable insurance or surety bond, tariff, and process agent requirements within a specified period of time. The procedural change is necessitated by the large number of unclosed files that have accumulated because the applicants have never effected compliance, and is intended to alleviate the current burden on Commission resources in maintaining these files.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Julia Farr (202) 927–7513. [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: The Commission is reinstating its prior policy that an applicant for new motor, water, broker, or freight forwarder operating authority generally must comply with the applicable insurance or surety bond, tariff, and process agent requirements within a specified period of time.

In the early 1980's, the Commission had eliminated the practice of requiring an applicant to effect compliance within a specific time period. Since then, however, over 16,000 files have accumulated for applicants granted authority more than a year ago, who have not complied with the terms of the grant and may never comply. The number of files awaiting compliance continues to increase and imposes a heavy burden on the Commission's limited resources, thus necessitating some resolution.

Effective upon publication of this policy statement, all new grants of authority will include the requirement that compliance be effected within 180 days. An applicant may seek a waiver of the 180-day compliance requirement, but such requests will only be granted on a showing of good cause. This procedure should allow applicants a sufficient amount of time to comply, while at the same time providing for relief in appropriate circumstances. If an applicant timely complies, the Commission will issue an appropriate certificate, permit, or license. If an applicant fails to comply or obtain a waiver within the 180-day period, the grant of authority will be, by its own terms, void and the application dismissed for want of prosecution.

As we have noted, several thousand applicants that were granted authority more than 180 days ago have not achieved compliance. As to these applicants, and any other applicants that were granted authority before publication of this policy statement, but that do not effect compliance within 180 days of their grant of authority, we will systematically issue a decision tentatively dismissing the application for want of prosecution. To afford each such applicant one final chance to effect compliance, each dismissal decision will not take effect for 60 days. If, within 60 days from the date of service of the dismissal decision, the applicant achieves compliance, then the application will not be dismissed for want of prosecution.

Authority: 5 U.S.C. 551(a); 5 U.S.C. 553; 5 U.S.C. 559; 16 U.S.C. 1456; 49 U.S.C. 10101; 49 U.S.C. 10305; 49 U.S.C. 10321; 49 U.S.C. 10921; 49 U.S.C. 10922; 49 U.S.C. 10923; 49 U.S.C. 10924; 49 U.S.C. 10928; 49 U.S.C. 11102.

Dated: December 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30138 Filed 12–10–92; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Explosives Technologies International, Inc. (ETI), Rockwood Office Park, Bldg. #1, 501 Carr Rd.—suite 200, Wilmington, DE 19809–2863.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Blastrite Services Inc.
Incorporated—SC
Incorporated—GA
Incorporated—VA
(ii) Beattie Explosives, Inc.
Incorporated—ID
(iii) Southern Explosives Corp.
Incorporated—KY
Incorporated—OH
(iv) Contract Carrier, Inc.
Incorporated—MO
(v) ETI of California, Inc.
Incorporated—CA
(vi) DECO Services, Inc., dba Danbury Explosives
Incorporated—CT
Incorporated—NY
(vii) Explosives Energy Inc. dba Arkansas Explosives
Incorporated—AR
(viii) Explo-Tech Inc.
Incorporated—PA
Incorporated—MD
(ix) ACE Explosives ETU Ltd.
Incorporated—CN

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30137 Filed 12–10–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-No. 1104X)]

Consolidated Rail Corporation—Abandonment Exemption—In Clearfield County, PA

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR Part 1152 subpart F—*Exempt Abandonments* to abandon approximately 4.5-miles of line in Clearfield County, PA. The segment to be abandoned, the Mills Industrial Track (a.k.a. Moshannon Industrial Track), extends from a point approximately 1,800 feet west of State Route 53 at Osceola Mills, at approximately milepost 24.5, to approximately 1,750 feet north of the Beaver Branch Creek at West Moshannon, at approximately milepost 29.0.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. Conrail has complied with the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies).

As a condition to this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance has been received, this exemption will be effective on January 11, 1993, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 21, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 31, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 16, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 3, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30139 Filed 12–10–92; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decision shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Volume I

New York, NY91–3 (Feb. 22, 1991). p. 797, p. 798.

Pennsylvania:

PA91–3 (Feb. 22, 1991)	p. All.
PA91–6 (Feb. 22, 1991)	p. All.
PA91–11 (Feb. 22, 1991)	p. All.
PA91–14 (Feb. 22, 1991)	p. All.
PA91–16 (Feb. 22, 1991)	p. All.
PA91–18 (Feb. 22, 1991)	p. All.
PA91–20 (Feb. 22, 1991)	p. All.
PA91–22 (Feb. 22, 1991)	p. All.

Volume II

Nothing

Volume III

Colorado.

CO91–7 (Feb. 22, 1991)	p. All.
CO91–8 (Feb. 22, 1991)	p. All.
CO91–9 (Feb. 22, 1991)	p. All.

Washington, WA91–11 (Feb. 22, 1991). p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of December 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–30141 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–27,496]

Allied-Signal Aerospace Co., Garrett Fluid Systems Division, Tempe, AZ; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated October 23 and November 9, 1992, the former workers at Allied-Signal Aerospace in Tempe, Arizona requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 18, 1992 and published in the Federal Register on October 13, 1992 (57 FR 46880).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former workers claim that Allied-Signal shifted some of its production (machining) to a company affiliate in Singapore which resulted in a loss of jobs and a decline in production at Tempe.

The investigation file shows that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. U.S. imports of parts for military aircraft decreased in the latest twelve month period May through April 1991–1992 compared with the same period in 1990–1991.

The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey shows that the subject firm's major customers did not import aerospace hardware during the period relevant to the investigation.

The findings show that the workers were not separately identifiable by product line and that only a neligible amount of production was shifted to Singapore in the 1991–1992 period and much of the transferred production was performed for the company by outside vendors rather than by employees of the Tempe plant. The findings also show that the Singapore plant had declining sales in 1992 compared to 1991.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of December, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–30162 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,807]

Carter Jasper Company, Jasper, GA; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 17, 1992, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 27, 1992 and published in the Federal Register on November 17, 1992 (57 FR 54256).

The company official states that a major customer decreased its purchases of canvas footwear from the Carter Jasper Company and increased its imported purchases of canvas footwear from China.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of December, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92–30167 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 21, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training

Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23d day of November, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Cas Refining (Workers)	Lafayette, LA	11/23/92	11/03/92	28,014	Refined Oil Products.
Nestle Beverage Company (Workers)	Sunbury, OH	11/23/92	11/11/92	28,015	Coffee.
Wayne Corp. (UAW)	Richmond, IN	11/23/92	11/13/92	28,016	Buses.
Spot Fashions, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,017	Ladies' Wool Coats.
American Design & Fashion (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,018	Ladies' Coats.
Andre Fashions (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,020	Ladies' Coats.
Econo-Cut (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,020	Ladies' Wool Coats, Jackets.
Epoca Fashions (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,021	Ladies' Coats.
ERA Coats (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,022	Ladies' Coats.
Greensleeves, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,023	Ladies' and Children's Bathing Suits.
Joseph Frank, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,024	Ladies' Apparel.
Lido Fashions (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,025	Ladies' Coats.
Malcolm Clothing Corp. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,026	Ladies' Coats.
Rosaria's Sportswear, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,027	Women's Skirts and Pants.
Ornstein Fashions (ILGWU)	Garfield, NJ	11/23/92	10/29/92	28,028	Women's Jackets.
Supercraft Coats (ILGWU)	Garfield, NJ	11/23/92	10/29/92	28,029	Women's Coats.
Nitrogen Products, Inc. (Workers)	Helena, AR	11/23/92	11/03/92	28,030	Ammonia Fertilizer.
Bayliner Marine Corp. (Workers)	Pipestone, MN	11/23/92	11/11/92	28,031	Boats and Marine Supplies.
Advanced Machine Works, Inc. (Co)	Houma, LA	11/23/92	11/13/92	28,032	Drilling Equipment.
Exlog, Inc. (Workers)	Houston, TX	11/23/92	11/02/92	28,033	Oil Exploration Services.
Gehl Company, Inc. (AIW)	West Bend, WI	11/23/92	11/06/92	28,034	Farm and Construction Equipment.
Ryan Transportation Service (Workers)	Livonia, MI	11/23/92	10/29/92	28,035	Transport Services.
Kelsey-Hayes Co. (UAW)	Detroit, MI	11/23/92	11/09/92	28,036	Rotors and Drums.
BethEnergy Mines, Inc. (UMWA)	Bethlehem, PA	11/23/92	11/06/92	28,037	Metallurgical Coal.
Pacific Enterprises Oil Co. (USA) (Co)	Wichita Falls, TX	11/23/92	11/12/92	28,038	Oil and Gas.
GCA Corp. (Workers)	Andover, MA	11/23/92	11/05/92	28,039	Semiconductor Mfg Equipment.
Itt Rayonier, Inc. (AWPPW)	Hoquium, WA	11/23/92	11/03/92	28,040	Paper and Oil Drilling Chemicals.
Grays Harbor Paper Co. (AWPPW)	Hoquaim, WA	11/23/92	11/03/92	28,041	Paper and Oil Drilling Chemicals.
Shell Oil Co. (Co)	Mobile, AL	11/23/92	11/02/92	28,042	Oil and Gas.
Shell Western E&P, Inc. (Co)	Mobile, AL	11/23/92	11/02/92	28,043	Oil and Gas.
Unisys Corp. (Workers)	Albany, NY	11/23/92	11/11/92	28,044	Repairs Data Processing Equipment.
Conca D'Oro (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,045	Ladies' Coats.
Shell Offshore (Co)	Mobile, AL	11/23/92	11/02/92	28,046	Oil and Gas.

[FR Doc. 92–30169 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,404, TA–W–27,404A Illinois, TA–W–27,404B New Jersey, TA–W–27,404C Colorado]

General Semiconductor Industries, Incorporated, Tempe, AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 17, 1992, applicable to all workers of General Semiconductor Industries, Inc., Tempe, Arizona. The Notice was published in the **Federal Register** on August 4, 1992 (57 FR 34307).

At the request of the workers the Department reviewed the certification for workers of General Semiconductor in Tempe, Arizona. New information from the company shows that diode assembly accounted for the major portion of production at Tempe. New information shows that imported diode components were assembled at Tempe. After assembly, the diodes were tested, marked and packaged at Tempe for the domestic market through its regional sales offices.

Worker separations at the regional sales offices occurred in Illinois, New Jersey and Colorado as a result of the August 2, 1992 sale of the company's diode product line to an independent company, General Instruments, who immediately began the production of diodes in Europe. General Instrument has their own sales offices in the U.S.

The intent of the Department's certification is to include all workers of General Semiconductor in Tempe, Arizona and their regional sales offices in Illinois, New Jersey and Colorado who were affected by the transfer of diode production overseas and the subsequent imports into the domestic market.

The amended notice applicable to TA–W–27,404 is hereby issued as follows:

All workers of General Semiconductor Industries, in Tempe, Arizona and operating in the States of Illinois, New Jersey and Colorado who became totally or partially separated from employment on or after June 10, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–30166 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-27,829]

Nerco Minerals Company Portland, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Nerco Minerals Company, Portland, Oregon. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,829; Nerco Minerals Company, Portland, Oregon (December 3, 1992)

Signed at Washington, DC, this 4th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-30163 Filed 12-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 602]

Nokia-Mailiefer South Hadley, MA; Affirmative Determination Regarding Application for Reconsideration

On October 23, 1992, a former worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on September 25, 1992 and published in the Federal Register on October 13, 1992 (57 FR 46880).

The former worker states that all of Nokia's production will be transferred from South Hadley to Finland and that Nokia's domestic customers will be supplied with wire and cable extrusion machinery from Finland.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of December, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-30168 Filed 12-10-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of November 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Treasure Isle, Inc. (Co)	Dover, FL	11/30/92	11/20/92	28,047	Shrimp and fresh seafood.
Sharon Steel Corp (Workers)	Farrell, PA	11/30/92	10/16/92	28,048	Flat-rolled and forging products.
Robertshaw Tennessee (USWA)	Knoxville, TN	11/30/92	11/17/92	28,049	Intake control valves.
Robertshaw Tennessee (UAW)	Carthage, TN	11/30/92	11/17/92	28,050	Intake control valves.
Parker Technology, Inc. (Workers)	Midland, TX	11/30/92	10/23/92	28,051	Oil well drilling rigs.
Ostrom Lumber Co., Inc. (Workers)	Monmouth, OR	11/30/92	11/16/92	28,052	Softwood lumber.
Leica, Inc. (Co)	Buffalo, NY	11/30/92	11/12/92	28,053	Optical instruments.
I.G.I. Adhesives, Inc. (Workers)	Lyndhurst, NJ	11/30/92	11/19/92	28,054	Adhesives
General Electric Co. (UAW)	Cincinnati, OH	11/30/92	11/18/92	28,055	Jet engines.
Dale Electronics, Inc. (Co)	El Paso, TX	11/30/92	11/18/92	28,056	Electronic components.
Dante Sportswear (ILGWU)	Clifton, NJ	11/30/92	11/10/92	28,057	Ladies' jackets.
Classic Fashion (ILGWU)	Paterson, NJ	11/30/92	11/10/92	28,058	Ladies' coats.
Allegany Apparel, Inc. (Workers)	Cresson, PA	11/30/92	11/16/92	28,059	Ladies' dresses.
Shape, Inc. (Workers)	Biddeford, ME	11/30/92	11/09/92	28,060	Computer cartridge equipment.
Teledyne Adams (IBT)	Union, NJ	11/30/92	11/10/92	28,061	Heating elements.
CTC International (Co)	Mandeville, LA	11/30/92	11/02/92	28,062	Sales.
Feature Enterprises, Inc. (Workers)	New York, NY	11/30/92	11/12/92	28,063	Gold jewelry.
Professional Geophysics, Inc. (Workers)	Houston, TX	11/30/92	11/02/92	28,064	Geophysic services for oil and gas.
Mario & Son (ILGWU)	Clifton, NJ	11/30/92	11/10/92	28,065	Women's coats and jackets.
Lyndhurst Coat (ILGWU)	Hackensack, NJ	11/30/92	11/10/92	28,066	Women's coats.
Mary Ann Casuals (ILGWU)	Garfield, NJ	11/30/92	11/10/92	28,067	Women's blazers.
Q.T. Foundations (ILGWU)	Bergenfield, NJ	11/30/92	11/11/92	28,068	Women's undergarments.
Preston Oil Co. (Co)	The Woodland, TX	11/30/92	11/17/92	28,069	Oil and gas.
Northern Processors (Co)	Traverse City, MI	11/30/92	11/17/92	28,070	Oil and gas.
Northern Processors (Co)	Enid, OK	11/30/92	11/17/92	28,071	Oil and gas.
Gorham, Inc. (Workers)	Smithfield, RI	11/30/92	10/20/92	28,072	Flatware/hollow-ware.
Drill Site Security/DSS Medical (Co)	Casper, WY	11/30/92	11/17/92	28,073	Oil field security services.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Park Avenue Exploration Corp. (Workers/Co)	Oklahoma City, OK	11/30/92	11/23/92	28,074	Oil and gas.
Fidelity Gas Systems (Workers/Co)	Oklahoma City, OK	11/30/92	11/23/92	28,075	Oil and Gas.

[FR Doc. 92–30165 Filed 12–10–92; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by January 6, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by December 29, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5434).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 International Program: United States/Mexico Artists Residencies Application Guidelines.

Frequency of Collection: One time.

Respondents: Individual artists.

Use: Guideline instructions and applications elicit relevant information from visual, folk, literary, and theater artists that apply for funding under the International Program Residencies category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 150.

Average Burden Hours per Response: 10.

Total Estimated Burden: 1,500.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92–30081 Filed 12–10–92; 8:45 am]
BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by January 6, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by December 29, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5434).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information for a pilot project targeting up to fifteen performing arts presenters who received funding from the NEA Inter-Arts/Presenting and Commissioning Program as well as the Dance and/or Music Programs for at least two of the three Fiscal Years 91, 92, and 93. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94 Presenting & Commissioning Program "Consolidated Application Pilot for Presenters (CAPP)" Program Announcement and Application Guidelines.

Frequency of Collection: One time.

Respondents: Non-profit presenting organizations invited to participate in the pilot project.

Use: Program announcement and guideline instructions and applications elicit relevant information from non-profit presenting organizations invited to apply for funding under the Consolidated Application Pilot for Presenters Program Announcement. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 15.

Average Burden Hours per Response: 32.

Total Estimated Burden: 480.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92–30082 Filed 12–10–92; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Ocean Sciences Review Panel; 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.

Date and Time: December 16–18, 1993; 8:30 a.m.–5 p.m.

Place: Room 118, St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Phillip Taylor, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–9639.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Global Oceans Ecosystems Dynamic (GLOBEC) 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.

Reason for Late Notice: Difficulty in arranging for a suitable meeting time for the full committee.

Dated: December 7, 1992

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–30078 Filed 12–10–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension
2. The title of the information collection: Data Report on Spouse
3. The form number if applicable: NRC Form 354
4. How often the collection is required: On occasion
5. Who will be required or asked to report: NRC employees, NRC contractors, and NRC licensee access authorization applicants who are married to non-U.S. citizens; marry after completing NRC's Personnel Security Forms; or marry after having been granted an NRC access authorization or employment clearance.
6. An estimate of the number of responses annually: 88
7. An estimate of the number of hours needed annually to complete the requirement or request: 22 (.25 hours per response)
8. An indication of whether Section 3504 (h), Pub. L. 96–511 applies: Not applicable
9. Abstract: The NRC Form 354 is completed by NRC contractors, licensee applicants, and employee applicants who are married to non-U.S. citizens; marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC. Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0026), NEOB–3019), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 18, day of December, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–30125 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co. (North Anna Power Station, Units No. 1 and No. 2); Exemptions

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7 which authorize operation of North Anna Power Station, Units No. 1 and No. 2 (NA–1&2, the facility) at steady-state power levels not in excess of 2893 megawatts thermal. The licenses provide, among other things, that the facility is subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility employs pressurized water reactors (PWRs) located at the licensee's site in Louisa County, Virginia.

The licensee is implementing a refurbishment and restoration program for the NA–1&2 service water system (SWS). The program is to be conducted in several stages. The Phase 1, Stage 1 efforts are to be conducted during the forthcoming NA–1 steam generator replacement program (SGRP) outage presently scheduled to commence on January 2, 1993. To support the Phase 1, Stage 1 SWS restoration program, the licensee has identified two exemptions required at this time. The two exemptions are specified below.

II

10 CFR Part 50, Appendix A, General Design Criterion-2 (GDC–2) requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena such as tornados, without loss of capability to perform their safety functions.

During the Phase I, Stage I effort, approximately 160 feet (4 parallel lines approximately 40 feet in length) of buried piping will be exposed and replaced. This buried piping is located in the alleyway between the service building and the quench spray pump house. The replacement of this section of buried piping requires the excavation of which the exemption from GDC–2 (tornado missiles) is needed. In addition to the buried SWS piping, the alleyway also contains two concrete-encased electrical duct banks, a concrete encasement which encloses the 4-inch SWS lines to the NA–1 control room chillers, and various nonsafety-related storm drains. Approximately temporary supports will be used to maintain seismic qualification of critical components.

In order to accomplish these Stage I activities during the NA–1 SGRP outage, the buried portions of the SWS supply and return lines to the NA–1 containment recirculation spray heat exchangers must be excavated during a pre-outage period starting about 30 days prior to the scheduled outage. Likewise, the exposed piping will be recovered during a 30-day post-outage period. Therefore, the exemption is requested for the scheduled NA–1 SGRP outage period plus about 30 days prior to and 30 days after the scheduled outage. This will result in an exemption time period from early December 1992 through June 30, 1993. The actual repair and replacement of the piping will not begin until NA–1 is shut down for the SGRP outage.

The licensee is providing contingency measures with compensatory actions to provide added assurance of safe operation of the facility during the

exemption period. Although the exemption is requested only for missile protection, the risk to the plant due to construction mishaps is more significant than the risk due to natural phenomena. Therefore, the compensatory measures are geared toward preventing such mishaps in addition to minimizing the potential for missiles generating by severe weather. As stated in the enclosed Safety Evaluation, these compensatory actions include:

—Electronic scanning and nondestructive locating methods will be used to accurately determine underground locations of piping, duct banks, and other buried utilities prior to excavation.
—Machine excavation will be limited to near-surface depths. The bulk of the excavating will be by hand-operated power and manual tools.
—Physical barriers will be used to keep vehicles a safe distance from the excavation.
—All lifting and rigging will be inspected and load tested. Lifting of equipment or construction materials over the excavation will be prohibited while the piping is exposed and operable.
—Severe weather procedures will be used to provide notification to clear the area of vehicles and loose materials in the event of a tornado watch or other high wind conditions.
—Adequate wind protection and heating will be provided during freezing weather conditions.

In order to implement the SWS restoration project, the licensee will rely on the NA–1&2 Technical Specification (TS) 3/4.7.4.1 which permits removal of one SW header from service for up to 168 hours at a time in support of service water upgrade activities. When entering this 168-hour action statement, additional contingency and compensatory actions will be taken. As stated in the enclosed Safety Evaluation, these compensatory actions are:

—A temporary water supply from either the primary grade water or fire water systems will be available as a contingency to the charging pump coolers should the normal SWS supply be interrupted.
—Emergency pipe repair materials will be staged in key areas to reduce response time in the event of a leak or a rupture. Procedures for emergency pipe repair will be developed and plant personnel will be trained in the use of these procedures and materials.
—As required by the TS, three of the four SWS pumps and both of the auxiliary SWS pumps will be operable as a prerequisite for entry into the 168-hour action statement. There will be no planned maintenance on the SWS during an action statement period.
—Flood prevention and mitigation measures will be in place.

The excavation of the SWS piping will only affect the missile shield protection aspects of the GDC–2, with seismic support being retained. While producing some increase in missile interaction risk, excavation of the piping does not result in total vulnerability to missiles. The lines are substantially below grade and are surrounded on several sides by heavily reinforced concrete structures. This will provide some degree of protection from horizontally generated missiles from any source.

Considering the existing design features and compensatory measures proposed by the licensee, the likelihood of damage to the exposed SWS lines and safety-related electrical duct banks from postulated missiles generated by natural phenomena is minimal. Also, based on the compensatory measures provided, assurance exists that the ability to bring the plant to a safe shutdown will be maintained following any natural phenomena, including tornadoes or other severe weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

10 CFR 50.49 (50.49) requires (in part) that each holder of a license to operate a nuclear power plant shall establish a program for qualifying safety-related electric equipment that is relied upon to remain functional during and following design basis events that are defined as conditions of normal operation, including operational events, and design basis accidents.

The requested exemption from 50.49 would permit temporary cooling of the NA–1 control room chillers from the common bearing cooling water system to provide normal control room temperatures and provide a reliable backup cooling system to the NA–2 air conditioning chillers. The period for the NA–1 chillers to be operating on bearing cooling water is projected to be between 90 and 120 days.

NA–1&2 each have three control room air conditioner chillers located in a missile-protected room of the service building off the respective unit's turbine building basement. Ventilation of each unit's chiller room is taken from and exhausted to the respective unit's turbine building basement. Hence, the chillers for each unit are located in the same environmental zone which is also common to the unit's turbine building basement. Therefore, as the result of an environmental qualification evaluation of the control room air conditioning systems, a station standing order requires at least one of the opposite unit's chillers to remain operable while that unit is in a shutdown condition and the other unit is operating. Specifically, the station standing order requires that at least one control room chiller on the unit in Mode 5 or 6 be maintained operable while the other unit is in Mode 4 or above. This measure assures that the air conditioning system serving the control room and emergency switchgear room of the operating unit would be available during a postulated main steam line break accident in the turbine building.

However, with bearing cooling water supplied to the NA–1 chillers instead of service water, the reliability of the NA–1 chillers is called into question because bearing cooling is not safety-related. Bearing cooling would not be available in the event of a loss of offsite power event or design basis earthquake coincident with the main steam line break accident in the turbine building. Therefore, an exemption from 10 CFR 50.49 for the NA–2 chillers is requested by the licensee for the period that the SWS is isolated from the NA–1 recirculation spray heat exchangers and the control room chillers.

While the shutdown unit's TS do not require the air conditioning systems to remain operable in Modes 5 and 6, the environmental qualification design basis for the operating unit's air conditioning systems requires at least one of the shutdown unit's chillers to be operable as a backup for the operating unit.

The design basis of concern results in an environmental condition in the NA–2 chiller room for which the NA–2 control room chillers are not qualified and may cease to function properly. The only postulated accident event that could cause this condition is the failure of a main steam line in the turbine building basement in proximity to the NA–2 chiller room. However, in order to have sufficient steam concentration in the area to disable the NA–2 chillers, the main steam trip valve on the line would also have to fail to a closed position. This is unlikely because the trip values are essentially check valves reversed to the flow of steam with the check disk physically held out of the steam flow path. Failure to hold the disk out of the steam flow path would cause the trip valve to slam shut. Failure of the valve caused by the disk sticking open is, therefore, unlikely The

likelihood of the above accident scenario during the time that the 50.49 exemption would be in effect is thus very low, and the exemption would not significantly affect the consequences of design basis accidents. The staff reviewed the risk associated with using bearing cooling water as a substitute for SWS cooling for a backup chiller and concluded the temporary change in environmental qualification is acceptable.

The required exemption period is technically from entry into the second 168-hour action statement through the clearing of the fifth 168-hour action statement for work activities associated with the Phase I, Stage 1 SWS restoration project and is projected to be between 90 and 120 days.

IV

The exemptions, as noted above, involve special circumstances as set forth in 10 CFR 50.12(a)(2)(V). The exemptions would provide only temporary relief from the applicable regulations (GDC–2 and 50.49). The exemptions are requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2 and 50.49. The licensee has made good faith efforts in considering alternatives to the exemption requests and has concluded that the SWS refurbishment and restoration program can only be conducted without the subject exemptions during a period when both NA–1&2 are shut down and defueled. The impact of scheduling such a dual-unit outage would have significant consequences in terms of power supply, fuel storage, capacity, and replacement power costs. Finally, the exemptions will indirectly result in benefits to the public from increased reliability of the upgraded safety-related SWS.

Based on the above and on review of the licensee's submittals, as summarized in the enclosed Safety Evaluation, the NRC staff concludes that the likelihood of unacceptable damage to the exposed SW headers due to tornado-borne missiles during the exemption period is low. Also, the staff concludes that the only postulated accident which could affect the normal environmental design basis for the NA–2 control room chillers is a highly unlikely event. Therefore, for the time that the 50.49 exemption would be in effect, the exemption would not significantly affect the probability or consequences of environmental design basis events.

Based on the low probability of unacceptable events, coupled with the comprehensive compensatory measures which the licensee has committed to, the NRC staff finds the proposed exemption from GDC–2 and 50.49 acceptable. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemptions, namely that the exemptions would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemptions: NA–1&2 may operate without conforming to the requirements of GDC–2 as they apply to the buried portions of the SWS supply and return lines to the NA–1 containment recirculation spray heat exchangers, providing that compensatory measures as described herein are continued for the period of the exemption. This exemption shall become effective on its date of issuance and shall expire on June 30, 1993.

NA–2 may operate without conforming to the requirements of 50.49 as they apply to the normal environmental design basis for the NA–2 control room chillers. This exemption shall be in effect during the Phase 1, Stage 1 SWS restoration program from entry into the second 168-hour action statement through the clearing of the fifth 168-hour action statement.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant effect on the quality of the human environment (August 27, 1992, 57 FR 38889; November 6, 1992, 57 FR 53146; and November 30, 1992, 57 FR 56606).

For further details with respect to this action, see the licensee's request dated July 16, 1992, as supplemented on September 11, 1992, and November 4, 1992, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the NA–1&2 Local Public Document Room, the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

The GDC–2 exemption is effective from its date of issuance through June 30, 1993. The 50.49 exemption is effective during the Phase 1 Stage 1 SWS restoration program from entry into the second 168-hour action statement through the clearing of the fifth 168-hour action statement or June 30, 1993, whichever occurs first.

Dated at Rockville, Maryland, this 3rd day of December 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30126 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31565; File No. SR–OCC–91–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating To a Modification of the Margin Calculation for Clearing Members' Customers' Accounts and Firm Non-lien Accounts

December 4, 1992.

On November 7, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File NoSR–OCC–91–16) relating to a modification of the margin calculation for clearing members' customers' accounts and firm non-lien accounts. The Commission published notice of this proposed rule change in the **Federal Register** on January 31, 1992.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposed rule change, OCC seeks to modify the logic within its Theoretical Intermarket Margin System ("TIMS")[3] which calculates margins for positions carried in clearing members' customers' accounts with OCC.[4] In particular, OCC proposes to eliminate the logic which reduces to zero any premium margin credit or additional margin credit for each class group comprising a given product group. Accordingly, the proposal deletes

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30286 (January 24, 1992), 57 FR 3808.

[3] For a description of TIMS, refer to Securities Exchange Act Release Nos. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] and 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15].

[4] This proposal also would modify the logic controlling margin calculations for firm non-lien accounts. Currently, however, no clearing member maintains such an account with OCC.

paragraph (d)(3)[5] from Rule 601 (margins on stock options) and paragraphs (d)(3)[6] and (d)(4)[7] from Rule 602 (margins on non-equity options).

1. Background

OCC requires its clearing members to adjust their margin deposits with OCC in the morning on every business day pursuant to calculations performed by OCC overnight.[8] OCC imposes margin requirements on short positions and gives margin credits for unsegregated long positions.[9] Premium margin requirements and credits within class groups[10] are offset against each other to provide a net premium margin requirement or credit for each class group. For each class group, TIMS also calculates an upside and a downside variation.[11] Premium margin amounts are then totaled across all class groups within a product group[12] as are the upside and downside variations. Only at the product group level is the premium margin requirement or credit combined with either (1) the net upside or net downside variation (*i.e.*, the additional margin requirement) or (2) zero to arrive at the margin requirement or credit for a given product group.[13]

Under TIMS, the method for calculating margin requirements or credits for clearing members' market professionals' accounts (*e.g.*, firm accounts and market-maker's or specialist's accounts) differs in two important respects from the method for calculating margin requirements or credits for clearing members' customers' accounts. First, because OCC does not have a lien on segregated long positions in clearing members' customers' accounts, such long positions are not offset against short positions in the same series of options and are not assigned any value for margin calculation purposes.[14] Second, in calculating product group margin requirements or credits in clearing members' customers' accounts, margin credits for the class groups within a product group are reduced to zero.[15] That is, a premium margin credit for one class group cannot offset a premium margin requirement for another class group and an additional margin credit for one class group cannot offset an additional margin requirement for another class group.[16] It is the second difference (*i.e.*, reducing margin credits to zero) that this proposed rule change will eliminate.

2. Modification to Margin Calculation for a Clearing Member's Customers' Account

Under Rule 611, a clearing member may submit written instructions ("spread instructions") to OCC designating any segregated long positions in its customers' account that the clearing member desires OCC to release from segregation. A clearing member may not file spread instructions, however, unless the clearing member is carrying for the account of such customer a short position for an equal number of options contracts of the same class of option.[17] Once OCC releases the long position, it is deemed unsegregated and subject to OCC's lien. At that point, any premium margin credit the clearing member receives from the unsegregated long position is permitted to offset the premium margin requirement imposed on the short position but only up to the amount of the margin imposed.[18]

For certain spreads though, TIMS calculates a premium margin credit which may exceed the premium margin required for the short position.[19] However, because TIMS currently reduces premium margin credit for each class group in a customer's account to zero, a premium margin credit from one class group cannot be used to offset a premium margin requirement for another class group within the same product group or an additional margin requirement at the product group level.

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[5] Rule 601(d)(3) states:

In calculating margin for the stock option product group, any premium margin credit and all negative upside or downside variations for the class groups comprising the product group shall be reduced to zero.

[6] Rule 502(d)(3) states:

In calculating product group margin, any premium margin credit and all negative upside or downside variations for the class groups comprising the product group shall be reduced to zero.

[7] Rule 602(d)(4) states:

In calculating the aggregate margin requirement for the positions in non-equity options and IPs [index participations] carried in the account, any class group margin credits shall be reduced to zero, so that the aggregate margin requirement for such positions shall be an amount equal to the sum of the margin requirements for those class groups and product groups as to which a margin requirement exists, without reduction.

[8] TIMSD is designed to calculate a clearing member's margin requirement at a level sufficient to protect OCC against the costs that would be incurred in liquidating that clearing member's open positions in the event of default or insolvency.

[9] A long position is "unsegregated" if OCC has a lien on it (*i.e.*, has recourse to the value of the position if the clearing member does not perform an obligation to OCC). Long positions in firm lien accounts and market-maker's or specialist's accounts are unsegregated. OCC By-Law, art. I, Section 1 U.(3). Long positions in customer's accounts are deemed segregated unless a clearing member submits contrary instructions to OCC in accordance with Rule 611 (*i.e.*, "spread instructions"). Segregated long positions are given no value for margin calculation purposes. OCC Rules 601(d)(1) and 602(d)(1).

[10] A class group consists of all put and call options relating to the same underlying security. A class group also consists of market baskets, commodity options, and futures relating to the same underlying security that are subject to margin at OCC because of cross-margining program with a commodity exchange. OCC Rule 601(b)(2) and Rule 602(b)(2). OCC has proposed to treat Index Participations ("IPs") as part of the same class group as put and call options relating to the same underlying interest. See Securities Exchange Act Release No. 29081 (April 12, 1991), 56 FR 16142 (notice of proposed rule change).

[11] Basically, variation is the net liquidation value or cost of a position in the event of changes in the market price. OCC calculates class group values across the range of exercise prices OCC has determined to examine. Upside and downside variations are the largest projected liquidating deficit or credit.

[12] A product group consists of two or more class groups whose underlying assets exhibit a sufficient price correlation to warrant margining on a combined basis. All class groups of equity options form a single product group. By contrast, class groups for non-equity options are organized into several product groups including those for stock index options and long-term Treasury options.

[13] Premium margin can either be a requirement or a credit. At the product group level, where margin requirements are actually imposed, additional margin is always a margin requirement or zero (*i.e.*, never a margin credit to offset a premium margin requirement). OCC Rules 601(c) (5) and (7) and 602(c)(2) (B) and (D).

[14] Although the proposed change is not expressly limited to unsegregated long positions, only unsegregated longs are recognized under TIMS. TIMS ignores segregated longs. Telephone conversation between Timothy J. Hinkes, Assistant Vice President, Economic Research, OCC; Jeanne M. Cawley, Counsel, OCC; and Richard C. Strasser, Attorney, Division, Commission (December 2, 1991).

[15] The reduction or margin credits to zero at the class group level is residual logic from the margin methodologies used before TIMS. Under those methodologies, product group margin was not calculated and, for customer accounts, class group margin credits were artificially reduced to zero so that they would not be applied against other class group margin requirements. This logic was carried over and incorporated into TIMS during the course of its development without significant analysis. OCC believes that retention of this logic results in the over-margining of positions and is therefore incompatible with one of the purposes of TIMS, which is to reduce the potential for such over-margining.

[16] As described below, this reduction to zero affects only long positions in a customers' account for which a clearing member has submitted spread instructions to OCC in accordance with Rule 611, and which are, by operation of Rule 611, deemed to be unsegregated long positions. Segregated long positions in customers' accounts will continue to be assigned no value for margin purposes.

[17] That is, before a clearing member may instruct OCC to release a long position from segregation, the long position must be spread on a contract-for-contract basis against a short position in the same class of option held for the account of the same customer.

[18] TIMS methodology limits the offset to the amount of the margin imposed. Telephone conversation between Timothy J. Hinkes, Assistant Vice President, Economic Research, James C. Yong, Vice President and Deputy General Counsel, and Jeanne M. Cawley, Counsel, OCC; and Jerry W. Carpenter, Branch Chief and Richard C. Strasser, Attorney, Division, Commission (October 8, 1992).

[19] *E.g.*, long box spreads, call bull spreads, and put bear spreads. Letter from Jean M. Cawley, Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 7, 1992).

Similarly, if the calculation of the upside and downside variations in a class group generates a credit, TIMS will reduce that credit to zero, and it cannot be used to offset an additional margin requirement for another class group within the same product group. A clearing member, therefore, may be required to deposit margin collateral in excess of the net risk of spread positions in its customers' account.[20] Therefore, OCC proposes to remove from TIMS the logic which reduces premium margin credits and upside or downside variation credits at the class group level to zero[21] and thereby allow such credits to be used as offsets.[22]

II. Discussion

The Commission believes that OCC's proposal is consistent with the Act and in particular with Section 17A thereunder.[23] Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed "to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions."[24] While adequate clearing margin is necessary for the integrity of the clearance and settlement system, excess margin requirements burden market participants by imposing unnecessary costs. Overmargining also reduces liquidity in the marketplace and thereby impedes the safe and efficient clearance and settlement of securities transactions. OCC has represented that this proposal will promote efficient clearance and settlement by eliminating the deposit of excessive margin collateral in positions carried in clearing members' customers' accounts without adversely affecting the securities and funds under OCC's control or for which it is responsible.

The Commission is satisfied that this modification of TIMS does not increase OCC's risk. The modification is consistent with the treatment of unsegregated long positions in clearing members' customers' accounts under OCC's liquidation rules[25] and is consistent with the TIMS' goal of calculating margin requirements based upon the risk of liquidating options positions carried by a defaulting clearing member. As OCC has represented, the provisions to be omitted by this proposal require margin in excess of what is necessary to assure that clearing members' risks are adequately collateralized. Therefore, the deletion of these provisions should not increase OCC's risk with regard to positions carried in its clearing members'' customers' and firm non-lien accounts.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with Section 17A thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–91–16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret. H McFarland,

Deputy Secretary.

[FR Doc. 92–30087 Filed 12–10–92; 8:45 am]

BILLING CODE 8010–01–M

[20] As previously explained, the proposed modification to TIMS logic will affect only the amount of margin that must be deposited with respect to spread positions in a customer's account. Unsegregated longs in a customer's account that are not part of a spread position are not eligible for release under Rule 611 and, therefore, receive no margin value.

[21] As is currently the case, no margin credit will be given for "negative" upside or downside variations at the product group level. See OCC Rules 601(c)(1), (c)(3) and (7) and 602(c)(2)(B) and (D).

[22] In calculating margin requirements or credits at the product group level, any negative upside or downside variation (*i.e.*, a variation credit) for any class group shall be reduced by the percentage OCC has specified for the product group to which that class group belongs. Therefore, the amount of offset allowed for these credits will be reduced in a manner consistent with current margin calculation procedures. OCC Rules 601(c)(1)(C)(4) and 602(c)(2)(A).

[23] 15 U.S.C. 78q–1 (1988).

[24] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[25] In the event of a clearing member default, OCC may liquidate an unsegregated long position and use the proceeds to offset the costs of liquidating short positions whether such short positions are in the same class group or in another class group in the customers' account.

[26] 17 CFR 200.30–3(a)(12) (1992).

[Rel. No. IC–19146; 812–8092]

Application; Ameritas Variable Life Insurance Co. et al

December 4, 1992.

AGENCY: Securities and Exchange Commission (the "Commission or the "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Ameritas Variable Life Insurance Company ("Ameritas"), AVLIC Separate Account V ("Ameritas Account"), Fidelity Investments Life Insurance Company ("Fidelity Life"), The Fidelity Investments Variable Life Account I ("Fidelity Account"), Midland National Life Insurance Company ("Midland"), Midland National Life Separate Account A ("Midland Account"), Monarch Life Insurance Company ("Monarch"), The Fidelity Variable Account ("Monarch Account"), Vermont Life Insurance Company ("Vermont"), and Vermont Variable Life Insurance Account ("Vermont Account"), (collectively the "Applicants"). Ameritas Account, Fidelity Account, Midland Account, Monarch Account and Vermont Account are referred to collectively as the "Accounts."

RELEVANT 1940 ACT SECTIONS: Order requested under Section 26(b) of the 1940 Act.[1]

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of certain securities issued by the Variable Insurance Products Fund ("VIPF") and by the Variable Insurance Products Fund II ("VIPF II"), and held by the Accounts to fund variable life insurance contracts (the "Contracts") issued by Ameritas, Fidelity Life, Midland, Monarch, and Vermont, for securities issued by the Zero Coupon Bond Fund ("ZCBF").

FILING DATE: The application was filed on September 17, 1992.

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 Commission's Secretary and serving the Applicants with copies of the request, personally or mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on the 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 Secretary of the Commission.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

Applicants: Ameritas Variable Life Insurance Company, 5900 O Street, Lincoln, NE 68510; Fidelity Investments Life Insurance Company, 82 Devonshire Street, Boston MA 02043; Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, SD 57193; Monarch Life Insurance Company, 361

[1] The Applicants represent that the application will be amended during the notice period to clarify that they seek an order only under section 26(b) of the 1940 Act.

Whitney Avenue, Holyoke, MA 01040; and Vermont Life Insurance Company, National Life Drive, Montpelier, VT 05604.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Ameritas is a stock life insurance company organized under the laws of the State of Nebraska. Fidelity Life is a stock life insurance company incorporated under the laws of the Commonwealth of Pennsylvania. Midland is a stock life insurance company incorporated under the laws of the State of South Dakota. Monarch is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts. Vermont is a stock life insurance company incorporated in the State of Vermont.

2. Ameritas Account was established by Ameritas as a separate investment account on August 28, 1985, to fund certain flexible premium variable universal life insurance policies (the "Ameritas Policies"). Fidelity Account was established by Fidelity Life as a separate investment account on July 22, 1987, to fund certain flexible premium variable life insurance policies (the "Fidelity Policies"). Midland Account was established by Midland as a separate investment account on July 20, 1987, to fund certain variable life insurance policies ("Midland Policies"). Monarch Account was established by Monarch as a separate investment account on August 9, 1984, to fund certain variable life insurance policies ("Vermont Policies"). (The Ameritas Policies, the Fidelity Policies, the Midland Policies, the Monarch Policies, and the Vermont Policies are referred to collectively as the "Policies.") Each of the Accounts is organized and registered under the 1940 Act as a unit investment trust.

3. Three management investment companies currently offer their shares to corresponding subaccounts of some or all of the Accounts: VIPF; VIPF II; and ZCBF. Each is registered under the 1940 Act as an open-end management investment company of the series type.

4. VIPF was organized as a Massachusetts business trust on November 13, 1981. VIPF currently offers five portfolios, only one of which, the Money Market Portfolio, is relevant to this application. By investing in high quality U.S. dollar denominated money market securities of domestic and foreign issuers, the Money Market Portfolio seeks to obtain as high a level of current income as is consistent with preserving capital and providing liquidity.

5. VIPF II was organized as a Massachusetts business trust on March 21, 1988. VIPF II currently offers two portfolios; each Account currently invests in one or both of those portfolios. Only one of the VIPF II portfolios, the Investment Grade Bond Portfolio, is relevant to this application. By investing in a broad range of investment-grade fixed-income securities, the Investment Grade Bond Portfolio seeks as high a level of current income as is consistent with the preservation a dollar-weighted average portfolio maturity of ten years or fewer.

6. VIPF and VIPF II currently offer series of shares of beneficial interest in their portfolios not only to the Accounts, but also to other separate accounts established to support variable annuity contracts.

7. ZCBF was organized as a Massachusetts business trust on February 21, 1986. ZCBF currently offers three Portfolios: The 1993 Portfolio, the 1998 Portfolio, and the 2003 Portfolio (collectively, the "Zero Portfolios"). The Zero Portfolios are offered exclusively to the Accounts; three subaccounts of each Account invest exclusively in shares of a specific portfolio of ZCBF.

The Zero Portfolios are not offered to variable annuity separate accounts, because any variable annuity separate account invested in the Zero Portfolios would fail the diversification requirements of section 817(h) of the Internal Revenue Code. Any annuity contract owner with values allocated to the Zero Portfolios would be subject to taxation each year on any increase in contract values.

8. The target maturity date of the 1993 Portfolio is November 15, 1993, that for the 1998 Portfolio is November 15, 1998, and that for the 2003 Portfolio is November 15, 2003. The Zero Portfolios seek to provide a definable return over their lifetime by investing principally in zero coupon U.S. Treasury securities.

9. In the more than four years that the Zero Portfolios have been available as an investment option, policyowners (the "Policyowners") of Ameritas, Fidelity Life, Midland, Monarch, and Vermont have shown little interest in them. As of December 31, 1991, only 372 of the 3,145 Policyowners who might have allocated their contract values to the Zero Portfolios had elected to do so. In addition, as of December 31, 1991, the 1993 Portfolio had net assets of less than $1.3 million, the 1998 Portfolio had net assets of less than $1 million, and the 2003 Portfolio had net assets of less than $1.7 million. Although Fidelity Management & Research Company (the "Adviser") has withdrawn a portion of its initial $1 million investment in each of the Zero Portfolios, its investment in the Zero Portfolios as of June 30, 1992, approximated $274,000. There have been no events during 1992 that would lead the Applicants to believe that either the number of Policyowners invested in, or the amount of the net assets of, the Zero Portfolios ever will increase by a material amount.

10. Aggregate sales of the Policies declined drastically following the enactment of the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA"). Under TAMRA, variable life insurance contracts entered into after June 20, 1988, which do not satisfy the "7-pay test" are generally treated as "modified endowment contracts." Since distributions from modified endowment contracts generally are subject to current federal income taxation, including penalty taxes, such contracts are far less desirable to prospective purchasers. Applicants believe that it is extremely unlikely that significant amounts of new premium will be invested in the Zero Portfolios. In fact, sales of the Policies were so adversely affected by TAMRA that Fidelity Life, Monarch and Vermont no longer offer Policies.

By contrast, the Investment Grade Bond Portfolio and the Money Market Portfolio each are available to approximately twenty variable life and variable annuity separate accounts, and have experienced healthy asset growth since 1988. The Investment Grade Bond Portfolio, which commenced operations on December 5, 1988, had assets of approximately $48 million by December 31, 1991. The Money Market Portfolio, which commenced operations April 1, 1982, had assets of approximately $271 million by December 31, 1991.

11. Since the inception of the Zero Portfolios, their expenses have been voluntarily limited by the Adviser to 1.00% of the average net assets of each Zero Portfolio. The expense of operating the Zero Portfolios is high because many of the expenses (such as those for accounting and outside auditors) are not significantly lower, despite the Zero Portfolios' small sizes and asset bases. The following table shows the expense ratio for each Zero Portfolio for 1991 and the amount of the Adviser's reimbursement.

	1991 expense ratio before reimbursement	Dollar amount of 1991 reimbursement by adviser
1993 Portfolio	8.54%	$89,064
1998 Portfolio	11.20%	90,537
2003 Portfolio	6.13%	93,859
Total Reimbursement		273,460

The total 1991 reimbursement of $273,460 far exceeded the $18,704 in management fees earned by the Adviser for managing the Zero Portfolios.

12. Effective December 5, 1988, the Adviser voluntarily limited the expenses of the Investment Grade Bond Portfolio to 0.80% of Investment Grade Bond Portfolio's average net assets. For 1991, the expense ratio of Money Market Portfolio was 0.38%.

13. Because neither state nor federal law requires expense reimbursement, absent the proposed substitution, it is likely that in the future the Advisor may cease to make expense reimbursements to the Zero Portfolios. Without reimbursement, expenses could increase fivefold or more. Policyowners who through ignorance or inattention do not leave the Zero Portfolios might find themselves with substantially lower, or even negative rates of return.

14. The Applicants propose to substitute shares of the Money Market Portfolio for shares of the 1993 Portfolio and to substitute shares of Investment Grade Bond Portfolio for shares of the 1998 Portfolio and the 2003 Portfolio. The substitution will be effected in the following manner. Each Account will redeem all of its shares of each Zero Portfolio. On the same day, each Account will use the proceeds to purchase the appropriate number of Money Market Portfolio and Investment Grade Bond Portfolio shares. The substitution would take place at relative net asset value with no change in the amount of any policyowner's account value.

15. Policyowners will not incur any fees or charges as a result of the substitution, nor will their rights or the obligations of Ameritas, Fidelity Life, Midland, Monarch or Vermont under the Policies be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting, brokerage and other fees and expenses, will be paid by FMR Corp., the parent company of the Adviser. In addition, the proposed substitution will not impose any tax liability on Policyowners. Further, the proposed substitution will not cause the fees and charges currently being paid by existing Policyowners to be greater after the substitution than before. The Applicants represent that Accounts that impose transfer charges will not count the substitution as a transfer for that purpose.

16. Ameritas, Fidelity Life, Midland, Monarch and Vermont will mail letters to each of its Policyowners informing them: (i) Of the filing of this Application; and (ii) that if an order is issued by the Commission, at the close the next business day, any investment in the 1993 Portfolio will be transferred to the Money Market Portfolio and any investment in the 1998 Portfolio or the 2003 Portfolio will be transferred to the Investment Grade Bond Portfolio. Following the substitution, prospectuses for the Policies that are currently offered will be updated to reflect the fact that the Zero Portfolios are no longer available for investment.

17. All affected Policyowners will be told that, at any time prior to the substitution, they may transfer their account values from subaccounts investing in the Zero Portfolios to any other permissible variable investment option without incurring any transaction fees and without the transfer being counted as one of the free transfers permitted in any policy year. Monarch Policyowners also will be notified that they may elect to exchange their Monarch Policies for fixed benefit life insurance issued by Monarch or one of its affiliates instead of accepting the substitution. In addition, shortly after the substitution, Ameritas, Fidelity Life, Midland, Monarch and Vermont each will notify, in writing, all Policyowners who had remaining account values transferred from the Zero Portfolios of their right to make a "free transfer" for an additional thirty days.

18. Applicants are seeking approval of the proposed substitution from such state insurance regulators as may be necessary or appropriate.

19. After the proposed substitution occurs, the Adviser intends to redeem its investment of seed money in the Zero Portfolios. By making this redemption after the substitution, the Adviser, rather than the Policyowners, will bear any expenses arising from the final liquidation of the investment portfolios of the Zero Portfolios.

20. ZCBF then will apply to the Commission, pursuant to section 8(f) of the 1940 Act, for an order that it has ceased to be an investment company. Upon grant of that order, ZCBF will dissolve itself as a business entity under Massachusetts law.

Applicants' legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that: "It shall be unlawful for 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 an provisions of this title."

2. Congress intended section 26(b) to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The proposed elimination of three subaccounts (*i.e.*, those invested in the Zero Portfolios) of each Account and the automatic transfer or reinvestment of Policy values to two other subaccounts of each Account may involve a substitution of securities within the meaning of section 26(b).

3. Ameritas, Fidelity Life, Midland, Monarch and Vermont each reserved a right of substitution and elimination to protect itself and its Policyowners in a number of situations, including the present circumstances where underlying investment portfolios have failed to grow sufficiently large to achieve the economies of scale needed to achieve viable performance without expense reimbursements.

4. With no recent interest among current Policyowners and very few new sales of the Policies, Ameritas, Fidelity Life, Midland, Monarch and Vermont each believes that the current financial circumstances of the Zero Portfolios will not improve in the foreseeable future. Moreover, they do not expect, and do not believe it is reasonable to expect, that the Adviser will forever remain willing and able to spend large sums of money to maintain the favorable expense ratios that the Zero Portfolios have so far enjoyed.

5. Applicants have determined that under these circumstances it is in the best interest of Policyowners to replace the 1998 and the 2003 Portfolios with the Investment Grade Bond Portfolio, and to replace the 1993 Portfolio with the Money Market Portfolio. The 0.38% expense ratio of the Money Market Portfolio is far lower than the reimbursed 1.00% ratio of the 1993 Portfolio, and the 0.80% reimbursed expense ratio of the Investment Grade Bond Portfolio in lower than the 1.00% reimbursed expense ratio of both the

1998 and the 2003 Portfolios. Applicants expect that in the near future the actual expense ratio of the Investment Grade Bond Portfolio will decline to a level lower than the current reimbursed rate, and that further economies of scale may be achieved as the expense ratio declines as the assets of the Investment Grade Bond Portfolio increase.

6. Applicants submit that the investment objectives and the relative safety of the portfolio holdings of the Investment Grade Bond Portfolio and the Money Market Portfolio make them reasonable substitutes for Policyowners currently invested in the Zero Portfolios.

7. The Investment Grade Bond Portfolio and the Money Market Portfolio both seek to achieve high income levels while preserving capital. On December 31, 1991, over 92% of the Investment Grade Bond Portfolio's holdings were rated investment grade by Standard & Poor's Corporation. The average maturity of the Investment Grade Bond Portfolio's holdings will never exceed ten years, and currently is 5.5 years. At least initially, the Investment Grade Bond Portfolio's exposure to interest rate risk will not be unreasonably dissimilar to that of the 1998 Portfolio, and will be far less than that of the 2003 Portfolio.

8. On December 31, 1991, approximately 92% of the Money Market Portfolio's investments were in commercial paper rated in the highest two categories by Standard & Poor's Corporation. The Money Market Portfolio's average maturity will not exceed 120 days. As the 1993 Portfolio approaches its maturity date of November 15, 1993, its effective maturity will decline so that it continually approaches the effective maturity of The Money Market Portfolio.

9. Section 26(b) was designed to forestall the ability of a depositor or sponsor to present holders of interests in a unit investment trust with situations in which a holder's only choices would be to continue an investment in a suddenly unsuitable, unbargained for underlying security, or to elect a costly, and in effect forced, redemption. The proposed substitution does not present this type of situation. Moreover, under the Policies, each Policyowner now has, and following the substitution will continue to have, the ability to make transfers among a wide range of underlying investments. Each Policyowner, by his or her own actions, can make the proposed substitution temporary, without incurring any cost or suffering any current taxation under a Policy. Further, the Applicants propose to permit free substitution by any Policyowner at any time before, and for thirty days after, the proposed substitution.

Conclusion

The Applicants assert that, for the reasons set forth above, the requested order approving the proposed substitution pursuant to section 26(b) of the 1940 Act is 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, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30088 Filed 12–10–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19145; 811–3917]

Institutional Diversified Assets; Notice of Application

December 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Institutional Diversified Assets.

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 October 23, 1991 and amended on November 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and open-end diversified management investment company. On November 23, 1983, applicant registered under the Act and filed a registration statement to register its securities under the Securities Act of 1933. Applicant's registration statement was declared effective on January 27, 1984, and its initial public offering commenced on January 30, 1984.

2. By letter dated June 29, 1984, applicant advised its shareholders of certain changes in the tax law that affected applicant's yield to the disadvantage of its shareholders. At no time were shareholders told that applicant would be liquidated. On various dates between June 29, 1984 and June 1, 1985 (the effective date of the new tax law), all of applicant's public shareholders redeemed their shares at net asset value. Following these redemptions, Goldman Sachs & Co., applicant's investment adviser and distributor ("Goldman Sachs"), was applicant's only remaining shareholder.

3. As of July 1, 1984, applicant had unamortized organizational expenses of approximately $225,000. Applicant originally had contemplated amortizing its organizational expenses over a five year period. Due to the uncertainty of applicant's viability after the tax law change, however, applicant amortized its organizational expenses in their entirely against its income during the period from July 1, 1984 to May 31, 1985.

4. Applicant has remained inactive since 1985. On April 19, 1990, applicant's board of trustees voted to dissolve applicant. On October 15, 1991, applicant's remaining portfolio securities were liquidated, its outstanding expense (including liquidation expenses of approximately $2,500) were paid, and its remaining cash was distributed to Goldman Sachs.

5. Applicant has no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administration proceeding. Applicant is engaged in only those business activities necessary for the winding-up of its affairs. Applicant intends to file an instrument of

termination with the Secretary of State of the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30090 Filed 12–10–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25693; International Series Release No. 505]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 4, 1992.

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 December 28, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 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.

Maine Yankee Atomic Power Company (70–7638)

Maine Yankee Atomic Power Company ("Maine Yankee"), Edison Drive, Augusta, Maine 04330, a subsidiary company of New England Electric System and Northeast Utilities, both registered holding companies, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act.

By order dated January 26, 1990 (HCAR No. 25031) the Commission authorized Maine Yankee to enter into and borrow up to $35 million under an amended and restated Eurodollar revolving credit agreement ("Credit Agreement") with a syndicate or international banks, for which Union Bank of Switzerland is acting as agent (collectively, "Banks"), through December 31, 1992.

The Credit Agreement provides that Maine Yankee may issue, sell, and renew promissory notes ("Euro Notes") to the Banks in an aggregate principal amount of up to $35 million ("Commitment") at any one time outstanding with maturities of up to one year from the date of issuance. The Credit Agreement further provides that Maine Yankee may select interest periods for each Euro Note of one, three, or six months. The interest rate on each Euro Note is equal to either (i) the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected for such Euro Note or, (ii) if LIBOR cannot be reasonably ascertained, the Banks' actual costs of funding such Euro Note, in each case plus ⅝%. A commitment fee on the unused portion of the Commitment will be .35%. The Euro Notes are secured by a second lien on Maine Yankee's nuclear fuel inventory and its rights to payments under related power contracts and a related Capital Funds Agreement.

Maine Yankee now proposes to extend its authorization to borrow under the Credit Agreement until December 31, 1995. It states that the Credit Agreement remains an important source of funds to finance both planned and unplanned capital needs, and to finance short-term debt balances.

Central and South West Corporation (70–7758)

Central and South West Corporation ("CSW"), a registered holding company, its wholly owned nonutility subsidiary companies, CSW Energy, Inc. ("CSW Energy") and CSW Development-I, Inc. ("Energy Sub"), each of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, and ARK/CSW Development Partnership ("ARK Joint Venture"), 23293 South Pointe Drive, Laguna Hills, California 92653 have filed a past-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) and Rules 43 and 45 to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 43, 45, 86, 87, 90 and 91 thereunder.

By order dated September 28, 1990 (HCAR No. 25162) ("1990 Order"), CSW and CSW Energy were authorized, through December 31, 1995: (1) To spend $75 million ("Aggregate General Authority") to conduct preliminary studies of, to investigate, to research, to develop, to agree to construct (such construction subject to further Commission authorization) and, except with respect to independent power projects ("IPPs"), consult with respect to qualifying cogeneration facilities, qualifying small power production facilities (collectively "QFs") and IPPs; (2) to finance such activities through capital contributions, open account advances and loans up to $75 million; (3) for CSW Energy to form Energy Sub for the purpose of engaging in a joint venture ("ARK Joint Venture") with ARK Energy, Inc. ("ARK"), a nonassociate corporation; and (4) for CSW Energy to use $25 million of the $75 million Aggregate General Authority to finance the ARK Joint Venture through capital contributions and loans ("ARK Joint Venture Authority").

The 1990 Order also authorized CSW to fund the activities of CSW Energy through capital contributions, open account advances and loans in the aggregate amount of $75 million through December 31, 1995. The 1990 Order provided that each such loan would have an interest rate not in excess of the prime commercial lending rate as in effect from time-to-time at Mellon Bank plus 3% per annum and a final maturity not to exceed 30 years.

The 1990 Order also authorized investments in the ARK Joint Venture in the form of capital contributions and loans. The 1990 Order provided that each such loan would bear interest at a rate equal to the prime rate of The Chase Manhattan Bank, N.A. as in effect from time-to-time plus 2%. The 1990 Order provided that the principal of each such loan would be payable no later than 5 years after the date of the making of such loan.

By order dated November 22, 1991 (HCAR No. 25414), CSW Energy was authorized to provide consulting services with respect to IPPs.

CSW, CSW Energy, Energy Sub and the ARK Joint Venture now propose, through December 31, 1995, that: (1) The financing authority originally granted by the 1990 Order be increased from $75 million to $150 million; and (2) the financing authority for the ARK Joint Venture be increased from $25 million to $50 million. In all other respects, the terms and conditions under the 1990 Order shall remain the same.

Central and South West Corporation, et al. (70–8037)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a

registered holding company, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403, a wholly-owned electric utility subsidiary company of CSW, and CSW Credit, Inc. ("Credit"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a wholly-owned nonutility subsidiary company of CSW, have filed an amendment to the application-declaration under sections 6(a), 7, 9(a), and 10 of the Act. An original notice of filing of the application-declaration was issued by the Commission on October 9, 1992 (HCAR No. 25652).

With respect to factoring of utility accounts receivable ("Receivables"), Credit is currently subject to a restriction ("50% Restriction") such that the average amount of utility Receivables from non-associated companies for the preceding 12-month period outstanding as of the end of any calendar month would be less than the average amount of Receivables acquired from associated companies outstanding as of the end of each calendar month during the preceding 12-month period. In connection with the proposal to acquire Receivables of Houston Power & Lighting Company ("HLP"), Credit has requested that the amount of the HLP's Receivables not be subject to the 50% Restriction, or in the alternative, that it be temporarily permitted to exceed the 50% Restriction, because of the special circumstances of litigation with HLP. Credit now states that it will comply with the 50% Restriction after the purchase of HLP's Receivables and requests authorization to sell a sufficient amount of HLP Receivables ("Excess Receivables") acquired by Credit from HLP to unrelated third parties ("Purchasers") so that Credit remains in compliance with the 50% Restriction. Such sales are not effected on an individual account receivable basis, but rather on an undivided interest in, or all of the interest in, a specified pool or group of Excess Receivables. Such sales will be effected either through the direct sale of the Excess Receivables or through sales of market-based participations in the Excess Receivables. Credit sates that such Purchasers may securitize the Excess Receivables acquired from Credit. The Purchasers will have all right and benefit to such Excess Receivables or to the underlying Excess Receivables (in case of participations) and all proceeds thereof. Credit will have no obligation to such Purchaser other than to remit to such Purchaser all proceeds received on account of such Excess Receivables.

Northeast Utilities, et al. (70–8064)

Northeast Utilities ("Northeast"), 107 Selden Street, Berlin, Connecticut 06037, a registered holding company; its wholly owned subsidiary, Charter Oak Energy, Inc. ("Charter Oak"), 107 Selden Street, Berlin, Connecticut 06037; and a wholly owned subsidiary of Charter Oak, COE Development Corporation ("COE Development"), 107 Selden Street, Berlin, Connecticut 06037 have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

The application-declaration seeks authorization for several related transactions relative to (i) the formation of Charter Oak Windpower Corp. ("Charter Oak Windpower"), (ii) the investment therein of $10 million, and (iii) the acquisition by Charter Oak Windpower of 33% interests, through limited partnerships, in two qualifying small power production ("SPP") facilities located in California.

The application-declaration also seeks authorization for expansion of authorities granted by orders dated May 17, 1989 (HCAR No. 24893) ("1989 Order"), January 28, 1992 (HCAR No. 25461) ("January 1992 Order"), and October 16, 1992 (HCAR No. 25655) ("October 1992 Order"). The application-declaration requests that those authorities be expanded to allow the companies to engage in preliminary development activities relative to qualifying SPP facilities throughout the United States.

In the 1989 Order, Northeast was authorized to establish Charter Oak in order to invest and participate in qualifying SPP and cogeneration facilities ("Qualifying Facilities"). The 1989 Order authorized Charter Oak to invest and participate in qualifying cogeneration facilities throughout the nation. However, its investment and participation in qualifying SPP facilities was limited to facilities located in the service territories of Northeast and the New England Power Pool.

In the January 1992 Order, the authorization in the 1989 Order was expanded to authorize Charter Oak to explore the potential for investment and participation in independent power production (IPP) facilities. In the October 1992 Order, Northeast and Charter Oak were authorized to establish and finance COE Development in order to engage in preliminary development of Qualifying Facilities and IPP facilities. Northeast and Charter Oak recently filed, in File No. 70–8062, an application-declaration to request a two-year extension—through December 31, 1994—of the authorities granted under the 1989 Order, the January 1992 Order, and the October 1992 Order ("the Orders").

Under the Orders, Charter Oak is authorized to invest and participate in qualifying SPP facilities located only in the service territories of Northeast and the New England Power Pool. Pursuant to section 713 of the Energy Policy Act of 1992, the application-declaration requests an expansion of authorities granted under the Orders to allow the companies to engage in preliminary development activities relative to qualifying SPP facilities throughout the United States.

The application-declaration also seeks authorization for the incorporation in Connecticut of Charter Oak Windpower as a direct wholly owned subsidiary of Charter Oak. The application-declaration also seeks authorization for (i) Charter Oak Windpower to issue 100 shares of common stock and (ii) Charter Oak to acquire those 100 shares for $10,000 in cash.

The application-declaration requests authorization for Charter Oak Windpower to acquire interests in two wind-fueled qualifying SPP facilities located in California. Each facility is or will be owned by a California limited partnership ("Windpower Partnerships") in which U.S. Windpower, Inc. ("USW"), a Delaware corporation, holds a 1% general partnership interest and KPC Investors, L.P. ("KPCI"), a Delaware limited partnership, holds a 99% limited partnership interest.

The partners of KPCI are (i) USW, which holds a 1% limited partner interest; (ii) Kenetich Project Company ("KPC"), a Delaware corporation and affiliate of USW, which holds a 1% general partner interest; (iii) Kenetich Corporation ("Kenetech"), a Delaware corporation that is the direct parent of USW and the indirect parent of KPC, which holds a 32% limited partners interest; and (iv) an unnamed Delaware limited partnership, in which Kenetech is an indirect general partner, which holds a 66% limited partner interest. Kenetch presently intends to transfer its 32% limited partner interest in KPCI to USW prior to the acquisition of a partnership interest by Charter Oak Windpower.

The application-declaration contemplates that Charter Oak Windpower will acquire from KPCI a 33% limited partner interest in each Windpower Partnership in a transaction scheduled to close on December 30, 1992. The cost of the acquisition will not exceed $10 million. Because it will acquire a limited partner interest in each Windpower Partnership, Charter

Oak Windpower will have no role in the management or control of the Windpower Partnerships. The application-declaration states that Charter Oak will guarantee the obligations of Charter Oak Windpower as a limited partner in the Windpower Partnerships.

The first Windpower Partnership in which Charter Oak Windpower seeks to invest is Windpower Partners 1992–2 L.P., a California limited partnership, which owns a 31–MW windplant that consists of 310 U.S. Windpower Model 56–100 wind tubrine generators located in the Altament Pass in California. The windplant is a qualifying SPP facility. The second Windpower Partnership in which Charter Oak Windpower seeks to invest is Windpower Partners 1992, L.P., a California limited partnership to be formed on or before December 30, 1992. On December 30, 1992, this Windpower Partnership will acquire a 30-MW windplant that consists of 300 U.S. Windpower Model 56–100 wind turbine generators located in the Altamont Pass in California. The windplant is a qualifying SPP facility.

To fund the acquisition of the interests in the Windpower Partnerships, Northeast proposes to invest up to $10 million in Charter Oak, which Charter Oak proposes to invest in Charter Oak Windpower. The investment of Northeast in Charter Oak and the concomitant investment of Charter Oak in Charter Oak Windpower will be in the form of additional acquisitions of common stock, capital contributions, open account advances or subordinated loans.

The application-declaration states that the open account advances or subordinated loans would be for a term of up to ten years and would be at an interest rate based on the cost to Northeast of funds in effect on the date of issue—but in no case in excess of the prime rate of a bank designated by Northeast. The application-declaration also states that the interest rates and terms of the subordinated loans and open account advances from Charter Oak to Charter Oak Windpower would be identical to the interest rates and terms of the subordinated loans and open account advances from Northeast to Charter Coak.

Blackstone Valley Electric Company (70–8093)

Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

By order dated December 17, 1984 (HCAR No. 21534), the Commission authorized Blackstone to borrow the proceeds from the sale of $6,500,000 electric facilities revenue bonds (the "Bonds") issued by the Rhode Island Industrial Facilities Corporation. The Bonds are supported by a letter of credit which Blackstone obtained from Citibank N.A. (the "Citibank LOC"). Interest on the Bonds is determined weekly by the Remarketing Agent, which is Citibank Securities Markets, Inc., an affiliate of Citibank, N.A.

Blackstone asserts that the Citibank LOC is adversely affecting the rate of interest paid on the Bonds by Blackstone relative to other potential letter of credit issuers because (i) Citibank's credit rating, which supports the Bonds, has deteriorated and (ii) the Remarketing Agent cannot take a position with respect to the Bonds to attain a more attractive interest rate for Blackstone because its affiliate, Citibank, has issued the letter of credit supporting the Bonds.

Blackstone proposes to enter into an alternate letter of credit and reimbursement agreement (the "Alternate Credit Agreement") with The Bank of New York ("BONY"), which provides for the issuance of a new letter of credit (the "BONY LOC"). Under the Alternate Credit Agreement, BONY will issue the BONY LOC in an amount not to exceed $6,914,643.84. Such amount represents the principal amount of the Bonds and 124 days of interest computed at a rate of 20% per annum, and is the same amount as provided in the Citibank LOC. The BONY LOC will expire three years from its date of issue and may be extended for a period of one year at Blackstone's request, and subject to the consent of BONY.

Blackstone will be required to pay BONY an annual letter of credit commission equal to 0.60% per annum on the amount available to be drawn on the BONY LOC, as compared to a letter of credit commission 0.75% for the Citibank LOC. Blackstone will be subject to business covenants in the Alternate Credit Agreement similar to those in its credit agreement with Citibank.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30089 Filed 12–10–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Propulsion Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Propulsion Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Propulsion Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33, and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, and 35).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33, and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/

FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The transport Airplane and Engine Subcommittee, consequently, established the Propulsion Harmonization Working Group.

Specifically, the Working Group's tasks are the following: The Propulsion Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and the FAA:

Task 1—Bird Ingestion: Update turbine engine bird ingestion requirements, including size and number of birds and pass/fail criteria (FAR 33.77)

Task 2—Inclement Weather: Update the inclement weather requirements for rain and hail in turbine engines (FAR 33.77).

Task 3—Vibration Surveys: Determine test requirements and pass/Fail criteria for turbine engine vibration tests (FAR 33.83).

Task 4—Rotor Integrity: Determine test requirements and pass/fail criteria for turbine, compressor, fan, and turbosupercharger rotor overspeed tests (FAR 33.27).

Task 5—Turbine Rotor Overtemperature: Clarify test and pass/fail requirements for turbine engine overtemperature tests to assure consistent certification criteria (FAR 33.88).

Task 6—Windmilling: Exmaine current turbine engine windmilling requirements and specify appropriate test and analysis requirements (FAR 33.92).

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below. If task 1–6 require the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Draft a Notice of Proposed Rulemaking for tasks 1–6 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Propulsion Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should *write* the person listed under the caption FOR FURTHER INFORMATION CONTACT expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Propulsion Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30113 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Seat Testing Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Seat Testing Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Seat Testing Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada (June 2–5, 1992), that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Seat Testing Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Seat Testing Harmonization Working Group is charged with making

recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Crew Seats: Make recommendations concerning the requirements and guidance material for the certification of flightcrew seats and the associated test conditions (FAR 25.562; AC 25.562A).

Reports:

A. Recommend time line(s) for completion of the task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a Notice of Proposed Rulemaking the task proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Seat Testing Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Seat Testing Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30114 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Direct View Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of direct view harmonization working group.

SUMMARY: Notice is given of the establishment of the Direct View Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at the meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)–Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Direct View Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Direct View Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Cabin Attendant Direct View: Review the proposed guidance material contained in draft Advisory Circular 25.785 for finding compliance with the cabin attendant's direct view requirements of FAR 25.785 and make recommendations for new or revised guidance (FAR 25.785; AC 35.785).

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a change to Advisory Circular 25.783 providing appropriate guidance material.

D. Give a status report on each task at each meeting of the Subcommittee.

The Direct View Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task,

and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individuals will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Direct View Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30115 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Hydraulic Test Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of hydraulic test harmonization working group.

SUMMARY: Notice is given of the establishment of the Hydraulic Test Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-5364.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirement (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Hydraulic Test Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Hydraulic Test Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Hydraulic Systems and Test Conditions: Make recommendations concerning new or revised requirements for hydraulic systems and the associated test conditions for hydraulic systems installed in transport category airplanes (FAR 25.1435).

Reports:

A. Recommend time line(s) for completion of the task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a Notice of Proposed Rulemaking the task proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Hydraulic Test Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Hydraulic Test Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30116 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Electromagnetic Effects Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Electromagnetic Effects Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Electromagnetic Effects Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Electromagnetic Effects Harmonization Working Group.

Specifically, the Working Group's tasks are the following:

The Electromagnetic Effects Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and the FAA:

Task-1—High Energy Radiated Fields: Develop new requirements for aircraft exposure to high energy radiated fields (new FAR 25.1316 and 25.1317 and related provisions of FAR parts 23, 27, 29, 33, and 35, as appropriate). The working group should draw members for this task from the interests represented by the General Aviation and Business Airplane, and Rotocraft Subcommittees.

Task 2—Lightning Protection Requirements: Revise advisory material on lightning protection requirements in Advisory Circulars 20–53B and 20–136 (FAR 25.1316 and related provisions of FAR parts 23, 27, 29, 33 and 35, as appropriate; AC 20–53B and 20–136). The working group should draw members for this task from the interests represented by the General Aviation and Business Airplane, and Rotorcraft Subcommittees.

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below.

C. Draft a Notice of Proposed Rulemaking for task 1 proposing new requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed. When the detailed briefing under item B, above, and this report are presented to the subcommittee, the Subcommittee and Working Group Chairs should arrange for a joint meeting with the General Aviation and Business Airplane and Rotorcraft Subcommittees to consider and join in the consensus on the results of those reports.

D. Draft changes to Advisory Circulars 20–53B and 20–136 for task 2 providing appropriate advisory material for the task. When the detailed briefing under item B, above, and this report are presented to the subcommittee, the Subcommittee and Working Group Chairs should arrange for a joint meeting with the General Aviation and Business Airplane and Rotorcraft Subcommittees to consider and join in the consensus on the results of those reports.

E. Give a status report on each task at each meeting of the Subcommittee.

The Installation Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has exerptise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittee are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Installation Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcements of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30117 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Installation Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of installation harmonization working group.

SUMMARY: Notice is given of the establishment of the Installation Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33, and 35 of the Federal Aviation Regulations (14 CFR parts 25, 23 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with the assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Installation Harmonization Working Group.

Specifically, the Working Group's tasks are the following:

The Installation Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and FAA:

Task 1—Installations (Engines): Develop recommendations concerning new or revised requirements for the installation of engines on transport category airplanes and determine the relationship, if any, of the requirements of FAR 25.1309 to these engine installations (FAR 25.901).

Task 2—Windmilling Without Oil: Determine the need for requirements for turbine engine windmilling without oil (FAR 25.903).

Task 3—Non-contained Failures: Revise advisory material on non-contained engine failure requirements (FAR 25.903 and related provisions of FAR Parts 23, 27, 29, 33, and 35, as appropriate; AC 20–128). The working group should draw members for this task from the interests represented by the General Aviation and Business Airplane, and Rotorcraft Subcommittees.

Task 4—Thrust Reversing Systems: Develop recommendations concerning new or revised requirements and guidance material for turbojet engine thrust reversing systems (FAR 25.933).

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below. If tasks 1, 2, and 4 require the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Draft a Notice of Proposed Rulemaking for tasks 1, 2 and 4 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Draft a change to Advisory Circular 120–128 for task 3 providing appropriate advisory material for each task. When the detailed briefing under item B, above, and this report are presented to the subcommittee, the Subcommittee and Working Group Chairs should arrange for a joint meeting with the General Aviation and Business Airplane and Rotorcraft Subcommittees to consider and join in the consensus on the results of those reports.

E. Give a status report on each task at each meeting of the Subcommittee.

The Installation Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Installation Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30118 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Cargo Standards Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of cargo standards harmonization working group.

SUMMARY: Notice is given of the establishment of the Cargo Standards Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Cargo Standards Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Cargo Standards Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Main Deck Class B Cargo Compartments: Make recommendations for new or revised requirements for main deck Class B cargo compartments (FAR 25.857).

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under item C, below.

C. Draft a Notice of Proposed Rulemaking proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Cargo Standards Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Cargo Standards Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30119 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Rotorcraft Subcommittee; JAR/FAR 27 and 29 Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of JAR/FAR 27 and 29 Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the JAR/FAR 27 and 29 Harmonization Working Group of the Rotorcraft Subcommittee. This notice informs the public of the activities of the Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Rotorcraft Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Rotorcraft Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for normal and transport category rotorcraft in parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation

Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Rotorcraft Subcommittee those projects related to JAR/FAR 27 and 29 Harmonization which were then in the process of being coordinated between the JAA and the FAA. The Harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Rotorcraft Subcommittee, consequently, established the JAR/FAR 27 and 29 Harmonization Working Group.

Specifically, the Working Group's tasks are the following:

The JAR/FAR 27 and 29 Harmonization Working Group is charged with making recommendations to the Rotorcraft Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and the FAA:

Task 1—Performance: Category A performance of normal category rotorcraft (FAR 27.1 and Appendix C).

Task 2—Rotor Drive System: Design assessment of the rotor drive systems which are consistent with the present state of the design art (FAR 29.547, 29.917, AC 29–2A).

Task 3—Critical Parts: Identification of the critical parts for consideration under design, production and maintenance, according to a critical parts plan to be prepared by the manufacture (FAR 27.602, 29.602).

Task 4—Oil Pressure Indicator: An oil pressure indicator to be provided for pressure-lubricated gear boxes to inform the crew in time that oil pressure is abnormal (FAR 27.1305, 29.1305).

Task 5—Performance & Propulsion: Miscellaneous performance and propulsion requirements for transport category rotorcraft (FAR 29.67, 29.923, 29.1587).

Task 6—Flutter: Update the flutter substantiation methodology and documentation requirements for transport category rotorcraft (FAR 29.629).

Task 7—Lighting and Bonding: Update lighting and bonding requirements for transport category rotorcraft (FAR 29.610, 29.1309).

Task 8—Bird Strike: Determine the need for bird strike protection for transport category rotorcraft (FAR 29.631).

Task 9—Battery Endurance: Reassess battery endurance requirements relative to different modes of operation and to varying environments for transport category rotorcraft (FAR 29.1351).

Task 10—Fire Detection: Reduce probability of false fire detector warning for transport category rotorcraft (AC 29–2A; ref. FAR 29.1203).

Task 11—Vibrations: Update advisory material of Appendix A of FAR 29 to provide guidance on basic vibration data to be provided for service (continuing airworthiness) use (AC 29–2A; ref. FAR 29 Appendix A).

Task 12—Rotor Drive System and Fatigue Gear Substantiation: Identify acceptable compliance methodology for gear teeth fatigue (AC 29–2A; ref. FAR 29.571, 29.901).

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below. If tasks 1–9 require the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Draft a Notice of Proposed Rulemaking for tasks 1–9 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Draft a change to Advisory Circular 29–2A for tasks 2 and 10–12 providing appropriate advisory material for each task.

E. Give a status report on each task at each meeting of the Subcommittee.

The JAR/FAR 27 and 29 Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Rotorcraft Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the JAR/FAR 27 and 29 Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Rotorcraft Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30128 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 175; Minimum General Specification for Ground Based Electronic Equipment in the National Airspace System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fifth meeting of Special Committee 175 to be held December 7–8, 1992, at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036 commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of summary of meeting held October 7–9; (3) Subcommittee review of draft specification; (4) Subcommittees meet in separate sessions; (5) Discuss approach for FAA Comments to Draft Specification; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 25, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–30111 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the RTCA Technical Management Committee to be held December 16, 1992, at the RTCA conference room, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC commencing at 1:30 p.m.

The agenda for this meeting is as follows: (1) Review October 26, 1992, TMC meeting summary (RTCA No. 713–82/TMC–54); (2) Consider/approve the formation of two new Special Committees as requested by the Airports Council International (formerly known as the Airports Association Council International-North America); (a) Form a new Special Committee that will prepare recommended standards for sensors/detectors used to activate runway entrance stop bars. (b) Form a new Special Committee that will prepare recommended standards for software used to control airport lights and other electronic airport surface traffic management systems; (3) Determine the preferred method for addressing the Global Navigation Satellite System Transition and Implementation Strategy Task Force recommendations calling for RTCA action. The TMC should assign tasking and establish appropriate milestones; (4) Concur in the formation of an Ad Hoc Committee on software issues that will sustain the government-industry cooperation developed by RTCA SC–167/EUROCAE WG–12 during the preparation of DO 178B. This new Ad Hoc committee will also lay the foundation for a new Special Committee to prepare "DO–178C" when the accumulation of software technology changes warrant such an effort; (5) Introduce for consideration the formation of new Special committees on: (a) Performance standards for Head Up Displays (HUDs) (b) Performance standards for flight Management Systems (FMSs) (c) Performance standards for enhanced vision components and systems; (6) Other business

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 25, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–30112 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Preemption Determination No. PD–1; Docket No. PDA–1(R)]

Application by National Solid Wastes Management Association for a Preemption Determination Concerning Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes

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

ACTION: Administrative determination that Maryland, Massachusetts and Pennsylvania bonding requirements for vehicles carrying hazardous wastes are preempted by the Hazardous Materials Transportation Act (HMTA).

APPLICANT: National Solid Wastes Management Association, on behalf of its Chemical Waste Transportation Institute.

STATE LAWS AFFECTED: Annotated Code of Maryland (Md. Code Ann.), Environment § 7–252 and Code of Maryland Regulations (COMAR) 26.13.04.04; 310 Code of Massachusetts Regulations (CMR) 30.411; 35 Pennsylvania Statutes Annotated (Pa. Stat. Ann.) § 6018.505(e) and 25 Pennsylvania Code § 263.32.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: The HMTA preempts the following State statutes and regulations which require the posting of a monetary bond as a condition for the issuance of a State permit to transport hazardous wastes:

Maryland: Md. Code Ann., Environment § 7–252(a)(1), COMAR 26.13.04.04;

Massachusetts: 310 CMR 30.411; and

Pennsylvania: 35 Pa. Stat. Ann. § 6018.505(e), 25 Pa. Code § 263.32.

These State bonding requirements are an obstacle to the accomplishment and execution of the HMTA and the HMR, which do not impose bonding, insurance or other financial responsibility requirements on carriers of hazardous materials (including hazardous wastes). The Maryland, Massachusetts, and Pennsylvania bonding requirements are not "otherwise authorized by Federal law" because they are not specifically authorized in the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, in the regulations of the Environmental Protection Agency (EPA) under RCRA, or in EPA's authorization of State hazardous waste programs in these three States.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder or Kathleen S. Molinar, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone number (202) 366–4400.

I. Application for Preemption Determination

"[O]n behalf of its Chemical Waste Transportation Institute," the July 17, 1991 petition of the National Solid Wastes Management Association seeks an administrative determination that the HMTA preempts the requirements of three States—Maryland, Massachusetts, and Pennsylvania—for a monetary bond in order to obtain a State license or permit for transporting hazardous wastes. (The applicant is referred to as "CWTI" in the balance of this decision.)

A. Relevant EPA and State Requirements for Transporters

Under EPA's regulations implementing RCRA, each "transporter" of hazardous waste must have "an EPA identification number," 40 CFR 263 11; must comply with manifest requirements, 40 CFR 263.20–263.22; and must take appropriate immediate action if a spill of hazardous waste occurs during transportation. 40 CFR 263.30. "Transporters storing manifested shipments of hazardous wastes in [approved] containers * * *, for a period of ten days or less" need not obtain a RCRA permit. 40 CFR 270.1(c)(2)(vi).

In Maryland, Massachusetts, and Pennsylvania, a transporter who picks up or deliver hazardous waste within the State must also hold a license or permit from the State. Md. Code Ann., Environment § 7–249(a), COMAR

26.13.04.01C(1); 21C Massachusetts General Laws Annotated § 5, 310 CMR 30.402(2); 35 Pa. Stat. Ann. § 6018.501, 25 Pa. Code § 263.11(a). As a prerequisite to obtaining that license or permit, each of these States requires the transporter to obtain a bond.

In Maryland, the Department of the Environment "shall require a person to secure a bond of not less than $50,000 for the purpose of indemnifying the State for abatement of pollution from the improper transportation or spill of" hazardous wastes. COMAR 26.13.04.04. (The requirement of such a "bond or other security that the Department considers sufficient" is contained in Md. Code Ann., Environment § 7–252(a)(1).) In Massachusetts and Pennsylvania, "[t]he amount of the bond shall be $10,000 at a minimum and be in an amount sufficient to assure that the licensee" performs all of the State statutory and regulatory requirements as well as "the terms and conditions of the license and any Department order issued to the licensee." 310 CMR 30.411(3), 25 Pa. Code § 263.32(c). (In Pennsylvania, this requirement is also set forth in Pa. Stat. Ann. § 6018.505(e).)

Each of these regulations specifies only the minimum amount of the bond. CWTI states that in Pennsylvania, the actual amount required "apparently depends upon the type of materials and the volumes transported," and that "the Commonwealth typically requires bonds in amounts up to $60,000 * * *" As noted below, one company submitting comments (D & J Transportation Specialists, Inc.) states that it has posted a $60,000 bond in Pennsylvania.

These States' bonding requirements are in addition to the Federal financial responsibility requirements set forth in 49 CFR 387.7, 387.9, and any separate State insurance requirement. See, e.g., 310 CMR 30.410. Each of these three States allows certain alternate forms of providing the required financial guarantee, such as a letter of credit or the deposit of cash or negotiable securities. However, in each case the beneficiary of the guarantee must be the State, and insurance policies (or evidence of self-insurance) do not qualify. CWTI's petition represents that each of these three States imposes its bonding requirement independently; there is no reciprocity, offset, credit or other recognition for a bond posted in another State. This means that, in each State with a bonding requirement in which a transporter picks up or delivers hazardous waste, it must post a separate bond.

B. Application of the HMTA and HMR to Hazardous Wastes

All hazardous wastes are designated "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14)(C), and, as such, hazardous wastes are "listed and regulated as * * * hazardous material[s] under the" HMTA. 42 U.S.C. 9656(a). "The term [hazardous materials] includes * * * hazardous wastes, * * *" 49 CFR 171.8 (as amended November 5, 1992, 57 FR 52930, 52935). See also 49 CFR 171.3(a): "No person may offer for transportation or transport a hazardous waste * * * in interstate or intrastate commerce except in accordance with the requirements of" the HMR.

RCRA specifically directs the EPA's regulations applicable to transporters of hazardous wastes "shall be consistent with the requirements of" the HMTA and the HMR. 42 U.S.C. 6923(b). (For purposes of the HMR, hazardous wastes are "hazardous substances" when the contents of a single package equal or exceed the "reportable quantity" for that hazardous substance. 49 CFR 171.8 and 172.101 appendix.)

C. CWTI's Petition and Public Notice

CWTI's petition argues that the three States' bonding requirements are preempted because they constitute an "obstacle" to the accomplishment and execution of the HMTA and the HMR. CWTI relies primarily on RSPA's opinion in IR–25 that the HMTA preempts a city ordinance requiring a $1,000 bond for each vehicle hauling hazardous wastes and similar products. IR–25, Transporting Hazardous Wastes, City of Maryland Heights (Missouri) Ordinance Requiring Bond for Vehicles, 54 FR 16308 (Apr. 21, 1989). In IR–25, RSPA stated that "[a] local government may not impose any insurance, bonding or indemnification requirement as a precondition to the transportation of hazardous materials." 54 FR at 16310.

On August 12, 1991, RSPA published a Public Notice and Invitation to Comment on CWTI's petition. 56 FR 38294. In response to that Notice, three industry associations and two companies submitted comments in support of a finding of preemption. The Massachusetts Department of Environmental Protection (Mass-DEP) opposed the petition. CWTI submitted rebuttal comments plus an additional letter concerning the December 1991 decision in *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991). Mass-DEP responded to CWTI's additional letter on the *Harmon* decision. All these comments are summarized in Part III, below.

II. Preemption Under the HMTA

The HMTA was enacted to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced "a patchwork of state and federal laws and regulations concerning hazardous materials with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." HMTA, Public Law 93–633 section 112(a), 88 Stat. 2161 (1975) (amended 1990, see 49 App. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974), as quoted in IR–2 (State of Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

In 1976, DOT's Materials Transportation Bureau (MTB, whose responsibilities are now delegated to RSPA's Associate Administrator for Hazardous Materials Safety) "published procedures that implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings." IR–2, 44 FR at 75567. Such inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local relationships," and also a possible "basis for an application * * * [for] a waiver of preemption pursuant to section 112(b) of the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State or local requirement was inconsistent with, and thus preempted by, the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible;

(2) The extent to which the State or political subdivision requirement is an

obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38167, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.) These "dual compliance" and "obstacle" criteria, respectively, are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In 1980, a preemption provision relating to hazardous waste was added to the HMR. Subsection (c) of 49 CFR 171.3, unchanged to the present, states that:

> With regard to hazardous waste subject to [the HMR], any requirement of a state or its political subdivision is inconsistent with [the HMR] if it applies because that material is a waste material and applies differently from or in addition to the requirements of [the HMR] concerning:
>
> (1) Packaging, marking, labeling, or placarding;
>
> (2) Format or contents of discharge reports (except immediate reports for emergency response); and
>
> (3) Format or contents of shipping papers, including hazardous waste manifests.

45 FR 34560, 34586 (May 22, 1980). In the preamble to the final rule, RSPA stated that "§ 171.3(c) does not list all the conditions under which it might view a State or local law as 'inconsistent.'" 45 FR at 34567.

The preemption provision in the HMTA was expanded in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), in which Congress found that uniform Federal standards for the transportation of hazardous materials were "necessary and desirable" to solve the problem that:

> many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements.

Public Law 101–615 section 2(3), 49 App. U.S.C. 1801 note.

"[U]niformity was the linchpin in the design of" the 1990 HMTUSA amendments. *Colorado Pub. Util Comm'n* v. *Harmon*, 951 F.2d at 1575. These amendments adopted the "dual compliance" and "obstacle" criteria and also provided for preemption when: (1) Non-Federal requirements in five "covered subject" areas are not "substantively the same" as Federal ones, 49 App. U.S.C. 1804(a)(4); (2) a fee imposed by a State, political subdivision or Indian tribe "in connection with the transportation of hazardous materials * * * is not equitable [or] not used for purposes related to the transportation of hazardous materials, * * *" 49 App. U.S.C. 1811(b); (3) non-Federal highway routing requirements fail to satisfy Federal standards to be issued by DOT, 49 App. U.S.C. 1805(b)(4); and (4) as clarified in a further 1992 amendment, State forms and procedures for registration and permitting of motor vehicles which transport hazardous materials are not the same as regulations to be issued by DOT based on recommendations of a State and local government working group. 49 App. U.S.C. 1819(e), as amended by Public Law 102–508 section 507, 106 Stat. 3312 (October 24, 1992).

The 1990 amendments to the HMTA also added requirements that certain motor vehicle transporters of hazardous materials must file a registration statement with DOT, 49 App. U.S.C. 1805(c), and/or obtain a safety permit from DOT. 49 App. U.S.C. 1805(d). Regulations implementing the registration requirement were issued on July 9, 1992 (57 FR 30620; Revisions, 57 FR 37900, August 21, 1992), and apply to transporters of (1) certain high risk hazardous materials, (2) hazardous materials in bulk containers (with a capacity of 3,500 or more gallons or more than 468 cubic feet), and (3) hazardous materials shipments of 5,000 lbs. or more in non-bulk packagings for which placarding is required. 49 CFR 107.601; see also Public Law 102–508 section 503, 106 Stat. 3311 (October 24, 1992). Regulations implementing the safety permit requirement has not yet been issued, but Congress directed that they must cover carriers of certain high risk hazardous materials and that DOT must issue a permit if it "finds that the carrier is fit, willing, and able—* * * to comply with any applicable Federal motor carrier safety laws and regulations and any applicable Federal minimum financial responsibility laws and regulations." 49 App. U.S.C. 1805(d)(2).

Since DOT's regulations on State motor carrier registration and permits have not yet been issued, CWTI's petition must be considered under the preemption provisions in 49 App. U.S.C. 1811 (a) and (b). The latter subsection prohibits fees in connection with the transportation of hazardous materials which are not "equitable" or "used for purposes related to the transportation of hazardous materials * * *" Subsection 1811(a) provides that, "unless otherwise authorized by Federal law" or unless a waiver of preemption is granted by DOT, "any requirement of a State or political subdivision or Indian tribe is preempted" when:

> (1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,
>
> (2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or
>
> (3) It is preempted under section 1804(a)(4) [describing the five "covered subject" areas] * * * or section 1805(b) [with respect to highway routing requirements] * * *

The five "covered subject" areas in which a non-Federal rule is preempted unless it is "substantively the same" (or "otherwise authorized by Federal law") are:

> (i) The designation, description, and classification of hazardous materials.
>
> (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
>
> (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
>
> (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
>
> (v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The 1990 amendments to the HMTA also authorize any directly affected person to apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA, 49 App. U.S.C. 1811(c)(1). This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR

1.53(b). Under RSPA's regulations, see 49 CFR 107.201–107.211, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making determinations regarding preemption under the HMTA, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comments

A. Comments Supporting Preemption

The five commenters who support CWTI's petition argue that the Maryland, Massachusetts, and Pennsylvania bonding requirements are an "obstacle" to the accomplishment and execution of the HMTA and the HMR.

The Hazardous Materials Advisory Council (HMAC), National Tank Truck Carriers, Inc. (NTTC), and Edison Electric Institute (EEI) contend that the prior decision in IR–25 should dispose of this case. EEI specifically notes that, since Congress codified the "obstacle" test in the 1990 amendments, previous inconsistency rulings are valid precedent. EEI acknowledges that Congress failed to "include bonding requirements in the list of [covered] subjects" in section 1804(a)(4). However, it asserts that this ommission should not "undermine DOT's prior determination that '[t]he subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal,'" as RSPA stated in IR–25 and repeated in IR–31, State of Louisiana; Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25582 (June 21, 1990).

Both NTTC and EEI quote Congressional statements regarding the need for consistency in hazardous materials transportation. NNTC argues RSPA should "weigh such non-Federal actions against Congressional intent as codified in HMTUSA." EEI states that "the likelihood that numerous state and local governments will seek to impose bonding and similar requirements," and the impact of such requirements, are factors which "could serve as a basis for a finding of preemption under the obstacle test."

HMAC alludes to differences between the three States' bonding requirements on "amounts, financial instruments, terms and conditions of the escrows, forfeiture terms and procedures, and terms of release * * *" Both HMAC and NTTC assert that the States fail to recognize each others' bonding requirements, and HMAC points out that they also ignore the Federal insurance requirements, in 49 CFR part 387, providing financial responsibility in case of an accident. HMAC contends that "few businesses [which operate in several States] can afford to repeatedly tie up substantial amounts of working capital. The effect, as other states assert their requirements in this area, will surely be to hinder the movement of hazardous waste."

Two companies allege the practical effect of these bonding requirements. D & J Transportation Specialists, Inc. reports that it:

> is presently permitted in forty (40) states to transport hazardous waste, including Massachusetts, Maryland, and Pennsylvania. We have posted bonds of $10,000, $50,000 and $60,000 respectively, in these states.
>
> As a private corporation it has been necessary in each case to provide a letter of credit to secure this bonding. Should each state of the forty (40) we are registered in require a $50,000 bond, letters of credit in the amount of $2,000,000 would be required.
>
> As we could not possibl[y] obtain letters of credit in this amount, we would be unable to operate in a large number of states. If you add to this the almost unlimited number of possibilities which exist if municipalities started the same thing, it is obvious how restrictive this practice would become.

An official of Bandag, Inc. states that, before the Pennsylvania bonding requirement, his previous employer had regularly shipped waste materials to a processing facility in Western Pennsylvania for recycling. However, after the requirement for a bond became effective, "we could not find a hauler to get our material to the processing facility."

Only NTTC argues that it is impossible to comply with both the HMR and these three State's bonding requirements. Although it notes that these requirements are in addition to (rather than instead of) the Federal insurance requirements in 49 CFR 387.7 and 387.9, NTTC contends that "[t]here are any number of direct conflicts between the states['] requirements and" the HMR, essentially based on differences between bonding and insurance as means of providing financial responsibility. NTTC further argues that, since posting a bond is a requirement for obtaining a permit, these are more in the nature of permit requirements. The delay "built into" the procedures in Massachusetts and Pennsylvania, such as for negotiating the amount of the bond and receiving approval, "creates the potential for unnecessary delays, [which] violates the dual compliance test and is 'inconsistent.'"

B. Comments Opposing Preemption

Only Mass-DEP has opposed a determination of preemption on CWTI's petition; no Maryland or Pennsylvania agency—or any other person—submitted comments in support of those States' bonding requirements. Although Mass-DEP addresses only the Massachusetts regulation, its comments appear to apply, and have been considered, with respect to all three States' requirements.

Mass-DEP alleges that CWTI failed to comply with RSPA's procedural regulations by failing to "[s]pecify each requirement of the Act or the regulations issued under the Act with which the applicant wishes the State * * * requirement to be compared; * * *" 49 CFR 107.203(b)(3). Mass-DEP asserts that, since "[i]t clearly is possible for transporters to comply with the [HMTA] and 310 CMR 30.411," the "dual compliance" test is satisfied. It contends that the Massachusetts bonding requirement also meets the "obstacle" test, inasmuch as:

(1) "The HMTA does not concern itself with financial assurance requirements," but "[a]ll subject matters regulated under HMTA concern the physical transportation activity";

(2) The HMTA specifically allows States to charge hazardous materials transporters "fees" which are "equitable" and "for purposes related to the transportation of hazardous materials * * *," 49 APP. U.S.C. 1811(b);

(3) RSPA's opinion in IR–25 does not support a determination of preemption because IR–25 was based on a "different preemption standard," was only "advisory" and "would not apply to our very different set of facts and law"

(including that the Massachusetts bonding requirement is a State law, rather than a local ordinance, and does not apply to through transporters);

(4) The reference in IR–25 to the insurance requirements in 49 CFR part 387 "is irrelevant to our facts and law," since part 387 is part of the Federal Motor Carrier Safety Regulations and not the HMR, and the Massachusetts bonding requirement "covers contingencies" such as willful acts and "acts of God or other situations typically excluded from insurance policies";

(5) Commerce Clause arguments are irrelevant to issues of statutory preemption under the HMTA; and

(6) Crankcase oil, "the largest single wastestream * * * in Massachusetts," is not classified as a hazardous material and therefore is "not subject to HMTA regulation."

Mass-DEP further asserts that its bonding requirement is part of its EPA-approved program implementing RCRA. As such, it claims that 310 CMR 30.411 is "otherwise authorized by Federal law" and, therefore, not preempted under the terms of 49 App. U.S.C. 1811(a).

C. Rebuttal Comments

In rebuttal comments, CWTI ignores Mass-DEP's arguments on the "dual compliance" test, but it disputes each of the other points raised by Mass-DEP. It argues that it is unnecessary to point to a specific section in the HMTA or the HMR when "the challenged non-Federal requirement is as a whole inconsistent with the accomplishment and execution of the goals of the Act and the HMRs." Citing its own testimony before a Congressional committee in 1988 and 1989, CWTI disagree that a bond is a "fee" under 49 App. U.S.C. 1811(b). CWTI also contends, even if the posting of a bond is considered a "fee," there is nothing to show that the bond is "equitable" or that it is used for purposes related to the transportation of hazardous materials, as required by the HMTA.

CWTI further asserts that its petition relies on the "obstacle" test, not on a claim of preemption under the Commerce Clause, and that each of the points on which Mass-DEP purports to distinguish IR–25 is unpersuasive. The fact that crankcase oil is not classified as a hazardous material simply means that its petition does not seek "relief from state bonding requirements imposed on motor carriers * * * [of] crankcase oil."

CWTI also disputes Mass-DEP's argument that its bonding requirement is "otherwise authorized by Federal law." It refers to RCRA's mandate that EPA regulations for hazardous waste "shall be consistent with the requirements of" the HMTA and the HMR, 42 U.S.C. 6923(b), and that a State program shall be "equivalent to" and "consistent with" Federal programs. 42 U.S.C. 6926(b). CWTI contends that RCRA's authorization in 42 U.S.C. 6929 for States to impose "more stringent" requirements than set forth in EPA's regulations applies only to "technical, design or performance standards for treatment, storage or disposal facilities, not standards that relate to transportation."

Approximately one month after CWTI's rebuttal comments, the decision in *Colorado Pub. Util Comm'n* v. *Harmon*, above, was issued. Six weeks later, CWTI submitted a further letter to point out the statement in footnote 10 of the *Harmon* opinion that the failure of a Federal statute to specifically preempt a State or local rule "cannot be construed as an authorization of the regulation." Mass-DEP filed additional comments, stating that the *Harmon* case footnote was irrelevant since Mass-DEP "did not argue that failure of a non-HMTA federal statute to preempt the DEP's bonding requirement should be equated with authorization of the bonding requirement."

IV. Discussion

The comments submitted on CWTI's petition, together with the petition itself, well frame the two main issues to be resolved in this decision. These are whether bonding requirements for carriers of hazardous waste, such as those of Maryland, Massachusetts and Pennsylvania, (1) create an "obstacle to the accomplishment and execution of" the HMTA and the HMR, especially in light of the separate financial responsibility requirements contained in the Federal Motor Carrier Safety Regulations (FMCSR), and (2) are "otherwise authorized by Federal law" when a State administers an EPA-approved State hazardous waste program under 42 U.S.C. 6926(b).

A. The "Dual Compliance" Test

NTTC's assertion that the challenged requirements fail to meet the "dual compliance" test does not require lengthy discussion. NTTC's argument here is that "the states require 'bonding'; while the Secretary [of Transportation, in 49 CFR part 387] permits 'insurance,'" and there are differences between the two. Those differences, however, do not make it impossible for a transporter of hazardous waste to fulfill both Federal and State requirements at the same time. Indeed, 49 CFR 387.7 allows surety bonds as an alternative to insurance policies (or evidence of self-insurance). The representation by D & J Transportation Specialists, Inc., that it has posted bonds in all three of the States whose requirements are challenged here, establishes that it is possible to comply with these bonding requirements as well as the DOT requirement. The Maryland, Massachusetts, and Pennsylvania bonding requirements are not preempted under 49 App. U.S.C. 1811(a)(1).

B. The "Obstacle" Test

A non-Federal requirement is preempted if it is an obstacle to "the goals and purposes" of the HMTA. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1580. Under the test, the Court of Appeals explained in the *Harmon* case (*id.*),

> the Supreme Court has examined whether the state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Hillsborough County* v. *Automated Medic. Labs.*, 471 U.S. 707, 713 (1985) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)) (emphasis added); see also *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270, 275 (2d Cir 1982). Further, "[a] state law also is preempted if it interferes with the methods by which the federal statute was designed to reach this goal." *International Paper Co.* v. *Quellette*, 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 477 (1984).

As already discussed in Part II, above, in enacting the 1990 amendments to the HMTA, Congress believed that uniform Federal standards, instead of multiple and conflicting State and local requirements, would provide for increased safety in the transportation of hazardous materials. See 49 App. U.S.C. 1801 note. See also the discussion in the *Harmon* decision of the legislative history of the 1990 amendments. 951 F.2d at 1580–81.

As amended in 1990, the HMTA contains Federal registration and safety permit requirements for carriers of certain high risk hazardous materials (and others to be determined by DOT). Transporters covered by the safety permit requirement must satisfy the Federal financial responsibility requirements in 49 CFR part 387. The HMTA requires the establishment of a working group to make recommendations for uniform State registration and permit requirements and provides that, following issuance of Federal regulations on these subjects, a State may not "establish, maintain, or enforce any requirement which relates to the subject matter of such regulation unless such requirement is the same as

such regulation." 49 App. U.S.C. 1819(e).

Congress set forth in the 1990 amendments its concern about "multiple and conflicting registration, permitting, * * * and other regulatory requirements." 49 App. U.S.C. 1801 note. It specifically referred to the Federal financial responsibility requirements in 49 App. U.S.C. 1805(d), and, with the further 1992 amendment to 49 App. U.S.C. 1819, it has mandated uniformity and consistency in both permitting and registration requirements of States and local government. These permitting requirements include the bonding requirements at issue here, since each of these three States makes the bond a condition for the issuance of a permit to transport hazardous wastes.

In light of Congress's specific attention in the HMTA to multiple and conflicting State permitting requirements, RSPA cannot accept the argument of Mass-DEP that: "All subject matters regulated under HMTA concern the physical transportation activity." For the same reason, resolution of the issues presented here cannot rest on a 1985 decision that the bonding requirement in 35 Pa. Stat. Ann. § 6018.505(e) is not preempted by the HMTA. That decision, by the Commonwealth Court of Pennsylvania, *Chemclene Corp.* v. *Pennsylvania Dep't of Environ. Res.*, 497 A.2d 268, 272 (Pa. Commonw. Ct. 1985), was based on a finding that "the scope of the [HMTA] * * * is narrow, devoted principally to matters of labeling, packaging standards, testing procedures, and training and safety practices." Any validity which this description might have had in 1985 has vanished with the 1990 and 1992 amendments to the HMTA.

In its petition, CWTI complains that these three States' bonding requirements go beyond the requirements of the HMR and the financial responsibility mandates in 49 CFR part 387. Mass-DEP notes that part 387 is not part of the HMR, and it argues that no preemption should be found because CWTI failed to "[s]pecify each requirement of the [HMTA] or the regulations issued under the [HMTA] with which the applicant seeks the State * * * requirement to be compared * * *" 49 CFR 107.203(b)(3).

There are two answers to this objection. First, as already mentioned, the Federal financial responsibility requirements are not ignored in the HMTA, but specifically mentioned in connection with the Federal safety permit requirement. 49 App. U.S.C. 1805(d)(2)(C). Second, when preemption under the HMTA is arguably grounded upon the absence of a comparable requirement in the HMR, as CWTI contends here, a petition will not be summarily decided on the ground that it "fails to cite to any requirement in HMTA or its regulations" with which the non-Federal requirement should be compared. The existence of the Federal financial responsibility requirements may advance the goals and purposes of the HMTA, even without specific incorporation of those requirements in the HMR.

In 1978, the FMCSR consisted of only parts 390–397 of 49 CFR In that year, virtually the entire FMCSR, "49 CFR parts 390 through 397 (excluding § 397.3 and § 397.9)," were incorporated into the HRM "to make civil penalties and other enforcement tools of the HMTA applicable to those hazardous materials carriers already subject to Parts 390–397." 43 FR 4858 (Feb. 6, 1978). See 49 CFR 177.804.

The financial responsibility requirements in 49 CFR part 387 were added to the FMCSR in 1981, pursuant to section 30 of the Motor Carrier Act of 1980 (see 46 FR 30974, June 11, 1981), which can be found in the note to 49 U.S.C. 10927. Section 30(b) required DOT to establish levels of financial responsibility, "covering public liability, property damage, and environmental restoration for the transportation of hazardous materials * * *, oil or hazardous substances * * *, or hazardous wastes * * *." Section 30(d) provided civil penalties for violation of the Federal financial responsibility requirements. See also 49 CFR 387.17. Thus, unlike the situation with those parts of the FMCSR in 49 CFR parts 390–397, incorporation into the HMR was unnecessary to provide civil penalties for violations of part 387.

Section 30 of the Motor Carrier Act of 1980 also sets the required level of financial responsibility, under CERCLA, for all motor vehicles transporting hazardous substances (including hazardous wastes). 42 U.S.C. 9608(b)(5), 9601(14)(C). For purposes of CERCLA, the term "facility" includes motor vehicles, 42 U.S.C. 9601(9)(A), and a separate section of CERCLA, 42 U.S.C. 9614(d), precludes additional State or local financial responsibility laws:

> Except as provided in [CERCLA], no owner or operator of a * * * facility who establishes and maintains evidence of financial responsibility in accordance with [CERCLA] shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial liability in connection with liability for the release of a hazardous substance from such * * * facility.

Pursuant to section 30(b), 49 CFR 387.9 specifies either $5,000,000 or $1,000,000 in insurance, surety bonds, or evidence of self-insurance for virtually all transporters of hazardous wastes. (Excluded are only those transporters of hazardous wastes other than Class A or B explosives, poison gas or highway route controlled quantity radioactive materials who either (1) are intrastate carriers in nonbulk, or (2) use only small vehicles, less than 10,000 lbs. GVWR.)

In a series of inconsistency rulings (IRs) between 1984 and 1989, RSPA found that State insurance or other financial responsibility requirements specifically applicable to hazardous materials transportation, beyond those prescribed in 49 CFR part 387 or other Federal law, were in conflict with the purposes and objectives of the HMTA and the HMR.

Three of nine consolidated decisions in November 1984 dealt with State or local insurance requirements applicable to shipments of radioactive materials. 49 FR 46632 (Nov. 27, 1984). IR–10 concerned the position of the New York State Thruway Authority (NYSTA) that "radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure." 49 FR at 46645. RSPA found that closing the Thruway "to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification * * *.

> directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of the Congressional objective of enhancing hazardous materials safety.
>
> * * * * *
>
> Applying this to the instant case, if any one State may use insurance requirements to deflect interstate carries of hazardous materials into other jurisdictions, then all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation[,] then the very patchwork of varying and conflicting State and local regulations which Congress sought to preclude.

49 FR at 46646–47. Based on the decision in IR–10, RSPA also found that the HMTA preempted similar insurance or indemnification requirements of the Ogdensburg (NY) Bridge and Port Authority (IR–11, 49 FR at 46649), and the State of Vermont (IR–15, 49 FR at 46663–64). In the latter case, RSPA noted that, in the course of promulgating rules on highway routing of radioactive materials, MTB had "examined the issue of indemnification

and concluded that Federal law provided adequate coverage. State adoption of higher insurance coverage requirements can operate as barriers to transportation." 49 FR at 46664. A similar finding was made in IR–18, concerning a radioactive materials transportation bonding requirement of Prince Georges County, MD. 52 FR 200, 204 (January 2, 1987).

IR–25 involved an ordinance of Maryland Heights, Missouri, which required "a bond in the amount of One Thousand Dollars ($1,000) per vehicle for each vehicle, hauling or to haul sewage, sludge, human excrement, special, hazardous or infectious wastes." 54 FR 16308. Quoting from the decision on Vermont's appeal of IR–15, 52 FR 13062, 13063 (Apr. 21, 1987), RSPA reaffirmed its earlier conclusion that: " 'The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification.' " 54 FR at 16310. As to non-radioactive waste, RSPA found that:

> no such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor vehicles transporting hazardous wastes, hazardous substances and other hazardous materials.
>
> If OHMT later determines that a bonding, insurance, or indemnity requirement is necessary under the HMTA for the transportation of non-radioactive hazardous materials, it will amend the HMR accordingly. Until such time, the absence of such a requirement in the HMR is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR.
>
> The subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal. The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such requirements, demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

54 FR at 16311.

In separate rulings, RSPA also found that non-Federal requirements to provide evidence of insurance were also inconsistent with the HMTA. For example, in IR–27 RSPA stated that "[r]equirements for information or documentation in excess of the HMR create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent." IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326, 16330 (April 21, 1989). Such information requirements included proof of liability insurance (as required by 49 CFR part 387) in order for the issuance of a State permit.

Specifically approving RSPA's finding in IR–27, the Court of Appeals for the Tenth Circuit held in the Harmon case that:

> Because Colorado's regulation forces transporters of hazardous materials to generate and maintain additional documentation and information, we conclude that it is likely to confound shippers and carriers and to increase the potential for hazards in other jurisdictions. Colorado's regulations simply do not further the federal purpose of promoting safety through uniformity. Therefore, we hold that [this requirement] is preempted.

951 F.2d at 1582 (footnote omitted). Similarly, the Court of Appeals for the Ninth Circuit agreed with RSPA's determination that the potential "great expense and delay" in meeting State requirements for information and documentation, beyond that in the HMR, amounted to "an obstacle to the accomplishment or execution of those requirements." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, above, 909 F.2d at 358, 359 (approving IR–19, 52 FR 24404, June 30, 1987, and decision on appeal, 53 FR 11600, April 7, 1988).

These two Court of Appeals decisions show that RSPA may properly look to the absence of a particular requirement in the HMR in determining the "goals and purposes" of the HMTA. Moreover, in holding that a requirement to provide proof of the insurance required by 49 CFR part 387 is preempted, the *Harmon* decision virtually compels the finding that a requirement to establish and prove financial responsibility beyond that required by 49 CFR part 387 is also preempted.

The reasoning behind RSPA's ruling in IR–25 remains applicable to CWTI's petition, notwithstanding differences pointed out by Mass-DEP. The *Harmon* and *Southern Pacific* cases involved State regulations, as did IR–10 and IR–15. The 50 States, plus the District of Columbia and other territories and possessions defined as "States" in the HMTA, 49 App. U.S.C. 1802(14), are more than sufficient to create "multiple and conflicting" requirements that would frustrate the HMTA's goal of uniformity. The fact that these three States' bonding requirements apply only to hazardous wastes being picked up or delivered within each State does not prevent the potential for expense and delay associated with meeting these requirements, as well as the diversion of traffic to other States when the hazardous waste transporter cannot or does not post the required bond. To the extent that these States' bonding requirements cover "contingencies which insurance does not," as Mass-DEP asserts (but CWTI disputes in part), that difference is merely additional proof that these non-Federal requirements exceed what RSPA has found to be sufficient in 49 CFR part 387.

Mass-DEP's assertion that IR–25 was decided under a "different preemption standard," is not correct. RSPA's ruling in IR–25, while advisory, was based on the "obstacle" test which was specifically incorporated into the HMTA in the 1990 amendments. It was not "made in part on dormant Commerce Clause grounds," as Mass-DEP argues. The "procedural safeguards" which apply to CWTI's petition here, see 49 App. U.S.C. 1811(c)(1) and 49 CFR 107.201–107.211, are virtually identical to the procedures which applied to RSPA's consideration of the local ordinance in IR–25. Mass-DEP has not shown that any "more thorough analysis of the facts and law" justifies a different finding than set forth in IR–25, or that the prior ruling "is unpersuasive and unreliable."

While these State bonding requirements appear to impose substantial costs on transporters of hazardous wastes, such costs cannot be considered a State "fee" authorized by 49 App. U.S.C. 1811(b). Any sums which a transporter pays for a surety bond, a letter of credit, or cash or negotiable securities placed on deposit, are separate and apart from fees paid for a license or permit itself.

The bonding requirements of Maryland, Massachusetts and Pennsylvania create an obstacle to the accomplishment and execution of the HMTA and the HMR and, accordingly, are preempted by the HMTA under 49 App. U.S.C. 1811(a)(2).

C. Effect of EPA-Authorized State Hazardous Waste Plan

Mass-DEP also argues that the State's bonding requirement is part of the Massachusetts hazardous waste program authorized by EPA under RCRA and, therefore, is not preempted by the HMTA because it is "otherwise authorized by Federal law." 49 App. U.S.C. 1811(a). This argument is considered with respect to the Maryland and Pennsylvania bonding requirements as well, since those States also have EPA-authorized hazardous waste programs.

RCRA provides for EPA to issue "regulations requiring each person

owning or operating a facility for the treatment, storage or disposal of hazardous waste identified or listed under this subtitle (RCRA, title II, subtitle C, 42 U.S.C. 6921 *et seq.*), to have a permit * * *" 42 U.S.C. 6925(a). In addition, the EPA Administrator may authorize a State to carry out its own hazardous waste program "in lieu of the Federal program under this subtitle in such State and to issue and enforce permits for the storage, treatment and disposal of hazardous wastes * * *" 42 U.S.C. 6926(b).

To be so authorized, a State hazardous waste program must be "equivalent to the Federal program under this subtitle, * * * consistent with the Federal or State programs applicable in other States, * * * [and] provide adequate enforcement of compliance with the requirements of this subtitle." Id. "Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subtitle." 42 U.S.C. 6926(d).

RCRA does not prohibit any State from imposing requirements which are more stringent than those imposed by EPA regulations. See 42 U.S.C. 6929. EPA regulations further provide that a State may operate a State program that has a greater scope of coverage than required by Federal law, but the additional coverage is not part of the Federally-approved program. 40 CFR 271.1(i)(2).

Also within subtitle C of RCRA is the authorization for EPA to "promulgate regulations * * * applicable to transporters of hazardous waste * * *," subject to the limitation that any such regulations "shall be consistent with the requirements of [the Hazardous Materials Transportation] Act and the regulations thereunder." 42 U.S.C. 6923(a), (b).

EPA has promulgated regulations at 40 CFR part 263 which require that a transporter obtain an EPA identification number, comply with manifest requirements, and take immediate action to protect human health and the environment if a discharge of hazardous waste occurs during transportation. EPA regulations do not impose bonding requirements on transporters, nor do they require a transporter of hazardous wastes to obtain a permit, unless the transporter is also operating a storage facility. See 40 CFR 263.12, 270.1(c)(2)(vii); see also 40 CFR 262.34 (temporary storage by generators prior to transportation). Mass-DEP has not rebutted industry comments that the State bonding requirements at issue here may violate the mandate, in 42 U.S.C. 6926(b) and 40 CFR 271.4, that a State hazardous waste program be consistent with the Federal RCRA program.

EPA has recently clarified that its authorization of a State hazardous waste program does not resolve issues of HMTA preemption of non-Federal requirements. In granting final authorization to California's hazardous waste program, EPA stated:

> [I]f there are preemption issues under other Federal laws, they do not affect the State's RCRA authorization. In addition, EPA does not believe that an individual State's authorization application is the appropriate forum to resolve problems which clearly affect a large number of states. * * * [A] process is already in place intended to address the problem pursuant to the HMTUSA.

California, Final Authorization of State Hazardous Waste Management Program, 57 FR 32726, 32728 (July 23, 1992).

In sum, EPA's review of a State hazardous waste program, as part of the authorization process, provides neither the forum for consideration of HMTA preemption issues nor the specific Federal authorization that will preclude HMTA preemption of these States' bonding requirements. EPA bears responsibility for ensuring that its hazardous waste transportation standards, in 40 CFR part 263, are consistent with DOT's regulations under the HMR. However, EPA does not review State regulations that go beyond the part 263 standards for consistency with the HMTA and the HMR. Such review remains within the purview of DOT and its procedures under the HMTA.

The Maryland, Massachusetts, and Pennsylvania bonding requirements for transporters of hazardous wastes are not "otherwise authorized by Federal law," within the meaning of 49 App. U.S.C. 1811(a), because there has not been any specific authorization of those State requirements. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

V. Ruling

To the extent that they impose bonding requirements on transporters of hazardous wastes regulated by the HMR, the following State laws and regulations are preempted by the HMTA, 49 App. U.S.C. 1811(a)(2), because they create an obstacle to the accomplishment and execution of the HMTA and the HMR, and they are not "otherwise authorized by Federal law":

Maryland: Md. Code Ann., Environment section 7–252(a)(1) and COMAR 26.13.04.04;

Massachusetts: 310 CMR 30.411; and

Pennsylvania: 35 Pa. Stat. Ann. section 6018.505(e) and 25 Pa. Code section 263.32.

VI. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC, on December 4, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 7, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0531.
Form Number: IRS Form 706NA.
Type of Review: Extension.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of a Nonresident Not a Citizen of the United States.

Description: Under section 6018, executors must file estate tax returns or nonresident noncitizens who had property in the U.S. Executors use Form 706NA for this purpose. IRS uses the information to determine correct tax and credits.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 300.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hour, 38 minutes.

Learning about the law or the form—30 minutes.

Preparing the form—1 hour, 46 minutes.

Copying, assembling, and sending the form to the IRS—41 minutes.

Frequency of Response: On occasion. (Generally, form is only filed once).

Estimated Total Reporting/Recordkeeping Burden: 1,295 hours.

OMB Number: 1545–0704.

Form Number: IRS Form 5471 and Schedules M, N, and O.

Type of Review: Revision.

Title: Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

Description: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035 and 6046 and the regulations thereunder pertaining to the involvement of U.S. person with foreign corporations.

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 88,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/sched.	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
5471	78 hrs., 41 min	24 hrs., 20 min	30 hrs., 18 min.
Sched. M	26 hrs., 33 min	18 min	44 min.
Sched. N	8 hrs., 22 min	3 hrs., 35 min	3 hrs., 52 min.
Sched. O	10 hrs., 46 min	12 min	23 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,846,545 hours.

OMB Number: 1545–1155.

Regulation ID Number: PS–74–89 (T.D. 8282) Final.

Type of Review: Extension.

Title: Election of Reduced Research Credit.

Description: These regulations prescribe the procedure for making the election described in section 280C(c)(3) of the Internal Revenue Code. Taxpayers making this election must reduce their section 41(a) research credit, but are not required to reduce their deductions for qualified research expenses, as required in paragraphs (1) and (2) of section 280C(c).

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–30135 Filed 12–10–92; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

DATE AND TIME: December 17, 1992, 9:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: FERC and State Public Utility Commissioners will discuss issues concerning the implementation of Order No. 636.

CONTACT PERSON FOR MORE INFORMATION: Judy Moesta or Jackie Flora, Division of Public and Intergovernmental Affairs, Telephone (202) 208–1088.

Dated: December 8, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30267 Filed 12–9–11:50 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 15, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Procurement of additional disk storage.

Memorandum and resolution re: Revisions to the Corporation's delegations of authority with respect to regulation and supervision expenditures.

Discussion Agenda

Memorandum re: Review of the Corporation's 1993 Business Plan.

Memorandum and resolution re: Proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would implement a permanent risk-related premium system.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 – 17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–30220 Filed 12–9–92; 9:16 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, December 15, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B, and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)((8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Matters relating to the Corporation's corporate activities.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–30221 Filed 12–9–92; 9:16 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, December 8, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr. and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memoradum re: Modification of contract with AT&T for enhancements to the new wide area network.

Memorandum re: Management Education Curriculum Project: Recommendation for Award of Contract.

By the same majority vote, the Board determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

The Board also determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven day's notice to the public, of the following matters:

Memordanum and resolution re: Proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would require insured state banks to obtain the prior consent of the Corporation before directly, or indirectly through a subsidiary, engaging "as principal" in any activity that is not permissible for a national bank.

Memorandum and resolution re: Proposed amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which would eliminate section 333.3 which makes certain prohibitions applicable to state chartered savings associations to state banks that are members of the Savings Association Insurance Fund.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations, which would eliminate Part 332, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law."

By the same majority vote, the Board further determined that no notice of these changes in the subject matter of the meeting earlier than December 2, 1992, was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30257 Filed 12–9–92; 11:15 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2), notice is hereby given that at its closed meeting held at 10:38 a.m. on Tuesday, December 8, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Matters relating to the Corporation's corporate activities.

Application of Devon Bank, Chicago, Illinois, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Deerbrook State Bank, Deerfield, Illinois, and for consent to establish a temporary branch until a permanent branch is established at 70 South Waukegan Road, Deerfield, Illinois.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30258 Filed 12–9–92; 11:15 am]

BILLING CODE 6714–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m., December 21, 1992.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Survey of Federal Retirement Thrift Savings Plan Inactive Accounts and Proposed Abandoned Account Policies at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

4. Review of Hewitt Associates "Defined Contribution Outsourcing Feasibility Study."
5. Ethics briefing.
6. Executive Director's compensation.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: December 9, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–30315 Filed 12–9–92; 2:14 pm]

BILLING CODE 6760–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, December 16, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of proposed criteria for sponsoring Telecommunications Service Priority (TSP) assignments.
2. Cost of Federal Reserve notes in 1993.
3. Proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) to implement amendments contained in the Housing and Community Development Act of 1992.
4. Implementation of section 7(h)(1) of the International Banking Act: Activities of State-Licensed Branches and Agencies.

Discussion Agenda

5. Implementation of section 7(e)(7) of the International Banking Act: Guidelines for Foreign Banks.
6. Proposed 1993 Federal Reserve Bank budgets.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30255 Filed 12–9–92; 11:14 am]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, December 16, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserves Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
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. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30256 Filed 12–9–92; 11:14 am]

BILLING CODE 6210–01–M

Corrections

Federal Register

Vol. 57, No. 239

Friday, December 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

Correction

In notice document 92–28835 beginning on page 56575 in the issue of Monday, November 30, 1992, make the following correction: On page 56575, in the third column, in the 15th paragraph, "FERC–508" should read "FERC–585".

BILLING CODE 1505–01–D

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB34

Loan Policies and Operations; Collateral Evaluation Requirements, Actions on Applications, and Review of Credit Decisions

Correction

In rule document 92–27961 beginning on page 54683 in the issue of Friday, November 20, 1992, make the following corrections:

1. On page 54684, in the 2d column, under **I. General**, in the 1st paragraph, in the 21st line, "54" should read "56".

2. On page 54687, in the second column, in the first full paragraph, in the eighth line, "evaluation" should read "evaluations".

3. On page 54690, in the second column, in the third full paragraph, in the fifth line, "encourage" should read "encouraged".

§ 614.4245 [Corrected]

4. On page 54696, in the third column, in § 614.4245(a), in the third line, "leading" should read "lending".

§ 614.4265 [Corrected]

5. On page 54698, in the second column, in § 614.4265(b), in the fourth line, after "comparison" insert "approach".

§ 614.4440 [Corrected]

6. On page 54699, in the first column, in § 614.4440(f), the ninth line should follow immediately after "evaluated".

BILLING CODE 1505–01–D

FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting

Correction

In notice document 92–29630 appearing on page 57530 in the issue of Friday, December 4, 1992, in the third column, at the end of the document, the FR Doc. line should read as set forth below:

[FR Doc. 92–29630 Filed 12–2–92; 2:53pm]

BILLING CODE 4410–01–M

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Implementation of Provisions of the Ryan White CARE Act Regarding Emergency Response Employees

Correction

In notice document 92–28206 beginning on page 54794 in the issue of Friday, November 20, 1992, make the following corrections:

1. On page 54794, in the second column, in the **DATES:**, in the second line, "January 19, 1992." should read "January 19, 1993."

2. On page 54795, in the first column, under the definition "*Emergency response employees*", in the ninth line, "normal" should read "nominal".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 159 (Rev.4)]

Delegation of Authority

Correction

In notice document 92–22684 appearing on page 43286 in the issue of Friday, September 18, 1992, make the following correction in the second column, in paragraph c., in the last line, after "ERISA", insert "section".

BILLING CODE 1505–01–D

federal register

Friday
December 11, 1992

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92

Home Investment Partnerships Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-92-1608; FR-3242-I-02]

RIN 2501-AB42

Home Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements recent statutory amendments concerning insular areas participating in the HOME Investment Partnerships Program. The rule provides the formula for determining allocations to insular areas (Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa). It also provides other requirements for the insular area component of the Program.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013.

II. Background

This interim rule implements section 211 of the Housing and Community Development Act of 1992. (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), which amended the National Affordable Housing Act (NAHA) to provide for reserving a portion of HOME funds for grants to insular areas. Section 104 of NAHA, as amended, defines "insular areas" to mean Guam, the Commonwealth of the Northern Mariana Islands (CNMI), the United States Virgin Islands, and American Samoa.

A proposed rule to implement the HOME program for the insular areas was published on August 5, 1992 (57 FR 34640). Although the Department had determined, in accordance with 24 CFR 10.1, that it would be in the public interest to omit public comment on this rule because a formula allocation for insular areas must be in place by the time of the 1993 Fiscal Year (FY) appropriation for the HOME Program, it was not necessary to omit a comment period altogether in order to promulgate an effective rule in time for FY 1993. To give interested parties an opportunity to comment before putting a rule into effect, a comment period of 30 days was permitted.

Comments were received from three of the insular areas: the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and American Samoa. In addition, on August 21, 1992, a meeting was held at the Department's Honolulu Office with HOME Coordinators from the insular areas of Guam, CNMI, and American Samoa to discuss and comment on the proposed rule. The following issues were identified by the comments and meeting:

The comments urged that a final rule be promulgated as quickly as possible in time for FY 1993 funding. The Department agrees that a rule must be in effect for FY 1993 purposes. However, this rule will be made effective as an interim rule rather than a final rule. This is because the HOME Investment Partnerships Program, which this rule amends, is currently implemented by an interim rule, published on December 6, 1991 (56 FR 65313). Because comments have already been received and considered for this rule, in accordance with the procedure explained above, comments are not being solicited here as they ordinarily are for interim rules. At the time that the rule for the entire HOME program is made final, the sections of it that deal with insular areas will also be made final.

Several of the comments pointed out that because of differences in the way land is held in some of the insular areas, the definition of "Homeownership" at § 92.2 would have to be amended for the HOME program to be effective. For example, leases are limited to 55 years in both CNMI and American Samoa. Guam has no lease limitations. In American Samoa, 97 percent of the land is communally held, and therefore residents cannot own land on a fee-simple basis; the only basis for homeownership would be on a lease basis.

It is claimed that problems arise in this regard because "Homeownership" is currently defined, in pertinent part, as, "ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD." For this reason, "Homeownership" will be redefined in this interim rule to include a lease of 40 years or more in the insular areas. This approach is consistent with FHA mortgage insurance requirements, which permit mortgage insurance for leases if the term of the lease is not less than ten years beyond the maturity date of the mortgage.

Several suggestions concerning the funding allocation formula for the insular areas at § 92.50(b)(3) of the proposed rule were made in the comments. That formula was based on section 1 of Pub. L. 102-230, which provided that the Secretary shall reserve for grants to the insular areas an amount that reflects their share of the total population of eligible jurisdictions, and any adjustments that the Secretary determines are reasonable in light of available data that are related to the statutory factors for the basic formula allocation to States and to units of general local government that are metropolitan areas, urban counties, and consortia.

The use of the number of rental units as a part of the allocation formula was criticized by the comments because some insular areas have only recently been producing rental units for the general population and have a limited stock. It was also recommended that the number of households paying more than 30% of their gross income for shelter be used as a factor in the allocation formula. Some comments recommended that the allocation formula should take into account the need for HOME assistance and the unique social and cultural factors present in the insular areas.

The discussion of the Department's proposed funding allocation formula for insular areas has been rendered moot by the recent legislative amendments made to the allocation formula by section 211 of HCDA 1992. The new statutory formula requires the greater of $750,000 or 0.2 percent of HOME funds appropriated to be provided for insular areas, and this rule at § 92.50(b)(3) has been amended accordingly.

Although the formula for allocating funds to the insular areas is changed in this interim rule, number of rental units will continue to be used as a part of the formula for allocating HOME funds among the insular areas. The Department has determined not to make any changes at this time in this allocation formula. As stated in the preamble of the proposed rule, the Department has used share of occupied rental housing as a measure of need based on rental occupancy data. Four of the six formula allocation factors used in determining relative need (see 24 CFR 92.50) are measures of subsets of

occupied rental housing. The Department's experience indicates that there is a reasonably close correspondence between the relative need determined by using these factors, and the relative need determined by using share of occupied rental household. However, these allocation issues will continue to receive consideration as the Department gains experience in administering the HOME program. They will also be considered as a part of an allocation formula study of the entire HOME program that will be performed by the Department this coming year.

The definition in § 92.2 of "unit of general local government" has also been amended to conform to the amendments made by section 211 of HCDA 1992.

Comments also focused on the program requirements, imposed by the proposed rule on insular areas, which differed from those applicable to participating jurisdictions. Comments were received on the provisions at § 92.60(c) that made funding allocations contingent on previous HUD audit findings and outstanding monetary obligations. The concerns expressed on this issue were similar to those made regarding the specific program description requirements of § 92.61(b), the requirement at § 92.62(a) that the program description must be consistent with the approved housing strategy, and the program description amendment procedures of § 92.63, in asking why these requirements were imposed on insular areas but not on participating jurisdictions.

The Department believes that, based on its experience, these provisions provide an appropriate control mechanism for the allocation of program funds to insular areas. This rule represents a considered balancing of options in which some requirements applicable to participating jurisdictions, such as those relating to matching funds or the prohibition on using program funds for administration, are removed, and others, such as those under discussion here, are added. Of course, like other aspects of the rule, these issues will be reexamined at the time that a final rule is promulgated.

With regard to the program description requirements, there was also concern that the 60 days permitted for submission in the proposed rule was insufficient. This interim rule amends § 92.61(a) to permit an additional 30 days for the program description submission.

One comment also requested that the percent of HOME funds that may be used for administration be increased to 20 percent. The Department believes that the 15 percent limit included in the proposed rule, which is the same percentage permitted only for the Indian HOME program (participating jurisdictions may not use any program funds for administration), strikes an appropriate balance between making funds available for administrative purposes while ensuring that the program's housing purposes, which are paramount, are maximized.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because only the four statutorily defined "insular areas" are affected by this rule.

Regulatory Agenda

This rule was listed as item 1370 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have federalism implications concerning the division of local, state, and federal responsibilities. The rule affects the four Federal territories included within the term "insular areas."

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects in 24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends part 92 of title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. In part 92, the authority citation continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.2, the definitions of *homeownership* and *unit of general local government* are revised, and the newly defined term *insular areas* is added, to read as follows:

§ 92.2 Definitions.

* * * * *

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the

participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest. For purposes of the insular areas, homeownership includes leases of 40 years or more.

* * * * *

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

* * * * *

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; the Federal States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

* * * * *

3. The heading for subpart B is revised and an undesignated heading is added immediately after the heading for subpart B, to read as follows:

Subpart B—Allocation Formula and Insular Areas Program Allocation Formula

4. In § 92.50, paragraph (b) is revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(b) *Amounts available for allocation; state and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving:

(1) For grants to Indian tribes, one percent (or such other percentage or amount, as authorized by Congress) of the total funds appropriated;

(2) Up to such amounts as may be authorized by law for housing education and organization support and for coordinated federal support activities; and

(3) For allocations to insular areas, an amount that is the greater of $750,000 or 0.2 percent of the total funds appropriated.

* * * * *

5. At the end of subpart B, an undesignated heading and new §§ 92.60 through 92.66 are added, to read as follows:

Subpart B—Allocation Formula and Insular Areas Program

Insular Areas Program

92.60 Allocation amounts for insular areas.
92.61 Program description and housing strategy.
92.62 Review of program description and certifications.
92.63 Amendments to program description.
92.64 Applicability of requirements to insular areas.
92.65 Funding sanctions.
92.66 Reallocation.

§ 92.60 Allocation amounts for insular areas.

(a) *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.

(b) *Threshold requirements.* The responsible HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and pertinent regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established and agreed to. This restriction does not apply if the Field Office manager finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.

(d) *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular area in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated to the states as provided in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.

(e) *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation that HUD has determined for the insular area in accordance with this section.

§ 92.61 Program description and housing strategy.

(a) *Submission requirement.* Not later than 90 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description to HUD containing the information described in paragraph (b) of this section.

(b) *Content of program description.* The program description must provide the following information:

(1) An executed Standard Form 424;

(2) The estimated use of HOME funds (consistent with needs identified in its approved housing strategy) and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, households assisted;

(3) A timetable for the implementation of the projects or eligible activities;

(4) If the insular area intends to use HOME funds for first-time homebuyers, the guidelines for resale, as required in § 92.254(a)(4);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211;

(6) If an insular area intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment;

(7) A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under §§ 92.350 and 92.351, respectively.

(c) The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(2) If the insular area intends to provide tenant-based assistance, the certification required by § 92.211;

(3) A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(5) A certification that the insular area will use HOME funds pursuant to the insular area's approved housing strategy and in compliance with all requirements of this part;

(6) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

(8) A certification that the insular area agrees to assist HUD to comply with 24 CFR part 50 and shall:

(i) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such program activities with respect to any eligible property, until HUD approval is received.

(Approved by the Office of Management and Budget under control number 2501–0013)

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless it is not consistent with the insular area's approved housing strategy, or if the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the information submitted is not consistent with the approved housing strategy, or the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* The HUD Field Office will notify the insular area if its program description is not consistent with its approved housing strategy, or determinations cannot be made under § 92.61 (b)(4), (b)(6), or (b)(7), or if the proposed projects or activities are beyond currently demonstrated capability, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the proposed projects or activities in its program description.

(c) *HOME Investment Partnership Agreement.* After Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement in accordance with this section and § 92.501.

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes during the fiscal year and must document any other changes in its file. A substantial change involves a change in the guidelines for resale (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)), or a change in tenure type of the project or activities, or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, is not consistent with its approved housing strategy, or determinations cannot be made under § 92.61(b) (b)(4), (b)(6), or (b)(7), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of requirements to insular areas.

(a) Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following.

(1) Subpart E (Program Requirements): Sections 92.208 through 210 do not apply. The prohibition, in § 92.214(a) against using HOME funds to defray administrative cost does not apply, and in addition to the costs listed in § 92.206, administrative costs of an insular area not to exceed 15 percent of the HOME funds provided to the insular area are eligible costs. The matching contribution requirements in §§ 92.218 through 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury for each insular area and the HOME funds must be used for approved activities. A local account must be established for repayment, interest and other return of investment of HOME funds. Each insular area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(B) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Cash and Management Information System) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and compliance with Treasury Circular No. 1075 (31 CFR part 205) is required.

(iii) Section 92.503 (Repayment of investment) applies, except that repayments, interest and other return on investment of HOME funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; monitoring) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(6) Subpart L (Performance Reviews and Sanctions): Section 92.522 does not apply. Instead, § 92.65 applies.

(b) The requirement of subpart H (Other Federal Requirements) of this part apply as follows: § 92.352 Environmental review and § 92.359 Executive Order 12372 apply as written, and the requirements of the remaining sections which apply to participating jurisdictions are applicable to the insular areas. In addition, an insular area must advise HUD when it proposes specific properties to be used in its program, and HUD will perform an environmental review with respect to those properties in accordance with 24 CFR part 50. The insular area will supply HUD with available, relevant information necessary for that review, will carry out mitigating measures required by HUD or select alternate eligible property, and will not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to these program activities with respect to any eligible property, until HUD approval is received.

(c) Subpart B (Allocation Formula), subpart C (Participating Jurisdiction: Designation and Revocation of Designation—Consortia), subpart D (Program Description), and subpart G (Community Housing Development Organizations) of this part do not apply.

§ 92.65 Funding sanctions.

Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 92.551 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

§ 92.66 Reallocation.

HUD will reallocate to the states any HOME funds reduced or recaptured from an insular area, and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.

(Approved by the Office of Management and Budget under control number 2501–0013)

Dated: December 3, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–29941 Filed 12–10–92; 8:45 am]

BILLING CODE 4210–32–M

federal register

Friday
December 11, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Gaming Compact Between the Three Affiliated Tribes and the State of North Dakota, which was enacted on October 7, 1992.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: December 3, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–30079 Filed 12–10–92; 8:45 am]

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federal register

Friday
December 11, 1992

Part IV

Department of the Interior

Bureau of Indian Affairs

Petition for Federal Acknowledgment of Existence as an Indian Tribe; Waccamaw-Siouan Indian Association; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Waccamaw-Siouan Indian Assoc.

November 27, 1992.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Waccamaw-Siouan Indian Association, of South Carolina, Inc., 1110 28th Avenue South, Myrtle Beach, South Carolina 29582,

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 16, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–30080 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Friday
December 11, 1992

Part V

Department of Energy

Strategic Petroleum Reserve; Standard Sales Provisions; Notice

DEPARTMENT OF ENERGY

Strategic Petroleum Reserve; Standard Sales Provisions

AGENCY: Office of Strategic Petroleum Reserve.

ACTION: Notice.

SUMMARY: In the event of a severe energy supply interruption or in order to meet obligations of the United States under the Agreement on an International Energy Program (IEP), the Department of Energy (DOE) may draw down from the Strategic Petroleum Reserve (SPR) and conduct a price competitive sale of SPR petroleum under the Energy Policy and Conservation Act, as amended. 42 U.S.C. 6201 et seq. Today, DOE is publishing Standard Sales Provisions (SSPs) which may be attached to a Notice of Sale issued pursuant to SPR implementing regulations. The SSPs contain or describe contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be used in connection with future sales. Today's version is based on experience gained in the late 1990 Test Sale and the 1991 drawdown during "Operation Desert Storm." DOE reserves the option of revising the SSPs at any time prior to issuance of a Notice of Sale.

FOR FURTHER INFORMATION CONTACT:

Nancy Marland, FE–422, Strategic Petroleum Reserve, Office of Technical Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4691.

Gary Landry, FE–4451, Strategic Petroleum Reserve Project Management Office, Acquisition and Sales Division, U.S. Department of Energy, 900 East Commerce Road, New Orleans, Louisiana 70123, (504) 734–4660.

Jocelyn Guarisco, FE–441, Strategic Petroleum Reserve Project Management Office, Office of Chief Counsel, U.S. Department of Energy, 900 East Commerce Road, New Orleans, Louisiana 70123, (504) 734–4294.

Issued in Washington, DC, November 30, 1992.

Berton J. Roth,

Deputy Director, Office of Procurement, Assistance and Program Management.

Until further notice, the SSPs for price competitive sales of petroleum from the SPR are as follows:

STANDARD SALES PROVISIONS

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Section A—General Pre-Sale Information

A.1 List of Abbreviations

(a) *ASO:* Apparently Successful Offeror
(b) *DLI:* Delivery Line Item
(c) *DOE:* U.S. Department of Energy
(d) *MLI:* Master Line Item
(e) *NA:* Notice of Acceptance
(f) *NS:* Notice of Sale
(g) *SSPs:* Standard Sales Provisions
(h) *SPR:* Strategic Petroleum Reserve
(i) *SPRCODR:* SPR Crude Oil Delivery Report (Exhibit H)
(j) *SPR/PMO:* Strategic Petroleum Reserve/Project Management Office

A.2. Definitions

(a) *Affiliate.* The term "affiliate" means associated business concerns of individuals if, directly or indirectly, (1) either one controls or can control the

other, or (2) a third party controls or can control both.

(b) *Business Day.* The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.

(c) *Contract.* The term "contract" means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

(d) *Contracting Officer.* The term "Contracting Officer" means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) *Government.* The term "Government", unless otherwise indicated in the text, means the United States Government.

(f) *Head of the Contracting Activity.* The term "Head of the Contracting Activity" means Project Manager, Strategic Petroleum Reserve Project Management Office.

(g) *Notice of Acceptance (NA).* The term "Notice of Acceptance" means the document that is sent by DOE to accept the purchaser's offer to create a contract.

(h) *Notification of Apparently Successful Offeror (ASO).* The term "notification of apparently successful offeror" means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

(i) *Notice of Sale (NS).* The term "Notice of Sale" means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information. (See Exhibit B, Sample Notice of Sale)

(j) *Offeror.* The term "offeror" means any person or entity (including a government agency) that submits an offer in response to a NS.

(k) *Petroleum.* The term "petroleum" means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(l) *Project Management Office (SPR/PMO).* The term "Project Management Office" means the DOE personnel and DOE contractors located in New Orleans, Louisiana responsible for the operation of the SPR.

(m) *Purchaser.* The term "purchaser" means any person or entity (including a government agency) that enters into a contract with DOE to purchase SPR petroleum.

(n) *Standard Sales Provisions (SSPs).* The term "Standard Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the "standard sales agreement" referenced in the Strategic Petroleum Reserve "Drawdown" (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

(o) *Strategic Petroleum Reserve (SPR).* The term "Strategic Petroleum Reserve" means that DOE program established by title I, part B of the Energy Policy and Conservation Act, 42 U.S.C. 6201, *et seq.*

(p) *Vessel.* The term "vessel" means a tankship, an integrated tug-barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale. (See Exhibit B, Sample Notice of Sale)

(b) All offerors must, as part of their offers for SPR petroleum in response to a NS, agree without exception to all sales provisions of that NS. The Government will not award a contract to an offeror that has failed to so agree. Offerors shall indicate their agreement by signing the Sales Offer Form (Exhibit A) or an offer form printed out by a computerized system from a diskette provided by the Government.

A.4 Periodic Revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the **Federal Register,** with any revisions. When a NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register.** Interested persons may obtain a copy of the current SSPs by writing to the address set forth in Provision No. A.5.

A.5 Sales Offerors' Mailing List

(a) The SPR/PMO will maintain a list of those potential offerors that wish to receive a NS whenever one is issued. In order to assure that prospective offerors will receive the NS or offer forms in a timely fashion, all potential offerors are encouraged to submit the information in (d) as soon as possible. A NS may be issued with a week or less allowed for the receipt of offers. While DOE will use its best efforts to timely supply copies of the NS to persons not on the list who request the NS at the time an SPR petroleum sale is announced, this may not always be feasible in light of the short amount of time available before offers must be received.

(b) Any firm or individual may request to be on the list by sending the following information by letter, telex, telephone or facsimile to: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123. Telephone Number (504) 734–4660; Telex 8109516267 CHODT; Facsimile (504) 734–4947.

The envelope should be marked "SPR Sales Offerors' Mailing List."

(c) Copies of the SSPs and the NS, when one is issued, may also be obtained from this address.

(d) A request to be placed on the mailing list should include the following information:

Name of firm
Mailing address (Street and P.O. Box)
City, State, Zip Code
Name of authorized agent and alternate authorized agent
Telephone numbers for agent and alternate including area code
Agent address, if different from firm represented
Telex number/code
Telephone number for facsimile transmission, including area code
Telephone number for verification of message receipt, including area code
Dun's number

As DOE may use express mail, which cannot be delivered to a Post Office Box, failure to provide a street address could result in untimely receipt of the NS and will be at the offeror's risk.

A.6 Publicizing the Notice of Sale

(a) The NS will be sent to names on the Sales Offerors' Mailing List

referenced in Provision No. A.5. Interested persons may send a representative to the address in Provision No. A.5 to obtain a copy of the NS.

(b) In addition to those on the Sales Offerors' Mailing List, the NS will also be sent to anyone requesting it when a sale is announced. Firms may request the NS by telephone or in writing (letter, telex or facsimile) to the telephone number or address in Provision No. A.5 above.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

(d) At the option of the Contracting Officer, advertisements may be placed in publications likely to reach interested parties. The advertisements will contain the salient features of the NS and a name and telephone number at the SPR/PMO to call for further information.

A.7 Penalty for False Statements in Offers to Buy SPR Petroleum

A penalty for making false statements is imposed in the False Statements Act, 18 U.S.C. 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Section B—Sales Solicitation Provisions

B.1 Requirements for a Valid Offer—Caution to Offerors

A valid offer to purchase SPR petroleum must meet the following conditions:

(a) The offer guarantee (see Provision No. B.11) must be received no later than the time set for the receipt of offers;

(b) The offer must include a completed Sales Offer Form, i.e., Exhibit A or other form generated by a personal computer disk supplied by DOE for submitting offers, and signed Standard Form 33 (Exhibit C) or other forms as specified in the NS;

(c) The offer must be received no later than the time set for receipt of offers;

(d) Any amendments to the NS that explicitly require acknowledgment of receipt must be properly acknowledged as provided for on Exhibit C; and

(e) The offeror must agree without exception to all provisions of the SSPs that the NS makes applicable to a particular sale, as well as to all provisions in the NS.

B.2 Price Indexing

The Government, at its discretion, may make use of a price indexing mechanism to effect contract price adjustments based on petroleum market conditions, e.g., crude oil market price changes between the times of offer price submissions and physical deliveries. The NS will set forth the provisions applicable to any such mechanism.

B.3 Certification of Independent Price Determination

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to: (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the signatory has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; (ii) as their agent does hereby so certify; and (iii) as their agent has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) An offer will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. If the offeror deletes or modifies (a)(2) above, the offeror must furnish with the offer a signed statement setting forth in detail the circumstances of the disclosure.

B.4 Requirements for Vessels—Caution to Offerors

(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin Islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning Reception Facility Requirements for Waste Materials Retained on Board (33 CFR parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibits any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (see Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes, all costs for which will be borne by the vessel. The terminals, however, may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for and

be responsible for all costs associated with appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals that lack reception facilities for oily ballast.

(c) By submission of an offer, the offeror certifies that it will comply with the "Jones Act" and all applicable ballast disposal requirements.

B.5 "Superfund" Tax on SPR Petroleum—Caution to Offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code, which imposed a tax on domestic and imported petroleum to support the Hazardous Substance Response Fund (the "Superfund"), were revised by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499; and the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509; the Steel Trade Liberalization Program Implementation Act, Public Law 101–221; and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239. As amended, these sections impose taxes to finance the Hazardous Substance Superfund and the Oil Spill Liability Trust Fund ("Trust Fund").

(b) Section 4611 imposes taxes on domestic crude oil and on imported crude oil to support the Superfund and the Trust Fund. The taxes are imposed on (1) crude oil received at a United States refinery and (2) petroleum products (including crude oil) entered into the United States for consumption, use, or warehousing. Section 4612 provides that no tax is imposed if it is established that a prior tax imposed by section 4611 has already been paid with respect to a barrel of oil. Additionally, as determined by the Secretary of Treasury, the Hazardous Substance Superfund tax and the Oil Spill Liability Trust Fund tax may not be imposed during certain periods when the unobligated balances of the funds reach particular statutorily-prescribed levels.

(c) DOE has already paid the Superfund and Trust Fund taxes on some of the oil imported and stored in the SPR. However, no Superfund or Trust Fund tax has been paid on imported oil stored prior to the effective dates of these Acts or on any domestic oil stored in the SPR. Because domestic and imported crude oil for which no taxes have been paid and crude oils for which Superfund and Trust Fund taxes have been paid have been commingled in the SPR, upon drawdown of the SPR, the NS will advise purchasers of the tax liability.

B.6 Export Limitations and Licensing—Caution to Offerors

(a) Offerors for SPR petroleum are put on notice that SPR crude oils subject to different export control laws have been commingled in storage. Export of SPR crude oil is subject to U.S. export control laws, the provisions of which differ depending on the source of the crude oil and the nature of the proposed export transaction. For example, imported crude oil stored in the SPR may be exported pursuant to applicable Department of Commerce "Short Supply Controls," 15 CFR part 777, if: the export is part of a transaction resulting in the importation of refined products of a quantity and quality not less than would be derived from domestic refining; the products are to be sold at prices no higher than the lowest prices at which they could have been sold by the nearest capable U.S. refinery; and for compelling economic or technological reasons beyond the exporter's control, the crude oil cannot reasonably be processed in the U.S. (15 CFR 777.6(d)(1)(vii)). However, there are somewhat more stringent, independent statutory tests to be met as preconditions to the export of certain other crude oils stored in the SPR, including Alaskan North Slope (ANS) and Naval Petroleum Reserves (NPR) oil. See 7(d) of the Export Administration Act of 1979, 50 U.S.C. App. 2406(d) (ANS oil) and 10 U.S.C. 7430(e) (NPR oil); see also 30 U.S.C. 185(u) (oil shipped across a Mineral Lands Leasing Act Section 28(u) right-of-way) and 43 U.S.C. 1354(a) (OCS oil).

(b) The Department of Commerce "Short Supply Controls" also contain special export provisions for the export of crude oil, including certain Alaskan crude oil, to and for consumption in Canada. See 15 CFR 777.6(d)(1) (viii), (x) and 777(f).

(c) Section 10 of Public Law 101–383 (42 U.S.C. 6241C) provides the President discretionary authority to waive the export control laws with regard to SPR crude oil for the purpose of obtaining refined product for the U.S. market.

(d) By submission of an offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

B.7 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all of the pertinent information necessary for the offeror to prepare a priced offer. A NS may be issued with a week or less allowed for the receipt of offers. Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.8 Submission of Offers and Modification of Previously Submitted Offers

(a) Unless otherwise provided in the NS, offers must be submitted to the SPR/PMO in New Orleans, Louisiana, by mail or hand-delivery. Any direct cash deposits as offer guarantees shall be sent by wire in accordance with Provision No. C.26.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn by hand delivery, mail, telegram, or telex, provided that the hand delivery, mail, telegram, or telex is received at the designated office prior to the time specified for receipt of offers.

(c) Envelopes containing offers and any material related to offers shall be plainly marked on the outside; "RE: NS # ____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFERS ARE DUE (insert time of opening), LOCAL NEW ORLEANS, LA TIME ON (insert date of opening). MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE." Envelopes containing modified offers or any material related to supplements or modifications of offers, shall be plainly marked on the outside: "RE: NS # ____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFER MODIFICATION. MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE."

(d) All envelopes shall be marked with the full name and return address of the offeror.

(e) Offers being sent by mail and modifications being sent by hand delivery, mail, telegram, or telex must be received at the address specified in the NS.

(f) Handcarried offers brought during normal business hours on the day set for receipt of offers, or any day prior to that day, shall be taken by the offeror to the place specified in the NS. This includes mail being delivered by a delivery service.

(g) Public opening of offers is not anticipated unless otherwise indicated in the NS. DOE will not release to the general public the identities of the offerors, or their offer quantities and prices, until the Apparently Successful Offerors have been determined. DOE will inform simultaneously all offerors and other interested parties of the successful and unsuccessful offerors and their offer data by means of public "offer posting." The offer posting will

normally occur within a week of receipt of offers and will provide all interested parties access to offer data as well as any DOE changes in the petroleum quantities or quality to be sold. DOE will announce the date, time, and location of the offer posting as soon as practicable.

B.9 Acknowledgment of Amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of receipt, receipt by an offeror must be acknowledged either by (a) signing and returning the amendment; (b) identifying the amendment number and date in the space provided for this purpose on Standard Form 33 (Exhibit C); or (c) letter, telegram, telex or facsimile sent to the address specified in the NS. Such acknowledgment must be received prior to the time specified for receipt of offers.

B.10 Late Offers, Modifications of Offers, and Withdrawal of Offers

(a) Any offer received at the office designated in the NS after the time specified for receipt will be considered only if it is received before award is made and only under the following conditions:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a NS requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); or,

(2) It was sent by mail, telegram or telex if authorized, and it is determined by the Contracting Officer that the late receipt was due solely to mishandling by the SPR/PMO after receipt at the address specified in the NS.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) above, except that it shall be mailed not less than the third calendar day prior to the date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or its authorized representative, provided the representative's identity is made known and the representative signs a receipt for the offer, but only if the withdrawal is made prior to the time set for receipt of offers.

(c) The only acceptable evidence to establish:

(1) The date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on either (i) the envelope or wrapper, or (ii) the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. Postmark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

(2) The time of receipt at the address specified in the NS is the time/date stamp at such address on the offer's wrapper or other documentary evidence of receipt maintained at the place of receipt.

(d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

B.11 Offer Guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified for receipt of offers no later than the time and date set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer.

(c) The amount of each offer guarantee is $10 million or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. To assist in this calculation, instructions and a worksheet are available at Exhibit J. Submission of the worksheet is not desired.

(d) Each offeror must submit one of the following types of offer guarantees with each offer:

(1) A certified check payable to the U.S. Department of Energy, drawn on a U.S. Bank;

(2) A cash wire deposit to the account of the U.S. Treasury in accordance with Provision No. C.26, all wire deposit costs to be borne by the offeror; or

(3) A standby letter of credit from a U.S. depository institution conforming without exception to the contents required by Exhibit F, Offer Standby Letter of Credit, all letter of credit costs to be borne by the offeror. If the standby letter of credit is from a single depository institution (hereinafter referred to as "bank"), including a branch or an agency of a foreign bank, that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant in the Fed's on-line FEDWIRE funds transfer system. If the standby letter of credit is issued by a syndicate of banks, only the institution acting as agent for the syndicate and responsible for honoring the drafts drawn under the letter of credit must maintain a Fed account and be a participant in the on-line FEDWIRE system. DOE reserves the right to request evidence that the bank official signing the letter of credit is authorized to do so, such as a confirming telex, telephone call, or letter from another bank official, or other appropriate evidence as determined by the Contracting Officer.

(e) If the offeror elects to make an offer guarantee by cash wire deposit, the Sales Offer Form shall be annotated with the statement "Offer guarantee made by cash wire deposit." The amount wired shall be annotated on the bottom of the first page of the offer form. In addition, the information identified in Exhibit I, Instruction Guide for Return of Offer Guarantees by Electronic Transfer or Treasury Check, shall be provided with the offer.

(f) If the offeror or bank forwards the letter of credit separately from the offer, the envelope shall clearly be marked "Offer Standby Letter of Credit (Name of Company)" and also marked in accordance with Provision No. B.8(c). Offerors are cautioned that if they provide more than one Offer Standby Letter of Credit for multiple offers and, due to the absence of clear information from the offeror, the Government is unable to identify which Letter of Credit applies to which offer, the Contracting Officer in his sole discretion may assign the Letters of Credit to specific offers.

(g) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) Withdraws its offer within 10 days following the time set for receipt of offers;

(2) Withdraws its offer after having agreed to extend its acceptance period; or

(3) Having received a notification of ASO, fails to furnish an acceptable payment and performance guarantee within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall

not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(h) Letters of credit furnished as offer guarantees must be valid for at least 60 calendar days after the date set for the receipt of offers.

(i) Offer guarantees (except letters of credit) will be returned to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period, except as provided in (j) below, and to a successful offeror upon receipt of a satisfactory payment and performance guarantee. All certified checks will be deposited by the Government. Cash offer guarantees (wire transfer or deposited certified check) will be subsequently returned to unsuccessful offerors via electronic transfer or Treasury check. To facilitate this, offerors submitting guarantees by certified check or wire transfer must provide with their offer the information as delineated in Exhibit I. Letters of credit will be returned only upon request. Where the offer guarantee was a cash wire deposit or a certified check, a successful offeror may apply it toward advance payment.

(j) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.12 Explanation Requests From Offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual at the telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.13 Currency for Offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.14 Language of Offers and Contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.15 Proprietary Data

If any information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so marked is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.16 SPR Crude Oil Streams and Delivery Points

(a) The geographical locations of the terminals and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows, (See also Exhibit D, SPR Crude Oil Stream Characteristics, and Exhibit E, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil stream
Freeport, Texas	Phillips Terminal or Phillips Terminal No. 2 Docks.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour, SPR Bryan Mound Maya.
Texas City, Texas.	ARCO Terminal or ARCO Docks.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour.
Nederland, Texas.	Sun Terminal or Sun Docks.	SPR West Hackberry Sweet, SPR West Hackberry Sour.
Lake Charles, Louisiana.	Texaco 22-Inch/DOE Lake Charles Pipeline Connection.	SPR West Hackberry Sweet, SPR West Hackberry Sour.
St. James, Louisiana.	Capline Terminal, LOCAP Terminal or DOE St. James Terminal Docks.	SPR Weeks Island Sour, SPR Bayou Choctaw Sweet, SPR Bayou Choctaw Sour.

(b) The NS may change delivery points and it may also include additional terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR. Alternatively, DOE or its contractor may provide the transportation to the purchaser's facility, for example, when the petroleum is in transit to the SPR at time of sale.

(c) The NS may contain additional information supplementing Exhibit E, SPR Delivery Point Data.

B.17 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality, and Delivery Method

(a) Unless the NS provides otherwise, the possible master line items (MLI) and delivery line items (DLI) that may be offered are as provided in Exhibit A, SPR Sales Offer Form. Currently, there are eight MLIs in Exhibit A, one for each of the eight crude oil streams that the SPR has in storage. The NS may offer fewer than the eight possible MLIs.

(b) Each MLI contains several DLIs, each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. This is most likely to occur in the first sales period of a drawdown if the period of sale does not correspond to a calendar month.

(1) DLI–A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI–B, DLI–C and DLI–D cover petroleum to be transported by tankships: DLI–B, covering tankships to be loaded from the 1st through the 10th of the month; DLI–C, tankships to be loaded from the 11th through the 20th; and DLI–D, tankships to be loaded from the 21st through the last day of the month.

(3) DLI–E, DLI–F and DLI–G cover petroleum to be transported by barges (Caution: These DLIs are currently only applicable to deliveries of West Hackberry Sweet and Sour crude oil streams from Sun Docks): DLI–E, covering barges to be loaded from the 1st through the 10th of the month; DLI–F, barges to be loaded from the 11th through the 20th; and DLI–G, barges to be loaded from the 21st through the last day of the month.

(4) Where the storage site is connected to more than one terminal or pipeline, additional DLIs will be offered. The additional DLIs will include DLI–H, covering petroleum to be transported by pipeline over the period of a month; DLI–I, covering tankships to be loaded from the 1st through the 10th; DLI–J, tankships to be loaded from the 11th through the 20th; and DLI–K, tankships to be loaded from the 21st through the last day of the month. The Notice of Sale will specify which DLIs are offered on each MLI.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may sell a quantity of petroleum in excess of the quantity offered for sale on a particular MLI in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of

the Government because the prices offered for them are not reasonable, or that, in light of market conditions after offers are received, a lesser quantity than that offered should be sold.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity that could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale. In order to avoid a competitive advantage for local pipeline owners, e.g., if there are only one or two likely offerors, the NS may omit a pipeline DLI. If this occurs, offerors may bid against vessel DLIs and, if successful, request a contract modification under Provision No. C.6, to permit delivery of the awarded oil to a pipeline.

(f) The NS will not specify what portion of the petroleum that DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision No. B.16, which shall be made in accordance with Provision No. C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision No. C.6.

(h) Exhibit D, SPR Crude Oil Stream Characteristics, contains nominal characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data will likely change as more crude oil is stored in the SPR. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.18 Line Item Information To Be Provided in the Offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract under the terms of its offer for the purchase of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision No. C.20) in accordance with the terms of that contract.

(b) An offeror may submit an offer which is for more than one MLI. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit multiple offers. However, separate offer forms and offer guarantees must be submitted and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the form in Exhibit A or other forms as required by the NS:

(1) MLI quantity. ("MAXQ" on the Exhibit A offer form) The offeror shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) DLI quantity. ("DESQ") The offer shall state the number of barrels that the offeror will accept on each DLI, i.e., by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the MAXQ for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its designated DLI quantities would exceed its maximum MLI quantity; otherwise, the total of its designated DLI quantities should equal its maximum MLI quantity.

(3) DLI unit price ("UP$$") and total price. The offer shall state the price per barrel for each DLI for which the offeror has designated a desired quantity, as well as the total price (quantity times unit price). Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Minimum DLI quantity acceptable. ("MINQ") The offeror must choose whether to accept only the stated DLI quantity (DESQ) or, in the alternative, to accept any quantity awarded between the offer's stated DLI quantity and the minimum contract quantity for the DLI (indicated by the "N" and "Y" blocks respectively under "MINQ" on the offer form). However, DOE will award less than the DESQ only if the quantity available to be awarded is less than the DESQ. If the offer fails to indicate the offeror's choice, the offer will be evaluated as though the offeror has indicated willingness to accept the minimum contract quantity.

(5) Any other data required by the NS.

B.19 Mistake in Offer

(a) After opening and recording offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any price discrepancies or quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) Price discrepancy: An offer for a DLI must contain the unit price per barrel being offered, the desired quantity of barrels to which the unit price applies, and an extension price which is the total of the quantity desired multiplied by the unit price offered. If there is a discrepancy between the unit price and the extension price, the unit price will govern and be recorded as the offer, unless it is clearly apparent on the face of the offer that there has been a clerical error, in which case the Contracting Officer may correct the offer.

(2) Quantity discrepancy: In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, if a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer. In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity is the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in (a) may have been made, he shall

request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by telex or facsimile. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within as little as 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in (1) and (2) below if an offeror alleges a mistake after opening of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, when the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.20 Evaluation of Offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.21 Procedures for Evaluation of Offers

(a) Award on each DLI will be made to the responsible offerors that submit the highest priced offers responsive to the SSPs and the NS and that have provided the required payment and performance guarantee as required by Provision No. C.21.

(b) DOE will array all offers on an MLI from highest price to lowest price for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offers involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) The highest priced offers will be reviewed for responsiveness to the NS.

(4) In the event the highest priced offer does not take all the petroleum available on the MLI, sequentially, the next highest priced offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest priced offer.

(5) In the event of tied offers and an insufficient remaining quantity available on the MLI or insufficient remaining capacity on the DLI to fully award all tied offers, the Contracting Officer shall apply an objective random methodology for allocating the remaining MLI quantity or DLI capacity among the tied offers, taking into consideration the quantity the offeror is willing to accept as indicated in its offer. When making this allocation, the Contracting Officer in his sole discretion may do one or more of the following:

(i) Make an additional quantity or capacity available;

(ii) Contact an offeror to determine whether alternative delivery arrangements can be made; or

(iii) Not award all or part of the remaining quantity of petroleum.

(6) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable; or if the Government determines, in light of market conditions after offers are received, to sell less than the overall quantity of SPR petroleum offered for sale.

(7) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified by telephone and advised to provide to the Contracting Officer, within five business days or such other longer time as the Contracting Officer shall determine, a letter of credit (See Exhibit G, Payment and Performance Letter of Credit) or advance payment as specified in Provision No. C.21. Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where: (i) an offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or (ii) evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity that represents a violation of law or regulation (including an Executive Order); or (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror that shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.22 Financial Statements and Other Information

(a) As indicated in Provision No. B.21(b)(7) above, compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and

unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require the submission of information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, and plans for complying with the Jones Act. The Contracting Officer shall set a deadline for receipt of this information.

B.23 Resolicitation Procedures on Unsold Petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum that has been awarded or allotted for award becomes available to DOE for resale, the following procedures will apply:

(1) If priced offers remain valid in accordance with Provision No. B.24, the petroleum may go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision No. B.24, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price it originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror. This process may continue until all the remaining petroleum has been allotted for award.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.24 Offeror's Certification of Acceptance Period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.25 Notification of Apparently Successful Offeror

The following information concerning its offer will be provided to the apparently successful offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.26 Contract Documents

If an offeror is successful, DOE will make award using an NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. Attached to the NA will be the NS and the successful offer. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. The Contracting Officer also shall provide the purchaser with an information copy of the then-current SSPs as published in the **Federal Register**. DOE may accept the offeror's offer by an electronic notice, such as telegram or telex, and the contract award shall be effective upon the issue of such notice. The electronic notice will be followed by a mailing of the full documentation as described above.

B.27 Purchaser's Representative

As part of its offer, each offeror shall designate an agent as a point of contact for any telephone calls or correspondence from the Contracting Officer. Any such agent shall have a U.S. address and telephone number and must be conversant in English.

B.28 Procedures for Selling to Other U.S. Government Agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision No. B.21. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must make all necessary arrangements to accept delivery of and transport SPR petroleum as set out in Provision No. C.1. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C Sales Contract Provisions

C.1 Delivery of SPR Petroleum

(a) The purchaser, at its expense, shall make a necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services other than those provided by DOE or its agent, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent,

subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance With the "Jones Act" and the U.S. Export Control Laws

Failure to comply with the "Jones Act," 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, or with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision No. C.29. Purchasers who have failed to comply with the "Jones Act" or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers in subsequent sales under Provision No. B.21 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR part 625.

C.3 Storage of SPR Petroleum

Continued storage of purchasers' oil in the SPR facilities after the end of the contract delivery periods is not permitted, unless specifically authorized by the Secretary of Energy and provided for in the NS. Allowing petroleum to remain in storage as the result of failure to complete delivery arrangements may result in assessment of liquidated damages under Provision Nos. C.29 through C.31 unless such failure is excused pursuant to those provisions.

C.4 Environmental Compliance

(a) Vessels to be used for the transportation of petroleum purchased from the SPR will comply with all applicable rules and regulations, including The Ports and Waterways Safety Act, The Federal Water Pollution Control Act of 1972, The Oil Pollution Control Act of 1961, and other applicable statutes, rules and regulations, including the following: Parts 151, 153, 157, 158 and 159 of title 33, and parts 30–36 and 542 of title 46 of the Code of Federal Regulations.

(b) In the event tankships are used in the performance of this contract, the purchaser will employ only tankships whose owners are parties to the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) or who carry equivalent, as determined by the Contracting Officer, liability coverage.

(c) A purchaser using ocean-going tankships or barges for carriage of SPR petroleum must warrant that it has in place the maximum available amount of standard oil pollution insurance coverage through, as applicable, the International Group of Protection and Indemnity Clubs, Water Quality Insurance Syndicate, and membership with the Contract Regarding the Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL), or equivalent coverage. The purchaser must further warrant that such coverage will remain in effect for the duration of each voyage involving the carriage of SPR petroleum.

(d) All petroleum transfer operations in performance of the contract will be in accordance with the guidelines detailed in the International Oil Tanker Safety Guide, U.S. Coast Guard Regulations, and the "Ship to Ship Transfer Guide" of the International Chamber of Shipping Oil Companies International Marine Forum.

(e) Failure of the purchaser or the purchaser's subcontractors to comply with all applicable rules and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision No. C.29, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and Transportation Scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO by hand-delivery, mail, telex, or facsimile, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the dates for which deliveries are to be tendered to the pipeline and the quantity to be tendered for each date. In the event conflicting requests are received, preference will be given to such requests in descending order, the highest offered price first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex, facsimile or express mail notice on the day after dispatch. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) Telex and facsimile telephone numbers, as well as the address to which mailed and hand-carried proposed schedules should be delivered, will be provided in the notification of ASO.

(c) In order to expedite the scheduling process, at the time of submission of each vessel lifting program or pipeline delivery schedule, each purchaser shall provide the DOE Contracting Officer's Representative with a written notice of the intended destination for each cargo scheduled, if such destination is known at that time. For DLIs A or H (pipeline deliveries), the purchaser shall also include, if known, the name of each pipeline in the routing to the final destination.

(d) Notwithstanding paragraph (a) above, ASOs and purchasers may request early deliveries, i.e., deliveries commencing prior to the contractual delivery period. DOE will use its best efforts to honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected or other circumstances make it unreasonable to honor such requests. DOE's decision following any such consideration for a change shall be final and binding. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision No. C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the load date.

(e) Notwithstanding paragraphs (a) and (d) above, in no event will schedules be confirmed prior to award of contracts.

C.6 Contract Modification—Alternate Delivery Line Items

(a) A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification shall be permitted by DOE, provided, in the sole judgment of

DOE, the change is viewed as reasonable and would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification. The NS shall establish per barrel rates for such increased costs.

(b) Changes in delivery method will only be considered after the initial confirmation of schedules described in Provision C.5(a) above.

C.7 Application Procedures for "Jones Act" Waivers

(a) Unless otherwise specified in the Notice of Sale, an ASO or purchaser seeking a waiver of the "Jones Act" should submit a request by letter, telegram or telex to: U.S. Customs Service, Chief, Carrier Rulings Branch, 1301 Constitution Avenue, NW., Washington, DC 20229, Telephone No. (202) 566–5706, Telex (710) 822–9525.

Copies of the request should also be sent to:

(1) Assistant Secretary of Defense (Acquisition and Logistics), Department of Defense, Washington, DC 20301–8000;
(2) Associate Administrator for Marketing, Maritime Administration, Department of Transportation, Mail Stop MAR–800, Washington, DC 20590, Telex (710) 822–9426;
(3) Department of Energy, ATTN: Deputy Assistant Secretary for Strategic Petroleum Reserve/ Director, Office of Emergency Planning and Operations, Mail Stop FE–40, Washington, DC 20585, Telex (710) 822–0176.
(4) Contracting Officer, FE–4451, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans LA 70123, Telex (810) 951–6267 CHODT.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy (and if applicable, operated with Operating Differential Subsidy) should have the owner of that vessel submit a request by letter, telegram, or telex for such waiver(s) to: Maritime Administrator, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Telex (710) 822–9426.

Copies of the request shall be sent to:

(1) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Strategic Petroleum Reserve/ Director, Office of Emergency Planning and Operations, Mail Stop FE–40, Washington, DC 20585, Telex (710) 822–0176.
(2) Chief, Carriers Rulings Branch, U.S. Customs Service, Department of the Treasury, Washington, DC 20229, Telex (710) 822–9525.
(3) Contracting Officer, FE–4451, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123, Telex (810) 951–6267 CHODT.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier "Jones Act" waiver request by the purchaser. Under section 805(a) of the Merchant Marine Act of 1936, a hearing is also required for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Any request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, e.g., to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registry of vessel for which waiver is sought, if known at the time of waiver request, and either the scheduled 3-day delivery window(s), if available, or 10-day delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed; and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence, telexes, telegrams, and telephone conversation summaries. Use of commercial brokers and the Transportation News Ticker (TNT) is suggested for maximum market coverage. Requests for waivers by telegram or telex may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after transmittal of the telegram or telex requesting the waiver.

(7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(d) If there are shown to be "Jones Act" vessels available and in a position to meet the loading dates required, no waivers may be approved.

(e) The names of any vessel(s) to be employed under a "Jones Act" waiver must be provided to the U.S. Customs Service no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision No. C.5.

C.8 Vessel Loading Procedures

(a) After notification of ASO, each ASO shall provide the SPR/PMO a proposed schedule of vessel loading windows in accordance with Provision No. C.5.

(b) The length of the scheduled loading window shall be 3 days. If the purchaser schedules more than one window, the average quantity to be lifted during any single loading window will be no less than DOE's minimum contract quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate commensurate with receiving an entire full cargo within a twenty-four (24) hour pumping time. Barges with a load rate of not less than 4,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/ PMO, lower loading rates and the use of barges at the Sun and Phillips Terminals' suitably equipped tankship docks may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying: (i) name and size of vessel or advice that the vessel is "To Be Nominated" at a later date (such date to be no later than 3 days before commencement of the loading window); (ii) estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) below); (iii) quantity to be loaded and contract number; and (iv) other relevant information requested by the SPR/PMO including but not limited to a copy of the crew list, ship's specifications, last three ports and cargoes, vessel owner/operator and flag, any known deficiencies, and on board quantities of cargo and slops. The listing of all required vessel information shall be provided in the Notice of SDOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be

firm. Once established, changes in such nomination details may be made only by mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days' notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with the above provisions.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the contract quantity scheduled to be delivered during a loading window, the information in (d) above and (f) below shall be provided for each vessel.

(f) The vessel or purchaser shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the purposes of vessel demurrage (see Provision No. C.9). If the purchaser fails to make notification of the expected day of arrival, the 1-day window will be deemed to be the middle day of the scheduled 3-day window. The vessel shall also notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO: (i) Quantity of oily bilge wastes or sludge requiring discharge ashore; (ii) cargo loading rate requested; (iii) number, size, and material of vessel's manifold connections; and (iv) defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in Exhibit E. The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours. Barges loading at Sun Terminal barge dock facilities shall be allowed berth time of three (3) hours plus the quotient determined by dividing the cargo size (gross standard volume barrels) by four thousand (4,000). Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions below excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immigration clearance. The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time used by the vessel in excess of allowable berth time provided for above, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision No. C.11.

C.9 Vessel Laytime and Demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside (all fast) the loading berth or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision No. C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside (all fast), or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside (all fast).

(c) For all hours or any part thereof of vessel laytime that elapse in excess of the allowed vessel laytime for loading provided for above, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the petroleum loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker. For foreign flag vessels, demurrage shall be as determined above, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the New Worldwide Tanker Nominal Freight Scale "Worldscale" shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that

is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the hourly rate contained in the charter of a chartered barge, or if it is not a chartered barge, at a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the contract quantity scheduled to be delivered during a single loading widow, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) above.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (see Provision No. C.19).

C.10 Vessel Loading Expedition Options

(a) Notwithstanding Provision No. C.8(j)(1) above, in order to avoid disruption in the SPR distribution process, the Government may limit berthing time for any vessel receiving SPR petroleum to that period required for loading operations and the physical berthing/unberthing of the vessel. At the direction of the Government, activities not associated with the physical loading of the vessel (e.g., preparing documentation, guaging, sampling, etc.) may be required to be accomplished away from the berth. Time consumed by these activities will not be for the Government's account. If berthing time is to be restricted, the Government will so advise the vessel prior to berthing of the vessel.

(b) In addition to (a) above, the Government may limit vessels calling at SPR terminals to a total of 24 hours for petroleum transfer operations. In such an event, the loading will be considered completed if the vessel has loaded 95 percent or more of the nominated quantity within a total of 24 hours. If the vessel has loaded less than 95 percent of its nominated quantity, then Provision C.11 shall apply.

C.11 Purchaser Liability for Excessive Berth Time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision No. C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.12 Pipeline Delivery Procedures

(a) No later than the last day of the month preceding the month of delivery, the purchaser shall furnish the SPR/PMO with the following information: (i) confirmation of the pipeline's acceptance of the amount of the petroleum proposed to be delivered in the delivery month; (ii) an estimated schedule (consistent with the terms of the contract) for delivery of the petroleum to the pipeline; and (iii) the name and telephone number of the pipeline point of contact with whom the SPR/PMO should coordinate the petroleum delivery.

(b) Once established, the pipeline delivery schedule can only be changed with DOE's prior written consent. Should the schedule provided by the purchaser in accordance with (a) of this provision vary from the original schedule established in accordance with the provision contained in Provision No. C.5, the Government will provide its best efforts to accommodate this revised schedule but will incur no liability for failure to provide delivery on the dates requested.

(c) The date of delivery, which will be recorded on the CODR (see Provision No. C.19), is the date delivery commenced to the custody transfer point, as identified in the NS.

(d) The purchaser shall receive pipeline deliveries at a minimum average rate of 100,000 barrels per day. The purchaser is solely responsible for making the necessary arrangements with pipeline carriers, including storage, to achieve the stated minimum.

C.13 Title and Risk of Loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment—when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment—as identified in the NS.

(c) For in-transit shipments—when the petroleum passes the permanent flange of the discharging vessel manifold upon discharge into the purchaser's designated marine terminal facility or vessel.

C.14 Acceptance of Crude Oil

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in Exhibit D, SPR Crude Oil Stream Characteristics. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided below, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 3.5 percent if Bryan Mound Maya, 2.0 percent if any other sour crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 20°API if Bryan Mound Maya, 26°API if any other sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision No. C.16, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of delivery, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision No. C.16. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision No. C.36.

C.15 Delivery Acceptance and Verification

(a) The purchaser shall provide written confirmation to SPR/PMO, no later than 72 hours prior to the scheduled date of the first delivery under the contract, the name(s) of the authorized agent(s) given signature authority to sign/endorse the delivery documentation (CODR, etc.) on the purchaser's behalf. Any changes to this listing of names must be provided to the SPR/PMO in writing no later than 72 hours before the first delivery to which such change applies. In the event that an independent surveyor (separate from the authorized signatory agent) is appointed by the purchaser to witness the delivery operation (guaging, sampling, testing, etc.), written

notification must be provided to SPR/PMO, no later than 72 hours prior to the scheduled date of each applicable cargo delivery.

(b) Absence of the provision of the name(s) of bona fide agent(s) and the signature of such agent on the delivery documentation constitutes acceptance of the delivery quantity and quality as determined by DOE and/or its agents.

C.16 Price Adjustments for Quality Differentials

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, quality price adjustments will be applied only to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/–0.5 °API) from the API gravity of the crude oil stream contracted for as published in the NS.

(b) Price adjustments for SPR crude oil are expected to be similar to one or more commercial crude oil postings for equivalent quality crude oil. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5 °API and decreased by that amount if the API gravity of the crude oil delivered falls below the published API gravity by more than 0.5 °API.

C.17 Determination of Quality

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API Manual of Petroleum Measurement Standards, Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products (ASTM D4057), latest edition; or from a representative sample collected by an automatic sampler whose performance has been proven in accordance with the API Manual of Petroleum Measurement Standards, Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method (ASTM D473) (IP53), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.8, Sediment in Crude Oil by Membrane Filtration (ASTM D4807), latest edition; and API Manual of Petroleum Measurement Standards, Chapter 10.2, Determination of Water in Crude Oil by Distillation (ASTM D4006) (IP358), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.9, Water in Crude Oil by Coulometric Karl Fischer Titration (ASTM D4928), latest edition.

Alternate methods: API Manual of Petroleum Measurement Standards, Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure) (ASTM D4007) (IP 359), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.4, Standard Methods of Test for Water and Sediment in Crude Oils, (API Pub. 2542) (ASTM D96), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.7, Water in Crude Oil by Karl Fischer Titration (Volumetric) (ASTM D4377), latest edition.

(2) Sulfur

Primary method: ASTM D1552, Sulfur in Petroleum Products (High Temperature Method), latest edition.

Alternate methods: ASTM D2622, Sulfur in Petroleum Products (X-ray Spectographic Method), latest edition; or ASTM D4294, Sulfur in Petroleum Products by Non-Dispersive X-ray Fluorescence Spectrometry, latest edition.

(3) API Gravity

API Manual of Petroleum Measurement Standards, Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products (ASTM D1298), latest edition; or API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method) (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The Government's test results will be binding in any dispute over quality characteristics of SPR petroleum.

(b) The purchaser or his representative may arrange to witness and verify testing simultaneously with the Government Quality Assurance Representatives. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision No. C.36. Should the purchaser opt not to witness the testing, then the Government findings will be binding on the purchaser.

C.18 Determination of Quantity

(a) The quantity of crude oil delivered to the purchaser will be determined by opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an automatic sampler is not available, or delivery meter reports. All volumetric measurements will be corrected to net standard volume in barrels at 60 °F, using the API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume 1, Volume Correction Factors (ASTM D1250) (IP 200); Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60 °F; Table 6A—Generalized Crude Oils, Correction of Volume to 60 °F Against API Gravity at 60 °F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a representative portion of the sample collected by a certified automatic sampler, and also corrected by the applicable pressure correction factor and meter factor.

(b) The quantity determination shall be made and certified by the DOE contractor responsible for loading operations, and witnessed by the Government Quality Assurance Representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision No. C.36. Should the purchaser not arrange for additional services, then DOE's quantity determination shall be binding on the purchaser.

C.19 Delivery Documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO–F–6110.2–14b (Rev 8/91) (see Exhibit H for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on

the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.20 Contract Amounts

The contract quantities and dollar value stated in the NA are estimates. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics, changes in delivery mode and price index values, if applicable. In addition, due to conditions of vessel loading and shipping or pipeline transmission, the quantity actually delivered may vary by +/−10 percent for each shipment. However, a purchaser is not required to engage additional transportation capacity if sufficient capacity to take delivery of at least 90 percent of the contract quantity has been engaged.

C.21 Payment

(a) Payment for petroleum delivered shall be due on the date stated on the invoice.

(b) Payment shall be made by the payment and performance guarantee which must be either:

(1) A letter of credit conforming without exception to requirements of Provision No. C.22 and Exhibit G, Payment and Performance Letter of Credit and equal to 100 percent of the contract amount; or

(2) An advance payment by cash wire deposit, made in accordance with the wire transfer instructions in Provision No. C.26 and equal to 110 percent of the contract amount.

(c) The purchaser must furnish an acceptable payment and performance guarantee before DOE will execute the NA. The Contracting Officer will inform the ASO by telephone that the guarantee is due within a period which may be as short as 5 business days. The Contracting Officer may, at his discretion, send a confirming telegram of the notification, but the timeliness of receipt for the guarantee is determined by the date of the telephone call.

(d) All wire deposit and letter of credit costs will be borne by the purchaser.

(e) The Contracting Officer (who may act through the SPR/PMO Planning and Financial Management Division) may draw against this payment and performance guarantee at any time after the first delivery for any monies due under the contract for petroleum delivered and at any time for any other monies owing to DOE under the contract, no matter how the debt arose.

C.22 Payment and Performance Letters of Credit—General Requirements

(a) Each letter of credit must conform without exception to the standard letter of credit provided as Exhibit G.

(b) DOE does not require information concerning the issuing bank's agreement with its customer. Any language in the letter of credit in addition to that specified in Exhibit G shall make the letter of credit unacceptable and shall be cause for rejection of the offer.

(c) As set forth in Exhibit G, the letter of credit provides for payment to DOE by wire transfer of funds over FEDWIRE. The banking institutional requirements required for the Payment and Performance Letters of Credit are the same as those required for the Offer Standby Letters of Credit (See Provision No. B.11).

C.23 Billing and Payment—With Purchaser's Letter of Credit

(a) After delivery of the SPR petroleum and completion of the delivery documentation, DOE shall prepare an invoice in accordance with the contract and the delivery documentation.

(b) Upon completion of the invoice, DOE shall prepare a draft requesting a wire transfer of funds in accordance with the letter of credit and transmit that message to the bank issuing the letter of credit by express mail or telex, or via the FEDWIRE system. On the date specified in the draft, the bank shall use the wire transfer procedures specified in the letter of credit to transfer the invoiced funds to the account of the U.S. Treasury. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex and express mail invoices on the day after dispatch.

(c) If the draft message is sent to the bank by mail, DOE shall provide both the bank and purchaser copies of the draft message, the invoice, and the CODR. If the draft message is sent to the bank by FEDWIRE or telex, DOE shall provide the bank by mail a copy of the invoice and the CODR, and the purchaser a copy of the draft message, invoice, and the CODR.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying the principal and any interest due (see Provision No. C.27) from the due date specified in the draft.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the bank or financial institution issuing the letter of credit. A copy of the notice of cancellation will be provided to the purchaser.

C.24 Billing and Payment—With Purchaser's Advance Payment

(a) If the offeror elects to pay in advance, delivery documentation will be provided to the purchaser after each delivery. After the last delivery under the contract, a reconciliation billing will be made. If money is due from the purchaser to DOE, an invoice will be issued to the purchaser (see paragraph (b) below). If money is due the purchaser, funds will be returned via electronic transfer or Treasury check. Purchasers should provide the SPR/PMO the information as delineated in Exhibit I. See Provision B.11(i) for return of funds via electronic transfer or Treasury check.

(b) In accordance with the delivery documentation and the contract, DOE shall determine the amount of any reconciliation invoice and transmit it to the purchaser by express mail, mail or telex. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex and express mail invoices on the day after dispatch. Reconciliation invoices must be paid in accordance with provision No. C.26 by the date stated in the invoice.

C.25 Replacement of Funds in the Payment and Performance Guarantee

(a) Payment and performance guarantees must be maintained in full force and effect to the Contracting Officer's satisfaction at the following minimum levels until final payment under the contract:

(1) Letter of credit at 100 percent of the contract price of the petroleum remaining to be paid for; and

(2) Advance payment at 110 percent of the contract price of the petroleum remaining to be delivered.

(b) If the Contracting Officer draws against the letter of credit, or makes charges against the advance payment, for monies owed DOE for oil delivered, for liquidated damages or for other funds due DOE, the purchaser shall be notified within 24 hours by express mail, mail or telex of the fact of such withdrawal or charge and the amount thereof. Purchaser is deemed to have received a mailed notice on the second business day after its dispatch and a

telex or express mail notice the next business day after its dispatch.

(c) In the event a draw against the payment and performance guarantee causes its amount to fall below the levels specified in (a) above, the purchaser shall, within two business days after it is deemed to have received notification in (b) above, replenish the payment and performance guarantee to those levels. Such replenishment shall be made either by the wire transfer of funds in accordance with Provision No. C.26, or by the provision of a new letter of credit or amendment of the old letter of credit. If such replenishment is not made within two business days, the Contracting Officer may, on the 3rd business day, without prior notice to the purchaser withhold deliveries under the contract and/or terminate the contract in whole or in part for default under Provision No. C.29.

(d) Notwithstanding (a) above, the Contracting Officer shall exercise discretion as to when the letter of credit or advance payment must be increased because of the effect of the price indexing mechanism provided for by Provision No. B.2. The Purchaser shall increase the guarantee level within two business days of being notified of a deficiency by the Contracting Officer by telex, express mail or facsimile. The purchaser shall be deemed to have received notice of the deficiency the next business day after the dispatch of the telex, express mail, or facsimile. If such replenishment is not made within two business days after purchaser is deemed to have received the notice of deficiency, the Contracting Officer may, without prior notice to the purchaser, withhold deliveries, in whole or in part, under the contract and/or terminate the contract in whole or in part under Provision No. C.29.

C.26 Method of Payments—General

(a) Notwithstanding any other contract provision, DOE may via a draft message request a wire transfer of funds at any time for payment of monies due under the contract. These would include but not be limited to, interest, liquidated damages, demurrage, amounts owing for any services provided for under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision No. C.29. If the invoice is for delinquent payments, interest shall accrue from the payment due date.

(b) All amounts payable by the purchaser shall be paid by wire transfer as a deposit to the account of the U.S. Treasury through FEDWIRE. The NS will specify the information which must be included on each wire transfer.

(c) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(d) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

(e) If a purchaser disagrees with the amounts invoiced by DOE, the purchaser immediately shall pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute, and purchaser shall file a claim promptly in accordance with Provision No. C.36.

C.27 Interest

(a) Amounts due and payable by the purchaser or its bank that are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

(b) Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Act of 1982 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

C.28 Government Options if Payment Is Not Received

(a) If any amount owed to DOE is not paid within the time deadlines specified by the applicable provisions, the Contracting Officer may, at his discretion, take the following actions either simultaneously or in any sequence he deems appropriate, with or without prior notice to the purchaser:

(1) Invoice the purchaser for the amount on which payment is delinquent or provide written notice that payment is delinquent;

(2) Draw against the letter of credit for all amounts due and delinquent;

(3) Apply any advance payment received against the amount due and delinquent;

(4) Withhold all or any part of future deliveries under the contract; and/or

(5) Terminate the contract, in whole or in part, for purchaser default, in accordance with Provision No. C.29.

(b) Any disputes will be settled by the Contracting Officer in accordance with Provision No. C.36.

C.29 Termination

(a) Immediate Termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision No. C.35 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under subparagraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under subparagraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with subparagraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(1) Subject to the provisions of subparagraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability to DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision No. C.35 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the

contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision No. C.31 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or an NS issued after the date of default that specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with subparagraphs (2) and (3), the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for Convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in (a)(1) or (b)(1) above, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex or express mail notice on the day after dispatch.

(3) Termination for the convenience of the government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy that it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) above, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.36.

(h) The term *subcontractor* or *subcontractors* includes subcontractors at any tier.

C.30 Other Government Remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision No. C.29, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision No. C.31 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.31 Liquidated Damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with paragraph (b) of

Provision No. C.29 and paragraph (c) of Provision No. C.30.

(b) As provided in (a) above, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision No. C.29. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision No. C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.36.

C.32 Failure to Perform Under SPR Contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future SPR contracts.

C.33 Government Options in Case of Impossibility of Performance

(a) In the event that DOE is unable to delivery petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision No. C.29; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price, if established for the same or similar crude oil streams in the most recent NS or determined after the opening of offers.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision No. 29.

C.34 Limitation of Government Liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.35 Notices

(a) Any notices required to be given by one party to the contract to the other in writing shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, telegram, or telex. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.36 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1–33.211.

(b) *Claim* means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's Name _____
Signature _____
Title _____

(d) The Government shall pay to the purchaser interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semiannually in the **Federal Register**.

(e) The purchaser shall pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision No. C.27 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with

performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.37 Assignment

The purchaser shall not make or attempt to make any assignment of a contract that incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.38 Order of Precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto;

(b) The NS;

(c) Those provisions of the SSPs (as published in the **Federal Register**) made applicable to the contract by the NS;

(d) The instructions to the SPR Sales Offer Form; and

(e) The successful offer.

C.39 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; *provided*, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

C.40 Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Exhibits

A—SPR Sales Offer Form
B—Sample Notice of Sale
C—Solicitation, Offer and Award—Standard Form 33
D—SPR Crude Oil Stream Characteristics
E—SPR Delivery Point Data
F—Offer Standby Letter of Credit
G—Payment and Performance Letter of Credit
H—Form SPRPMO–F–6110.2–14b (Rev 8/91)—SPR Crude Oil Delivery Report
I—Instruction Guide for Return of Offer Guarantees by Electronic Transfer or Treasury Check
J—Offer Guarantee Calculation Worksheet

BILLING CODE 6450–01–M

Strategic Petroleum Reserve Sales Offer Form

INSTRUCTIONS

1. Maximum MLI Quantity (MAXQ)

For each MLI offered against, offers shall state here, in thousands of barrels, the number of barrels which the offeror seeks to purchase on the MLI, regardless of delivery method. The maximum MLI quantity shall be not less than the DOE's minimum quantity as stated in the Notice of Sale (NS).

2. Delivery Line Items (DLI)

Applicable DLI delivery methods are as follows:

DLI A	Pipeline delivery from first terminal
DLI B, C, D	Tanker delivery from first terminal
DLI E, F, G	Barge delivery from first terminal
DLI H	Pipeline delivery from second terminal
DLI I,J,K	Tanker delivery from second terminal

DLI A and H nominally have a 30-day delivery period. Vessel DLIs B, E, and I have ten day delivery periods nominally from the 1st to the 10th; C, F, and J cover the 11th to the 20th; and D, G, and K cover the 21st to the last day of the period of sale. Not all DLIs may be available on a particular MLI. For example, barges are allowed only at the Sun Terminal barge docks (with certain limited exceptions, see SSP No. C.8). Therefore, only MLI 004 and MLI 005 have DLIs E, F, and G. Buyers are cautioned to read the NS carefully as it may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month.

3. Unit Price (UP$)

The offer shall state the offered price per barrel on each DLI for which the offer indicates a desired DLI quantity. The offer may state either the same unit price for different DLIs or different unit prices. DOE will award the highest price first. Prices may be stated to one-hundredths of a cent ($0.0001), but in no smaller fraction thereof.

4. Delivery Preference (P)

Where the offer has the same unit price for two or more DLIs on the same MLI, the offer may indicate the offerors order of preference for delivery method and period (1st, 2nd, 3rd, etc.). If the offer does not indicate a preference, DOE will select the DLIs to be awarded at its discretion.

5. Desired DLI Quantity (DESQ)

Offers must indicate at least one desired DLI, stating (in thousands of barrels) the number of barrels which the offeror will accept by the delivery method and during the delivery period established for that DLI. An offeror may indicate a willingness to accept alternate delivery methods or delivery periods. An offeror may request all, part or none of the offer's maximum MLI quantity on any particular DLI. A total of all the offeror's desired DLI quantities should total at least the maximum MLI quantity, but could exceed the maximum MLI quantity if the offeror is willing to accept alternate delivery methods or periods. For example, the offer could state:

MLI: 001
Maximum MLI Quantity: 1,000
Desired DLI Quantities:
DLI 001B: 1,000
DLI 001C: 1,000
DLI 001D: 1,000

This would indicate the offeror would be willing to accept one million barrels of Bryan Mound sweet to be delivered to its vessels either from the 1st through the 10th, the 11th through the 20th, or 21st through the end of the month.

6. Minimum Contract Quantity (MINQ)

For each DLI on which an offer is made, the offeror should indicate his willingness to accept as little as DOE's specified minimum contract quantity for that DLI by marking the 'Y' block, or unwillingness to accept less than the DESQ for that DLI by marking the 'N' block. If neither 'Y' or 'N' is indicated, the offer will be evaluated as though the offeror had indicated a 'Y'. DOE only will award less than the offeror's desired DLI quantity if an offer is otherwise successful, but the quantity which DOE has available for award is less than said desired DLI quantity or award of the desired quantity would cause the offeror's MAXQ on the MLI to be exceeded.

7. Total Price

The offer shall calculate the total price (desired DLI quantity times unit price) for each DLI on which an offer is made. The offeror is reminded that DESQ is stated in thousands of barrels.

8. Offer Guarantee

The amount of the offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each MLI times the highest offer prices that the offeror would have to pay for that MLI if the offer is successful. To assist in this calculation, instructions and a worksheet are available at Exhibit J. Submission of the worksheet is not mandatory.

Exhibit A

Strategic Petroleum Reserve Sales Offer Form

Offeror Information

Name

Address

City

State

Zipcode -

Country

Telephone - -

Offer Guarantee

Agent Information

Name

Address

City

State

Zipcode -

Country

U S A

Telephone - -

Exihibit A

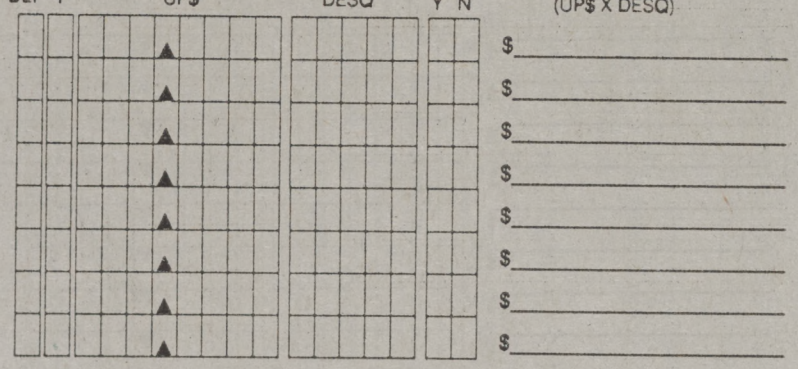
DLI=Delivery Line Item (*2, 5)
UP$$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)

* = See Instructions

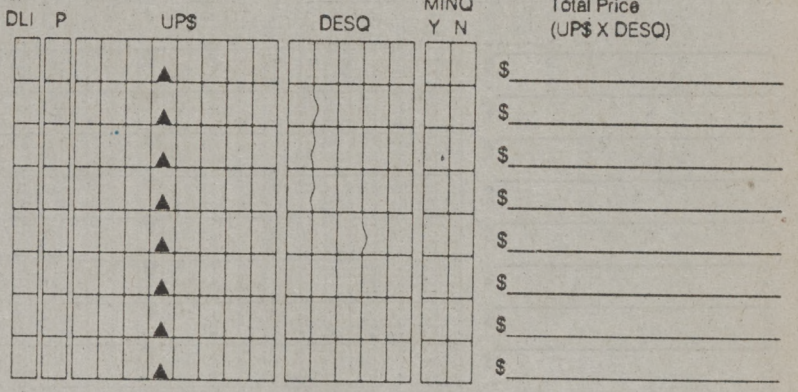
Offer

MAXQ=Maximum MLI Quanttty (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)

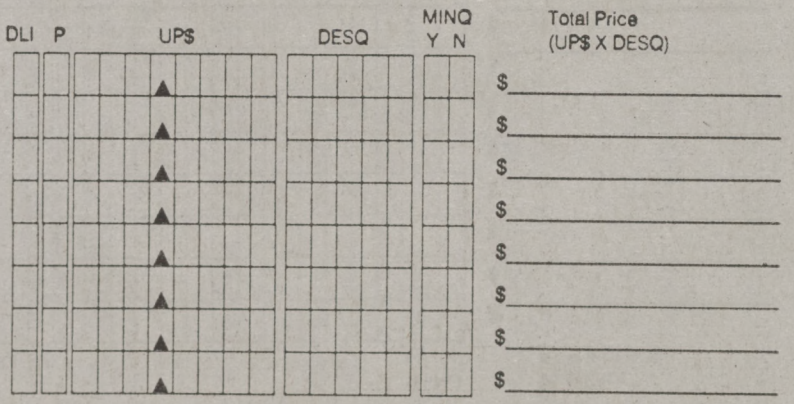
Bryan Mound Sweet MLI 0 0 1 MAXQ



Bryan Mound Sour MLI 0 0 2 MAXQ



Bryan Mound Maya MLI 0 0 3 MAXQ



West Hackberry Sweet MLI 0 0 4 MAXQ

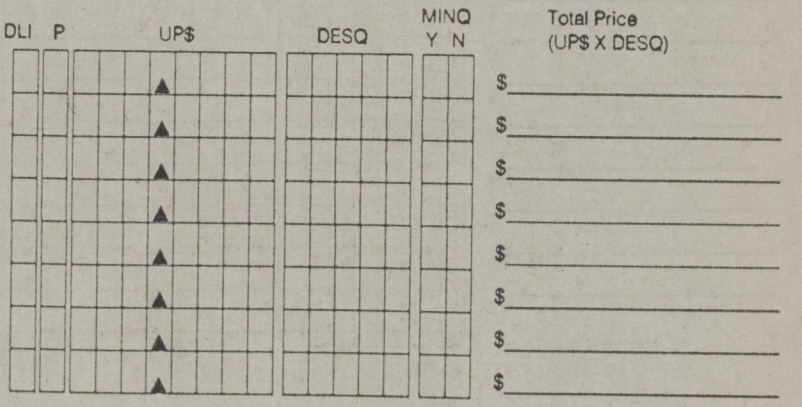


Exhibit A

DLI=Delivery Line Item (*2, 5)
UP$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)

Offer

MAXQ=Maximum MLI Quanttty (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)

* = See Instructions

West Hackerry Sour MLI 005 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Weeks Island Sour MLI 006 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Bayou Choctaw Sweet MLI 007 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Bayou Choctaw Sour MLI 008 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

By signing below the offeror certifies agreement without exception to all terms and conditions applicable to this sale and that the maximum potential contract amount (Instruction 8) is $_____

Signature: Offeror or Agent _____

Company Name _____

Exhibit A

Exhibit B - Sample Notice of Sale (NS)

1 NS No. DE-NS96-92P0x000x is issued (date) for sale of Strategic Petroleum Reserve (SPR) crude oil. All references to "Provision No." refer to the Standard Sales Provisions (SSPs) published in the Federal Register (date). All provisions are applicable to this sale except that provision No(s). (give number or numbers) are supplemented or modified to read: (give changes). Additional requirements applicable to this sale are as follows: (give text).

(Note: Should the SSPs be extensively changed, the Notice of Sale (NS) may include, for information purposes only, a complete text of the SSPs as modified for the sale. Offerors are cautioned, however, that these complete text SSPs have no contractual status and that in the event of any inconsistencies, the published SSPs and the NS shall establish the terms and conditions for the sale.)

2. Mailed and handcarried offers and offer guarantees must be received by 1:00 p.m. local time on (date) at (address). Offer guarantees sent by wire transfer must also be received at the U.S. Treasury by the time stated above.

3. Offerors must give names, addresses and telephone numbers, including area codes, for authorized representative of the offeror with whom the Government may conduct any necessary discussions, including financial.

4. Direct questions regarding NS to (name of individual), telephone (504) 734-4660. Collect calls will not be accepted.

5. Master Line Item (MLI) numbers given herein refer to those schedules attached as Exhibit A of the SSPs. The quantities for each MLI offered for sale are as follows:

MLI 001: _____ bbls; MLI 002 not offered this sale; MLI 003: _____ bbls; MLI 004: _____ bbls; MLI 005 not offered this sale; MLI 006 not offered this sale; MLI 007: _____ bbls; MLI 008: _____ bbls.

6. Offered delivery line items (DLI) and their maximums, i.e., offered DLIs and the Department of Energy's best estimates of the maximum amount of petroleum that can be moved by each delivery line item transportation system over the delivery period, are as follows (see provision No. B.17 of the SSPs):

7. Minimum quantities which will be awarded for each delivery line item (DLI) are as follows:

8. Delivery line item A, for pipeline delivery, is not offered under MLI 001. Offerors wishing to take delivery of MLI 001 by pipeline should offer to purchase quantities under delivery line items B, C, and D. If successful, purchasers may modify delivery method under Provision No. C.6.

9. Consideration to be paid for alteration of contract delivery modes in accordance with provision No. C.6 is as follows:

10. Applicable quality differentials are plus or minus _____¢ per degree API gravity, or part thereof, for sweet crude oil streams, and plus or minus _____ per one-tenth degree API gravity for sour crude oil streams. These quality adjustments will only be applied to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/- 0.5° API) from the API gravity of the crude oil stream contracted for as published in this Notice of Sale.

11. The following information is provided in connection with SSP Provision No. B.4 "'Superfund' tax on SPR petroleum - caution to offerors":

12. All offerors and purchasers are cautioned that, if the letters of credit contained in Exhibits F and G to the SSPs are altered in any manner, no matter how minor, such alterations are at the peril of the offerors/purchasers and may lead torejection of a letter of credit. It is recommended, therefore, that offerors/purchasers review and proofread letters of credit issued on their behalf, to assure their full compliance with the above cited Exhibits.

EXHIBIT C

OMB Approved No. 9000-0008

SOLICITATION, OFFER AND AWARD	1 THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶	RATING	PAGE OF PAGES

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.

7. ISSUED BY	CODE	8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ▶	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(V)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE	
	A	SOLICITATION/CONTRACT FORM	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS	
	C	DESCRIPTION/SPECS./WORK STATEMENT	
	D	PACKAGING AND MARKING	
	E	INSPECTION AND ACCEPTANCE	
	F	DELIVERIES OR PERFORMANCE	
	G	CONTRACT ADMINISTRATION DATA	
	H	SPECIAL CONTRACT REQUIREMENTS	

(V)	SEC.	DESCRIPTION	PAGE(S)
		PART II – CONTRACT CLAUSES	
	I	CONTRACT CLAUSES	
		PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	J	LIST OF ATTACHMENTS	
		PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	M	EVALUATION FACTORS FOR AWARD	

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52-232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. ☐ CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ *(4 copies unless otherwise specified)*	ITEM

24. ADMINISTERED BY *(If other than Item 7)*	CODE	25. PAYMENT WILL BE MADE BY	CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

33-134

STANDARD FORM 33 (REV 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

☆ GPO : 1985 O - 491-248 (20232)

EXHIBIT D

SPR CRUDE OIL ANALYSIS
Bryan Mound Sweet, MLI 001

Whole Crude								
Specific Gravity, 60/60° F	0.8446	Ni, ppm	3.7	RVP, psi @ 100° F	6.90			
API Gravity	36.0	V, ppm	4.8	TAN, mg KOH/g	0.04			
Sulfur, Wt. %	0.34	Fe, ppm	2.8	Mercaptan Sulfur, ppm*	10.4			
Nitrogen, Wt. %	0.109	Org. Cl, ppm	0.5	H_2S Sulfur, ppm*	0.2			
Micro Car. Res., Wt. % *	2.23	O.D. Color	11970	Viscosity: 77° F	7.03	cSt	48.8	SUS
Pour Point, °F	30	UOP "K"	12.0	100° F	4.62	cSt	41.2	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	4.0	5.7	8.2	12.2	16.6	13.6	28.8	39.7	11.2
Vol. Sum %	4.0	9.7	17.9	30.1	46.7	60.3	89.1	100.0	100.3
Wt. %	2.9	4.6	7.2	11.2	16.3	13.8	30.6	44.1	13.1
Wt. Sum %	2.9	7.5	14.7	25.9	42.2	56.0	86.6	100.1	99.7
Specific Gravity, 60/60° F		0.6767	0.7384	0.7772	0.8268	0.8582	0.8975	0.9386	0.988
API Gravity		77.6	60.1	50.6	39.6	33.4	26.2	19.3	11.7
Sulfur, Wt. %		0.0015	0.0017	0.0138	0.07	0.21	0.51	0.70	1.22
Mercaptan Sulfur, ppm		9.4	13.0	27.4	36.4				
H_2S Sulfur, ppm		<1.0	<1.0	1.8	<1.0				
Organic Cl, ppm		0.2	0.1	0.1	0.2				
n-Paraffins, Vol. %		42.0	24.3	22.9					
i-Paraffins, Vol. %		34.6	29.2	30.6					
Aromatics, Vol. %		3.3	7.6	19.5					
Naphthenes, Vol. %		20.1	38.9	23.7					
Aniline Point, ° F				124.4	142.2	169.0	191.0		
TAN, mg KOH/g					0.02	0.08			
Cetane Index					46.4	51.4			
Naphthalenes, vol. %					4.70	8.76			
Smoke point, mm					19.9	14.4			
Nitrogen, Wt. %					0.0005	0.012	0.121	0.312	0.700
Viscosity:									
cSt 77° F					2.43				
100° F					1.93	6.21			
130° F						4.07	25.92	107.0	
180° F							10.43	31.76	3732
210° F									937.8
250° F									
Freezing Point, °F					-31.9				
Cloud Point, °F						30	114		
Pour Point, °F						35	105	100	
Ni, ppm									27.4
V, ppm									23.1
Fe, ppm									16.8
Micro Car. Res., Wt. %								5.17	17.00

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bryan Mound Sweet, MLI 001

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		42.0	24.3	22.9
Total Iso-paraffins		34.6	29.2	30.6
Total Aromatics		3.3	7.6	19.5
Total Naphthenes		20.1	38.9	23.7
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.1	3.3
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	0.2	0.0	0.0
	C5	21.3	0.4	0.0
	C6	19.0	4.1	0.0
	C7	1.4	13.3	0.4
	C8	0.0	6.4	4.7
	C9	0.0	0.2	7.5
	C10	0.0	0.0	6.9
	C11	0.0	0.0	3.0
	C12	0.0	0.0	0.3
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	9.5	0.1	0.0
	C6	20.3	2.5	0.0
	C7	4.7	11.0	0.2
	C8	0.0	14.3	3.4
	C9	0.0	1.3	8.6
	C10	0.0	0.0	14.5
	C11	0.0	0.0	3.7
	C12	0.0	0.0	0.2
Aromatics:	C6	3.0	1.3	0.2
	C7	0.3	4.9	0.6
	C8	0.0	1.4	5.2
	C9	0.0	0.0	5.3
	C10	0.0	0.0	6.3
	C11	0.0	0.0	1.5
	C12	0.0	0.0	0.4
Naphthenes:	C5	2.8	0.0	0.0
	C6	14.0	7.7	0.1
	C7	3.3	22.3	1.4
	C8	0.0	8.0	6.9
	C9	0.0	0.9	9.2
	C10	0.0	0.0	4.1
	C11	0.0	0.0	1.8
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.1
Propane	22.4
i-Butane	12.5
n-Butane	49.4
i-Pentane	6.2
n-Pentane	4.2
C_6+	3.0

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.3
Toluene	0.6
Ethylbenzene	0.2
o,m,p-Xylene	0.7

Octane Number		
	RON	MON
C_5-175° F	63.8	65.5
C_5-375° F	50.5	49.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
Bryan Mound Sour, MLI 002

Whole Crude

Specific Gravity, 60/60° F	0.8599	Ni, ppm	14.0	RVP, psi @ 100° F	5.30		
API Gravity	33.1	V, ppm	51.1	TAN, mg KOH/g	0.08		
Sulfur, Wt. %	1.51	Fe, ppm	6.0	Mercaptan Sulfur, ppm*	14.1		
Nitrogen, Wt. %	0.166	Org. Cl, ppm	1.0	H_2S Sulfur, ppm*	1.1		
Micro Car. Res., Wt. % *	4.56	O.D. Color	25859	Viscosity: 77° F	9.43	cSt	56.8 SUS
Pour Point, °F	-30	UOP "K"	11.9	100° F	6.26	cSt	46.4 SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	2.2	5.9	7.6	13.9	15.9	11.7	26.6	43.1	18.9
Vol. Sum %	2.2	8.1	15.7	29.6	45.5	57.2	83.8	100.3	102.7
Wt. %	1.5	4.6	6.4	12.4	15.1	11.7	28.5	48.3	19.5
Wt. Sum %	1.5	6.1	12.5	24.9	40.0	51.7	80.2	100.0	99.7
Specific Gravity, 60/60° F		0.6625	0.7247	0.7705	0.8174	0.8603	0.9216	0.9643	1.029
API Gravity		82.1	63.8	52.1	41.6	33.0	22.0	15.2	6.0
Sulfur, Wt. %		0.0040	0.0061	0.0445	0.35	1.12	2.00	2.71	3.92
Mercaptan Sulfur, ppm		19.0	38.1	65.5	17.7				
H_2S Sulfur, ppm		6.9	3.8	4.0	<1.0				
Organic Cl, ppm		5.0	4.3	3.9	<0.1				
n-Paraffins, Vol. %		49.2	33.2	26.8					
i-Paraffins, Vol. %		39.2	33.5	30.7					
Aromatics, Vol. %		1.8	7.9	24.0					
Naphthenes, Vol. %		9.7	25.4	16.7					
Aniline Point, ° F				126.5	144.7	161.0	179.4		
TAN, mg KOH/g					0.01	0.02			
Cetane Index					50.0	50.8			
Naphthalenes, vol. %					3.88	10.52			
Smoke point, mm					19.7	15.4			
Nitrogen, Wt. %					0.0007	0.018	0.153	0.365	0.636
Viscosity:									
cSt 77° F					2.23				
100° F					1.78	4.87			
130° F						3.32	25.78	251.7	
180° F							10.20	63.16	18353
210° F									4331
250° F									
Freezing Point, °F					-29.2				
Cloud Point, °F						22	110		
Pour Point, °F						20	95	60	
Ni, ppm									72.8
V, ppm									244
Fe, ppm									20.4
Micro Car. Res., Wt. %								9.45	23.4

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bryan Mound Sour, MLI 002

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		49.2	33.2	26.8
Total Iso-paraffins		39.2	33.5	30.7
Total Aromatics		1.8	7.9	24.0
Total Naphthenes		9.7	25.4	16.7
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.1	0.0	1.7
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	2.1	0.0	0.0
	C5	24.2	0.3	0.0
	C6	22.1	4.8	0.0
	C7	0.9	19.5	0.6
	C8	0.0	8.4	5.7
	C9	0.0	0.1	9.1
	C10	0.0	0.0	7.9
	C11	0.0	0.0	3.4
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.2	0.0	0.0
	C5	12.5	0.1	0.0
	C6	22.4	2.7	0.0
	C7	4.1	15.3	0.2
	C8	0.0	14.6	2.7
	C9	0.0	0.8	9.1
	C10	0.0	0.0	13.3
	C11	0.0	0.0	5.5
	C12	0.0	0.0	0.0
Aromatics:	C6	1.6	0.7	0.0
	C7	0.1	5.6	0.7
	C8	0.0	1.5	7.6
	C9	0.0	0.0	9.2
	C10	0.0	0.0	5.0
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.3
Naphthenes:	C5	1.8	0.1	0.0
	C6	6.9	4.2	0.0
	C7	1.0	13.1	0.7
	C8	0.0	7.7	4.7
	C9	0.0	0.3	6.7
	C10	0.0	0.0	3.3
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.1
Propane	13.9
i-Butane	12.6
n-Butane	59.8
i-Pentane	9.4
n-Pentane	3.9
C_6+	0.2

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.1
Toluene	0.4
Ethylbenzene	0.2
o,m,p-Xylene	0.8

Octane Number		
	RON	MON
C_5-175° F	66.4	61.9
C_5-375° F	47.8	44.2

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
Bryan Mound Maya, MLI 003

Whole Crude

Specific Gravity, 60/60° F	0.9171	Ni, ppm	57.1	RVP, psi @ 100° F	4.50		
API Gravity	22.8	V, ppm	238	TAN, mg KOH/g	0.10		
Sulfur, Wt. %	3.28	Fe, ppm	6.0	Mercaptan Sulfur, ppm*	9.6		
Nitrogen, Wt. %	0.320	Org. Cl, ppm	1.0	H_2S Sulfur, ppm*	0.9		
Micro Car. Res., Wt. % *	10.82	O.D. Color	72340	Viscosity: 77° F	114.1 cSt	527	SUS
Pour Point, °F	-25	UOP "K"	11.7	100° F	55.05 cSt	256	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	2.1	4.5	5.4	9.5	11.8	7.5	29.7	59.6	29.2
Vol. Sum %	2.1	6.6	12.0	21.5	33.3	40.8	70.5	100.4	99.7
Wt. %	1.4	3.3	4.2	8.0	10.6	7.0	30.1	65.5	34.2
Wt. Sum %	1.4	4.7	8.9	16.9	27.5	34.5	64.6	100.0	98.8
Specific Gravity, 60/60° F		0.6644	0.7239	0.7704	0.8230	0.8633	0.9296	1.0050	1.069
API Gravity		81.5	64.0	52.2	40.4	32.4	20.7	9.3	0.87
Sulfur, Wt. %		0.0121	0.0254	0.2724	1.018	1.99	2.99	4.44	5.53
Mercaptan Sulfur, ppm		54.2	70.8	39.5	16.1				
H_2S Sulfur, ppm		10.9	9.0	2.2	<1.0				
Organic Cl, ppm		2.9	5.1	8.3	2.4				
n-Paraffins, Vol. %		49.5	33.7	26.9					
i-Paraffins, Vol. %		38.1	31.9	31.6					
Aromatics, Vol. %		2.2	7.8	21.0					
Naphthenes, Vol. %		10.2	26.5	16.7					
Aniline Point, ° F				128.0	140.6	150.8	163.7		
TAN, mg KOH/g					0.02	0.03			
Cetane Index					47.8	49.8			
Naphthalenes, vol. %					3.66	9.82			
Smoke point, mm					21.0	15.4			
Nitrogen, Wt. %					0.0009	0.019	0.202	0.482	0.816
Viscosity:									
cSt 77° F					2.30				
100° F					1.79	4.59			
130° F						2.97	29.72	7898	
180° F							11.30	887.8	
260° F									38380
280° F									17318
Freezing Point, °F					-32.8				
Cloud Point, °F						16	102		
Pour Point, °F						20	85	85	
Ni, ppm									167
V, ppm									691
Fe, ppm									17.9
Micro Car. Res., Wt. %							0.42	16.77	31.28

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bryan Mound Maya, MLI 003

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		49.5	33.7	26.9
Total Iso-paraffins		38.1	31.9	31.6
Total Aromatics		2.2	7.8	21.0
Total Naphthenes		10.2	26.5	16.7
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.0
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	1.5	0.0	0.0
	C5	26.1	1.0	0.0
	C6	20.7	5.7	0.1
	C7	1.2	18.0	0.8
	C8	0.0	8.9	5.5
	C9	0.0	0.1	9.1
	C10	0.0	0.0	7.9
	C11	0.0	0.0	3.3
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	13.7	0.2	0.0
	C6	19.8	3.7	0.0
	C7	4.5	13.0	0.3
	C8	0.0	13.8	3.0
	C9	0.0	1.1	9.4
	C10	0.0	0.0	13.2
	C11	0.0	0.0	5.4
	C12	0.0	0.0	0.2
Aromatics:	C6	1.7	0.9	0.2
	C7	0.5	5.2	0.8
	C8	0.0	1.7	7.1
	C9	0.0	0.0	5.3
	C10	0.0	0.0	6.3
	C11	0.0	0.0	0.9
	C12	0.0	0.0	0.3
Naphthenes:	C5	1.5	0.3	0.0
	C6	7.1	4.5	0.1
	C7	1.5	12.9	1.0
	C8	0.0	8.6	4.3
	C9	0.0	0.3	6.2
	C10	0.0	0.0	3.7
	C11	0.0	0.0	1.3
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.0
Propane	23.5
i-Butane	18.8
n-Butane	56.7
i-Pentane	0.6
n-Pentane	0.1
C_6+	0.2

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.5
Ethylbenzene	0.2
o,m,p-Xylene	0.7

Octane Number		
	RON	MON
C_5-175° F	68.7	---
C_5-375° F	41.5	45.5

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS

West Hackberry Sweet, MLI 004

Whole Crude

Specific Gravity, 60/60° F	0.8403	Ni, ppm	2.7	RVP, psi @ 100° F	7.10		
API Gravity	36.9	V, ppm	3.9	TAN, mg KOH/g	0.05		
Sulfur, Wt. %	0.31	Fe, ppm	5.4	Mercaptan Sulfur, ppm*	1.0		
Nitrogen, Wt. %	0.104	Org. Cl, ppm	<0.1	H_2S Sulfur, ppm*	<1.0		
Micro Car. Res., Wt. %*	1.96	O.D. Color	9590	Viscosity: 77° F	5.362 cSt	43.4	SUS
Pour Point, °F	25	UOP "K"	11.90	100° F	3.744 cSt	38.4	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	5.0	7.2	9.0	13.4	16.3	11.3	27.5	38.7	11.1
Vol. Sum %	5.0	12.2	21.2	34.6	50.9	62.2	89.7	100.9	100.8
Wt. %	3.6	5.8	8.0	12.4	16.1	11.5	29.5	42.7	13.0
Wt. Sum %	3.6	9.4	17.4	29.7	45.8	57.3	86.9	100.0	99.9
Specific Gravity, 60/60° F		0.6778	0.7424	0.7791	0.8288	0.8578	0.9024	0.9264	0.984
API Gravity		77.3	59.1	50.1	39.2	33.5	25.3	21.2	12.3
Sulfur, Wt. %		0.0004	0.0004	0.0054	0.06	0.26	0.58	0.64	1.04
Mercaptan Sulfur, ppm		<1.0	<1.0	<1.0	6.0				
H_2S Sulfur, ppm		<1.0	<1.0	<1.0	<1.0				
Organic Cl, ppm		0.2	0.1	0.1	0.1				
n-Paraffins, Vol. %		42.12	23.10	22.68					
i-Paraffins, Vol. %		33.69	28.46	30.45					
Aromatics, Vol. %		4.04	9.74	20.27					
Naphthenes, Vol. %		20.15	38.70	24.14					
Aniline Point, ° F				121.0	141.6	162.8	191.0		
TAN, mg KOH/g					0.01	0.07			
Cetane Index					45.7	51.6			
Naphthalenes, vol. %					5.93	10.44			
Smoke point, mm					19.1	15.5			
Nitrogen, Wt. %					0.0005	0.005	0.116	0.294	0.607
Viscosity:									
cSt 77° F					2.414				
100° F					1.912	5.001			
130° F						3.406	23.65	85.31	
180° F							9.668	23.34	1589
210° F									479.4
250° F									
Freezing Point, °F					-29				
Cloud Point, °F						22	108		
Pour Point, °F						10	100	60	
Ni, ppm									18.5
V, ppm									28.0
Fe, ppm									45.3
Micro Car. Res., Wt. %							0.13	4.45	14.79

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
West Hackberry Sweet, MLI 004

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		42.1	23.1	22.7
Total Iso-paraffins		33.7	28.5	30.4
Total Aromatics		4.0	9.7	20.3
Total Naphthenes		20.2	38.7	24.1
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.5
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	0.5	0.0	0.0
	C5	19.9	0.2	0.0
	C6	20.4	3.9	0.0
	C7	1.3	13.1	0.4
	C8	0.0	5.7	5.6
	C9	0.0	0.1	7.6
	C10	0.0	0.0	6.7
	C11	0.0	0.0	2.3
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	7.6	0.1	0.0
	C6	21.6	2.0	0.0
	C7	4.4	11.4	0.2
	C8	0.1	13.4	4.6
	C9	0.0	1.6	9.0
	C10	0.0	0.0	13.4
	C11	0.0	0.0	3.3
	C12	0.0	0.0	0.0
Aromatics:	C6	3.0	1.2	0.0
	C7	1.0	7.2	1.0
	C8	0.0	1.4	6.7
	C9	0.0	0.0	5.5
	C10	0.0	0.0	5.8
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.2
Naphthenes:	C5	2.7	0.1	0.0
	C6	14.5	8.8	0.1
	C7	3.0	22.2	1.5
	C8	0.0	6.7	6.7
	C9	0.0	0.8	10.3
	C10	0.0	0.0	3.8
	C11	0.0	0.0	1.6
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.0
Propane	10.3
i-Butane	11.2
n-Butane	40.5
i-Pentane	16.6
n-Pentane	21.4
C_6+	0.0

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.3
Toluene	0.7
Ethylbenzene	0.2
o,m,p-Xylene	0.7

Octane Number		
	RON	MON
C_5-175° F	68.1	66.9
C_5-375° F	53.7	51.8

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
West Hackberry Sour, MLI 005

Whole Crude							
Specific Gravity, 60/60° F	0.8564	Ni, ppm	9.6	RVP, psi @ 100° F	6.25		
API Gravity	33.7	V, ppm	38.8	TAN, mg KOH/g	0.10		
Sulfur, Wt. %	1.44	Fe, ppm	2.8	Mercaptan Sulfur, ppm*	32.8		
Nitrogen, Wt. %	0.150	Org. Cl, ppm	0.2	H_2S Sulfur, ppm*	4.7		
Micro Car. Res., Wt. % *	4.45	O.D. Color	26220	Viscosity: 77° F	8.565 cSt	53.9	SUS
Pour Point, °F	-10	UOP "K"	11.90	100° F	5.599 cSt	44.3	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	4.6	7.2	7.8	14.4	14.4	10.5	26.6	41.9	15.2
Vol. Sum %	4.6	11.8	19.5	33.9	48.4	58.9	85.5	100.8	100.7
Wt. %	3.2	5.6	6.6	13.0	13.8	10.6	28.7	47.1	18.3
Wt. Sum %	3.2	8.8	15.4	28.4	42.2	52.8	81.5	99.9	99.8
Specific Gravity, 60/60° F		0.6663	0.7268	0.7712	0.8190	0.8618	0.9217	0.9608	1.032
API Gravity		80.9	63.2	52.0	41.3	32.7	22.0	15.8	5.6
Sulfur, Wt. %		0.0046	0.0079	0.0426	0.37	1.19	1.75	2.42	3.35
Mercaptan Sulfur, ppm		20.3	29.1	158.8	65.7				
H_2S Sulfur, ppm		2.1	7.8	31.3	<1.0				
Organic Cl, ppm		0.3	0.8	0.4	0.3				
n-Paraffins, Vol. %		46.84	31.16	26.62					
i-Paraffins, Vol. %		38.56	35.58	32.84					
Aromatics, Vol. %		3.02	8.42	20.34					
Naphthenes, Vol. %		11.58	24.84	17.56					
Aniline Point, ° F				125.9	144.8	159.0	180.0		
TAN, mg KOH/g					<0.01	<0.01			
Cetane Index					49.4	50.3			
Naphthalenes, vol. %					4.55	9.50			
Smoke point, mm					21 8	14.7			
Nitrogen, Wt. %					0.0008	0 012	0.162	0.366	0 586
Viscosity:									
cSt 77° F					2.258				
100° F					1.801	4.845			
130° F						3.301	25.21	204.3	
180° F							10.25	53.56	12266
210° F									2880
250° F									
Freezing Point, °F					-27				
Cloud Point, °F						20	96		
Pour Point, °F						20	90	30	
Ni, ppm									53.9
V, ppm									214.2
Fe, ppm									17.4
Micro Car. Res., Wt. %							0.22	9.37	23.97

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
West Hackberry Sour, MLI 005

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		46.8	31.2	26.6
Total Iso-paraffins		38.6	35.6	32.8
Total Aromatics		3.0	8.4	20.3
Total Naphthenes		11.6	24.8	17.6
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.6
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	1.1	0.0	0.0
	C5	19.8	0.4	0.0
	C6	24.3	5.4	0.0
	C7	1.7	18.1	0.7
	C8	0.0	7.1	6.6
	C9	0.0	0.1	8.9
	C10	0.0	0.0	7.5
	C11	0.0	0.0	2.7
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.1	0.0	0.0
	C5	9.1	0.1	0.0
	C6	24.2	2.8	0.0
	C7	5.2	15.4	0.3
	C8	0.0	15.7	4.9
	C9	0.0	1.5	9.7
	C10	0.0	0.0	14.0
	C11	0.0	0.0	3.8
	C12	0.0	0.0	0.0
Aromatics:	C6	1.9	0.8	0.0
	C7	1.1	6.1	0.9
	C8	0.0	1.5	6.6
	C9	0.0	0.0	5.4
	C10	0.0	0.0	6.0
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.2
Naphthenes:	C5	1.7	0.1	0.0
	C6	8.3	5.1	0.1
	C7	1.6	14.1	1.1
	C8	0.0	4.8	4.5
	C9	0.0	0.7	7.7
	C10	0.0	0.0	3.0
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.0
Propane	7.1
i-Butane	9.2
n-Butane	40.8
i-Pentane	16.8
n-Pentane	19.1
C_6+	5.5

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.6
Ethylbenzene	0.2
o,m,p-Xylene	0.8

Octane Number		
	RON	MON
C_5-175° F	65.0	62.4
C_5-375° F	47.1	50.6

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS

Weeks Island Sour, MLI 006

Whole Crude								
Specific Gravity, 60/60° F	0.8824	Ni, ppm	15.6	RVP, psi @ 100° F	4.90			
API Gravity	28.9	V, ppm	46.8	TAN, mg KOH/g	0.02			
Sulfur, Wt. %	1.41	Fe, ppm	1.0	Mercaptan Sulfur, ppm*	6.3			
Nitrogen, Wt. %	0.198	Org. Cl, ppm	0.9	H_2S Sulfur, ppm*	0.6			
Micro Car. Res., Wt. % *	5.05	O.D. Color	25540	Viscosity: 77° F	16.44	cSt	83.0	SUS
Pour Point, °F	10	UOP "K"	11.8	100° F	11.06	cSt	62.6	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	1.5	4.6	6.0	11.0	14.7	12.3	31.6	50.1	18.3
Vol. Sum %	1.5	6.1	12.1	23.1	37.8	50.0	81.6	100.1	99.9
Wt. %	1.0	3.5	5.0	9.7	13.9	12.1	33.3	54.8	21.4
Wt. Sum %	1.0	4.5	9.5	19.2	33.1	45.2	78.5	100.1	99.9
Specific Gravity, 60/60° F		0.6681	0.7352	0.7775	0.8293	0.8695	0.9297	0.9662	1.030
API Gravity		80.3	61.0	50.5	39.1	31.2	20.7	15.0	5.9
Sulfur, Wt. %		0.0029	0.0044	0.0392	0.32	0.89	1.62	2.22	3.32
Mercaptan Sulfur, ppm		14.8	18.8	37.9	8.6				
H_2S Sulfur, ppm		1.7	4.0	3.7	<1.0				
Organic Cl, ppm		5.2	4.2	5.7	<0.1				
n-Paraffins, Vol. %		45.3	27.7	23.5					
i-Paraffins, Vol. %		36.3	28.0	28.9					
Aromatics, Vol. %		3.9	10.3	24.1					
Naphthenes, Vol. %		14.5	33.9	21.8					
Aniline Point, ° F				121.1	138.1	154.2	173.6		
TAN, mg KOH/g					0.01	0.04			
Cetane Index					45.5	48.0			
Naphthalenes, vol. %					4.64	10.90			
Smoke point, mm					21.1	15.0			
Nitrogen, Wt. %					0.0006	0.014	0.186	0.424	0.666
Viscosity:									
cSt 77° F					2.31				
100° F					1.84	5.17			
130° F						3.49	33.15	342.1	
180° F							12.16	79.00	31.163
210° F									6.411
250° F									
Freezing Point, °F					-34.6				
Cloud Point, °F						18	94		
Pour Point, °F						20	85	65	
Ni, ppm									79.7
V, ppm									220
Fe, ppm									9.5
Micro Car. Res., Wt. %							0.32	9.10	23.08

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Weeks Island Sour, MLI 006

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		45.3	27.7	23.5
Total Iso-paraffins		36.3	28.0	28.9
Total Aromatics		3.9	10.3	24.1
Total Naphthenes		14.5	33.9	21.8
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	1.8
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	3.5	0.1	0.0
	C5	21.2	0.5	0.0
	C6	19.3	4.4	0.0
	C7	1.2	15.7	0.7
	C8	0.0	7.0	5.2
	C9	0.0	0.1	7.8
	C10	0.0	0.0	6.8
	C11	0.0	0.0	2.8
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.3	0.0	0.0
	C5	11.6	0.2	0.0
	C6	20.0	2.3	0.0
	C7	4.3	12.6	0.3
	C8	0.0	12.3	2.9
	C9	0.0	0.6	8.4
	C10	0.0	0.0	12.5
	C11	0.0	0.0	4.6
	C12	0.0	0.0	0.2
Aromatics:	C6	2.9	1.4	0.1
	C7	0.9	7.3	1.2
	C8	0.0	1.6	8.0
	C9	0.0	0.0	8.9
	C10	0.0	0.0	4.6
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.3
Naphthenes:	C5	2.4	0.1	0.0
	C6	10.2	6.2	0.1
	C7	1.9	17.6	1.4
	C8	0.0	9.3	6.5
	C9	0.0	0.6	8.6
	C10	0.0	0.0	3.8
	C11	0.0	0.0	1.4
	C12	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	2.6
Propane	36.4
i-Butane	12.4
n-Butane	42.2
i-Pentane	3.9
n-Pentane	2.1
C_6+	0.4

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.4
Ethylbenzene	0.2
o,m,p-Xylene	0.6

Octane Number		
	RON	MON
C_5-175° F	67.2	65.6
C_5-375° F	51.1	49.4

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS

Bayou Choctaw Sweet, MLI 007

Whole Crude

Specific Gravity, 60/60° F	0.8441	Ni, ppm	4.7	RVP, psi @ 100° F	7.80		
API Gravity	36.1	V, ppm	3.5	TAN, mg KOH/g	0.02		
Sulfur, Wt. %	0.39	Fe, ppm	7.3	Mercaptan Sulfur, ppm*	10.5		
Nitrogen, Wt. %	0.124	Org. Cl, ppm	0.1	H_2S Sulfur, ppm*	0.1		
Micro Car. Res., Wt. % *	2.47	O.D. Color	14150	Viscosity: 77° F	7.37	cSt	50.0 SUS
Pour Point, °F	40	UOP "K"	12.0	100° F	4.78	cSt	41.7 SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	3.9	6.0	8.1	12.5	15.8	12.0	30.1	41.6	11.8
Vol. Sum %	3.9	9.9	18.0	30.5	46.3	58.3	88.4	99.9	100.2
Wt. %	2.8	4.8	7.1	11.6	15.5	12.2	31.9	46.1	13.9
Wt. Sum %	2.8	7.6	14.7	26.3	41.8	54.0	85.9	100.1	99.8
Specific Gravity, 60/60° F		0.6741	0.7385	0.7772	0.8282	0.8541	0.8950	0.9363	0.996
API Gravity		78.4	60.1	50.6	39.4	34.2	26.6	19.6	10.6
Sulfur, Wt. %		0.0009	0.0023	0.0134	0.07	0.28	0.54	0.76	1.32
Mercaptan Sulfur, ppm		7.0	11.3	31.9	36.5				
H_2S Sulfur, ppm		<1.0	1.2	<1.0	<1.0				
Organic Cl, ppm		0.7	0.4	0.6	0.2				
n-Paraffins, Vol. %		43.5	24.2	23.2					
i-Paraffins, Vol. %		35.2	26.9	30.8					
Aromatics, Vol. %		2.9	7.6	19.2					
Naphthenes, Vol. %		18.5	41.2	24.5					
Aniline Point, ° F				123.5	144.3	169.5	193.7		
TAN, mg KOH/g					<0.01	0.02			
Cetane Index					46.0	52.7			
Naphthalenes, vol. %					4.28	8.14			
Smoke point, mm					21.3	16.5			
Nitrogen, Wt. %					0.0004	0.011	0.132	0.324	0.618
Viscosity:									
cSt 77° F					2.38				
100° F					1.88	5.53			
130° F						3.27	25.84	112.9	
180° F							10.43	38.47	4402
210° F									1304
250° F									
Freezing Point, °F					-30				
Cloud Point, °F						35	112		
Pour Point, °F						30	100	65	
Ni, ppm									33.0
V, ppm									24.0
Fe, ppm									36.9
Micro Car. Res., Wt. %								5.53	17.80

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bayou Choctaw Sweet, MLI 007

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		43.5	24.2	23.2
Total Iso-paraffins		35.2	26.9	30.8
Total Aromatics		2.9	7.6	19.2
Total Naphthenes		18.5	41.2	24.5
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.3
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	0.9	0.0	0.0
	C5	22.2	0.4	0.0
	C6	19.1	4.4	0.0
	C7	1.4	13.6	0.4
	C8	0.0	5.7	5.3
	C9	0.0	0.1	7.7
	C10	0.0	0.0	6.8
	C11	0.0	0.0	2.7
	C12	0.0	0.0	0.2
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	10.5	0.1	0.0
	C6	20.4	2.4	0.0
	C7	4.2	11.6	0.2
	C8	0.1	11.8	3.7
	C9	0.0	1.0	8.9
	C10	0.0	0.0	14.2
	C11	0.0	0.0	3.7
	C12	0.0	0.0	0.2
Aromatics.	C6	2.1	1.2	0.2
	C7	0.8	5.2	1.4
	C8	0.0	1.2	5.4
	C9	0.0	0.0	5.1
	C10	0.0	0.0	5.7
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.3
Naphthenes.	C5	2.6	0.2	0.0
	C6	12.8	8.3	0.1
	C7	3.0	22.5	1.4
	C8	0.0	9.5	7.6
	C9	0.0	0.8	9.6
	C10	0.0	0.0	4.0
	C11	0.0	0.0	1.8
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	1.3
Propane	28.6
i-Butane	11.0
n-Butane	47.7
i-Pentane	7.5
n-Pentane	3.1
C_6+	0.8

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.4
Ethylbenzene	0.1
o,m,p-Xylene	0.5

Octane Number		
	RON	MON
C_5-175° F	66.1	66.0
C_5-375° F	51.4	48.6

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS

Bayou Choctaw Sour, MLI 008

Whole Crude

Specific Gravity, 60/60° F	0.8591	Ni, ppm	6.8	RVP, psi @ 100° F	5.22		
API Gravity	33.2	V, ppm	25.3	TAN, mg KOH/g	0.05		
Sulfur, Wt. %	1.47	Fe, ppm	1.0	Mercaptan Sulfur, ppm*	20.8		
Nitrogen, Wt. %	0.145	Org. Cl, ppm	0.7	H_2S Sulfur, ppm*	1.7		
Micro Car. Res., Wt. % *	3.58	O.D. Color	15380	Viscosity: 77° F	8.55 cSt	53.9	SUS
Pour Point, °F	10	UOP "K"	11.85	100° F	5.87 cSt	45.2	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	2.0	4.8	7.6	13.4	16.8	13.7	28.1	41.5	13.6
Vol. Sum %	2.0	6.8	14.4	27.8	44.6	58.3	86.4	99.8	100.0
Wt. %	1.4	3.7	6.4	12.1	16.1	13.8	30.1	46.5	16.1
Wt. Sum %	1.4	5.1	11.5	23.6	39.7	53.5	83.6	100.0	99.7
Specific Gravity, 60/60° F		0.6636	0.7235	0.7722	0.8209	0.8643	0.9201	0.9615	1.020
API Gravity		81.7	64.1	51.7	40.9	32.2	22.3	15.7	7.23
Sulfur, Wt. %		0.0085	0.0158	0.0457	0.43	1.14	2.14	2.65	3.75
Mercaptan Sulfur, ppm		35.7	67.1	78.9	34.8				
H_2S Sulfur, ppm		<1.0	8.2	7.7	1.5				
Organic Cl, ppm		0.4	1.2	5.3	4.5				
n-Paraffins, Vol. %		46.7	32.7	25.9					
i-Paraffins, Vol. %		38.6	35.6	32.7					
Aromatics, Vol. %		4.6	7.9	21.2					
Naphthenes, Vol. %		10.1	23.7	17.4					
Aniline Point, ° F				125.6	143.6	163.1	178.0		
TAN, mg KOH/g					0.02	0.01			
Cetane Index					48.7	49.5			
Naphthalenes, vol. %					2.58	9.06			
Smoke point, mm					20.3	14.6			
Nitrogen, Wt. %					0.0010	0.024	0.155	0.344	0.522
Viscosity:									
cSt 77° F					2.30				
100° F					1.82	5.83			
130° F						3.86	31.45	203.8	
180° F							11.45	52.53	11376
210° F									2513
250° F									
Freezing Point, °F					-31.0				
Cloud Point, °F						32	104		
Pour Point, °F						30	95	60	
Ni, ppm									48.2
V, ppm									152.8
Fe, ppm									7.6
Micro Car. Res., Wt. %								7.93	22.23

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bayou Choctaw Sour, MLI 008

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		46.7	32.7	25.9
Total Iso-paraffins		38.6	35.6	32.7
Total Aromatics		4.6	7.9	21.2
Total Naphthenes		10.1	23.7	17.4
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.7
Paraffins	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	1.4	0.1	0.0
	C5	21.9	0.7	0.0
	C6	21.8	7.8	0.1
	C7	1.5	17.0	0.6
	C8	0.0	7.2	5.4
	C9	0.0	0.0	8.6
	C10	0.0	0.0	7.6
	C11	0.0	0.0	3.5
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.1	0.0	0.0
	C5	11.1	0.2	0.0
	C6	23.6	4.7	0.0
	C7	3.8	15.2	0.2
	C8	0.0	14.7	2.9
	C9	0.0	0.8	9.1
	C10	0.0	0.0	14.8
	C11	0.0	0.0	5.3
	C12	0.0	0.0	0.2
Aromatics:	C6	2.8	1.4	0.2
	C7	1.8	5.4	0.8
	C8	0.0	1.1	6.0
	C9	0.0	0.0	5.6
	C10	0.0	0.0	6.7
	C11	0.0	0.0	1.5
	C12	0.0	0.0	0.3
Naphthenes:	C5	2.0	0.3	0.0
	C6	6.8	5.7	0.1
	C7	1.4	12.3	0.8
	C8	0.0	5.0	5.3
	C9	0.0	0.5	6.6
	C10	0.0	0.0	3.3
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	1.0
Propane	39.8
i-Butane	13.7
n-Butane	40.1
i-Pentane	1.1
n-Pentane	3.2
C_6+	1.0

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.1
Toluene	0.3
Ethylbenzene	0.1
o,m,p-Xylene	0.6

Octane Number		
	RON	MON
C_5-175° F	58.0	55.3
C_5-375° F	43.3	42.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Exhibit E - SPR Delivery Point Data

PHILLIPS TERMINAL
(Formerly Seaway Terminal)

(Data as of November 1, 1991)

LOCATION: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)

CRUDE OIL STREAMS: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya

DELIVERY POINTS: Phillips Terminal marine dock facility number 2

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 3 Docks: Nos. 1, 2 and 3

MAXIMUM LENGTH
LENGTH OVERALL (LOA): 750 feet during daylight and 615 feet during hours of darkness.

MAXIMUM BEAM: 107 feet

MAXIMUM DRAFT: 37.5 feet; subject to change due to weather and silting conditions

MAXIMUM AIR DRAFT: None

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 50,000 DWT. Dock Nos. 2 and 3 can accommodate up to 80,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: Dock No. 1 has the capability to load barges of a minimum 30,000-barrel capacity. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Freeport Harbor sea buoy approximately 4.5 miles from the terminal.

ARCO PIPELINE COMPANY

TEXAS CITY TERMINAL

(Data as of November 1, 1991)

LOCATION: Docks 11 and 12, Texas City Harbor, Galveston County, Texas

CRUDE OIL STREAMS: Bryan Mound Sweet and Bryan Mound Sour

DELIVERY POINTS: ARCO Pipe Line Company Marine Docks (11 and 12) and connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 11 and 12

MAXIMUM LENGTH OVERALL (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.

MAXIMUM BEAM: Dock 11 - 108 feet; Dock 12 - 220 feet

MAXIMUM DRAFT: 39.6 feet; subject to change due to weather and silting conditions

MAXIMUM AIR DRAFT: None

MAXIMUM DEADWEIGHT TONS (DWT): 150,000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Bolivar Roads (breakwater) or Galveston sea buoy.

SUN TERMINAL

(Data as of November 1, 1991)

LOCATION: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)

CRUDE OIL STREAMS: West Hackberry Sweet, West Hackberry Sour

DELIVERY POINTS: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 5 Docks: Nos. 1, 2, 3, 4 and 5

MAXIMUM LENGTH OVERALL (LOA): 1000 feet

MAXIMUM BEAM: 150 feet

MAXIMUM DRAFT: 40 feet fresh water

MAXIMUM AIR DRAFT: 136 feet

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 150,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: 3 Barge Docks: A, B and C. Each is capable of handling barges up to 25,000 barrels capacity.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar Bouy, also at Sabine Bar for vessels with draft of 39 feet or less. Short-term anchorage for vessels of less than 40 foot draft in turning basin.

TEXACO 22-INCH/DOE LAKE CHARLES PIPELINE CONNECTION

(Data as of November 1, 1991)

LOCATION: Lake Charles Upper Junction, located in Section 36, Township 10 South, Range 10 West, Calcasie Parish, (Lake Charles) Louisiana

CRUDE OIL STREAMS: West Hackberry Sweet, West Hackberry Sour

DELIVERY POINT: Texaco 22-Inch/DOE Lake Charles Pipeline Connection

MARINE DISTRIBUTION FACILITIES: None

DOE ST. JAMES TERMINAL

(Data as of November 1, 1991)

LOCATION: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3)

CRUDE OIL STREAMS: Bayou Choctaw Sweet, Bayou Choctaw Sour, Weeks Island Sour

DELIVERY POINTS: St. James Terminal marine dock facility and LOCAP and Capline Terminals (connections to Capline interstate pipeline system and local commercial pipelines)

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 1 and 2

MAXIMUM LENGTH OVERALL (LOA): 940 feet

MAXIMUM BEAM: None

MAXIMUM DRAFT: 45 feet

MAXIMUM AIR DRAFT: 153 feet less the river stage

MAXIMUM DEADWEIGHT TONS (DWT): 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILIITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.

CUSTOMARY ANCHORAGE: Grandview Reach approximately 11 miles from the terminal.

EXHIBIT F

OFFER

STANDBY LETTER OF CREDIT

DATE: _____

Acquisition and Sales Division
Mail Stop FE-4451
Project Management Office
Strategic Petroleum Reserve
U.S. Department of Energy
900 Commerce Road East
New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer _____ we hereby establish in the U.S. Department of Energy's favor, an irrevocable Letter of Credit, Numbered _____, for an amount not to exceed U.S. $_____ (_____) effective immediately on account of our customer in response to the U.S. Department of Energy's Notice of Sale No. _____, including any amendments thereto, for the sale of Strategic Petroleum Reserve petroleum. This Letter of Credit expires 60 days from the date of issuance of this Letter of Credit.

This Letter of Credit is available by wire payment to the U.S. Department of Energy against presentation of a demand on us of a manually signed statement (with blanks filled in) containing the following:

"THIS DRAWING OF U.S. $_____ (_____) AGAINST YOUR LETTER OF CREDIT NUMBERED _____, DATED _____, IS DUE THE U.S. GOVERNMENT BECAUSE OF THE FAILURE OF _____ TO HONOR ITS OFFER TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PETROLEUM FROM THE STRATEGIC PETROLEUM RESERVE, IN ACCORDANCE WITH THE U.S. GOVERNMENT'S NOTICE OF SALE NO. _____, INCLUDING ANY AMENDMENTS THERETO."

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at our office located

at _____, we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by wire transfer through the Federal Reserve Communications System to the U.S. Treasury (Code 021030004) for credit to Department of Energy Account 89000201. Each wire transfer shall be formatted in accordance with prescribed Treasury requirements.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the State in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to _____.

Yours truly,

_____

Authorized Signature

INSTRUCTIONS FOR OFFER LETTER OF CREDIT

1. If issued from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant (on line) in the Fed's FEDWIRE funds transfer system. If issued by a syndicate of banks, only the institution acting as paying agent for the syndicate and responsible for honoring the drawing under the letter of credit must maintain a Fed account and be a participant (on line) in FEDWIRE.

2. If Offeror (bank's customer) or bank forwards letter of credit separately from the offer, the envelope shall clearly say "Offer Standby Letter of Credit (Name of Company)" and shall be clearly marked in accordance with Standard Sales Provision B.7(c).

3. Letters of Credit shall conform without exception to this attachment.

4. Insert date of issuance of Letter of Credit.

5. Insert dollar amount of Letter of Credit in numbers and in words.

6. Banks shall fill in all blanks except those in drawing statement. The drawing statement is in bold print with double lines for the blanks. Do not fill in the double-lined blanks.

7. Attachment E to Notice of Sale No. DE-NS96-91PO51012 provides an instruction guide for funds transfer deposit messages to other Federal agencies through Treasury, and the current wire transfer format.

8. If available, please include your American Bank Association Number on Letter of Credit.

9. Type name under authorized signature.

EXHIBIT G

PAYMENT AND PERFORMANCE
LETTER OF CREDIT

Date: _____

Acquisition and Sales Division
Mail Stop FE-4451
Strategic Petroleum Reserve
Project Management Office
U.S. Department of Energy
900 Commerce Road East
New Orleans, LA 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer _____ we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for about U.S. $_____ (_____) effective immediately and expiring at our office located at _____ one hundred and twenty (120) days from the date of issuance of this Letter of Credit.

This Letter of Credit is available by wire payment to the U.S. Department of Energy against presentation of a demand on us. If transmitted by telex, mail, express delivery, or means other than FEDWIRE, it shall contain either a statement (with blanks filled in) that:

"THIS DRAWING IS DUE THE U.S. DEPARTMENT OF ENERGY UNDER YOUR LETTER OF CREDIT NUMBER _____ FOR (CUSTOMER'S NAME). PAYMENT OF U.S. $_____ TO BE MADE BY WIRE TRANSFER TO U.S. DEPARTMENT OF ENERGY ON (DATE) UNDER CONTRACT NUMBER _____, INVOICE NO. _____. THE WIRE TRANSFER MUST INCLUDE OUR FEDWIRE NUMBER AND OTHER WIRE INFORMATION AS FOLLOWS: TRANSFER TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ PAYMENT FOR THE SALE OF CRUDE OIL UNDER CONTRACT NO. _____, INVOICE NO._____."

or a statement (with blanks filled in) that:

"THIS DRAWING IS DUE TO THE U.S. DEPARTMENT OF ENERGY UNDER YOUR LETTER OF CREDIT NUMBER _____ FOR (CUSTOMER'S NAME). PAYMENT OF U.S. $_____ TO BE MADE BY WIRE TRANSFER TO U.S. DEPARTMENT OF ENERGY BECAUSE OF FAILURE TO PERFORM IN ACCORDANCE WITH CONTRACT NUMBER _____ RESULTING IN PAYMENT DUE UNDER THE CONTRACT IN THAT AMOUNT. THE WIRE TRANSFER MUST INCLUDE OUR FEDWIRE NUMBER AND OTHER WIRE INFORMATION AS FOLLOWS: TRANSFER TO

TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ PAYMENT FOR FAILURE TO PERFORM IN ACCORDANCE WITH CONTRACT NUMBER_____."

or both.

We also will honor demands presented over the Federal Reserve Bank's FEDWIRE system, provided that each such demand contains (with blanks filled in) the substance of either of the following statements:

"THIRD PARTY SENDER, RE YOUR LOC# ___(LETTER OF CREDIT NO.) FOR ___(CUSTOMER'S NAME)___ THIRD PARTY RECEIVER, TRANSFER TO TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) $_____ PAYMENT DUE ON ___(DATE)___ FOR SALE OF OIL UNDER CONTRACT NO._____, INVOICE NO. _____."

or a statement (with blanks filled in) that:

"THIRD PARTY SENDER, RE YOUR LOC# ___(LETTER OF CREDIT NO.)___ FOR ___(CUSTOMER'S NAME)___ THIRD PARTY RECEIVER, TRANSFER TO TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) $_____ PAYMENT DUE FROM FAILURE TO PERFORM IN ACCORDANCE WITH CONTRACT NO. _____."

The U.S. Department of Energy may make multiple drawings totalling up to 110 percent of the amount of funds indicated in the first paragraph as available under this Letter of Credit.

Upon receipt of the U.S. Department of Energy's demand, we will honor the demand and make payment by 3 p.m. Eastern Time on the date stated in the demand or, if the demand is not received before the stated date, then no later than one day after presentation (or the next business day thereafter if the stated date or day after presentation does not fall on a regular business day). Payment will be by wire transfer of funds over FEDWIRE to the U.S. Treasury (Code 021030004) for credit to the Department of Energy Account 89000201. Each wire transfer of funds shall be formatted in accordance with prescribed U.S. Treasury requirements.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to

_____

_____

Yours truly,

_____

Authorized Signature

INSTRUCTIONS FOR PAYMENT AND PERFORMANCE
LETTER OF CREDIT

1. If issued from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant (on line) in the Fed's FEDWIRE funds transfer system. If issued by a syndicate of banks, only the institution acting as paying agent for the syndicate and responsible for honoring the drawings under the letter of credit must maintain a Fed account and be a participant (on line) in FEDWIRE.

2. Letter of Credit shall conform without exception to this attachment.

3. Insert date of issuance of Letter of Credit.

4. Insert dollar amount of Letter of Credit in numbers and in words.

5. Banks shall fill in all blanks except those in the drawing statements. The drawing statements are in bold print with double lines for the blanks. Do not fill in the double-lined blanks.

6. Attachment E to the Notice of Sale No. DE-NS96-91PO51012 provides instruction guide for funds transfer deposit messages to other Federal agencies through Treasury and the current wire transfer format.

7. If available please include your American Bank Association Number on Letter of Credit.

8. Type name under authorized signature.

EXHIBIT H

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT

1. SALES CONTRACT NUMBER	2. TERMINAL REPORT NUMBER	3. CARGO NUMBER

4. DATE DELIVERED	5. TRANSPORTATION MODE	6. ACCEPTANCE POINT	7. PRICE DATE
	☐ TANKER ☐ BARGE ☐ PIPELINE	☐ ORIGIN ☐ DESTINATION	

8. SHIPPING SPR SITE/TERMINAL	9. PURCHASER-NAME AND ADDRESS	10. CARRIER

11. CONTRACT LINE ITEM MLI	11. CONTRACT LINE ITEM DLI	12. DESCRIPTION OF CRUDE OIL AND GROSS BBLS	13. API GRAVITY	14. TOTAL SULPHUR %	15. DEL'D NET BBLS @ 60°F	16. UNIT PRICE	17. AMOUNT DUE

18. QUALITY ADJUSTMENT - INCREASE/(DECREASE) 18A. NET GRAVITY ADJUSTMENT FROM 18B(5) _____		
18B. CALCULATION OF GRAVITY ADJUSTMENT	19. NET AMOUNT DUE	
(1) ADVERTISED API GRAVITY	20. THE DELIVERED NET BARRELS, UNIT PRICE, PRICE DATE, QUALITY ADJUSTMENT AND NET AMOUNT DUE HAVE BEEN VERIFIED	
(2) DELIVERED API GRAVITY		
(3) VARIANCE--(2)MINUS(1)	SIGNATURE: _____	
(4) ALLOWABLE VARIANCE	ACCOUNTABLE OFFICER	
(5) NET VARIANCE --(3)MINUS(4)	22. REMARKS	

21. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
PILOT ON BOARD		
WEIGHED ANCHOR		
FIRST LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

23. GOVERNMENT INSPECTOR'S CERTIFICATE: I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON. DATE _____ SIGNATURE _____ NAME TYPED/PRINTED	24. RECEIPT IS ACKNOWLEDGED FOR THE QUANTITY AND QUALITY SHOWN HEREON: DATE RECEIVED: _____ AGENT: _____ BY: _____ NAME TYPED/PRINTED 25. I CERTIFY THAT THE TIME STATEMENT SHOWN HEREON IS CORRECT SIGNATURE _____ MASTER OF VESSEL

SPRPMO-F-6110.2-14b 1/87 REV 8/91

EXHIBIT I

INSTRUCTION GUIDE FOR RETURN OF OFFER GUARANTEES
BY ELECTRONIC TRANSFER OR TREASURY CHECK

Offer guarantees will be returned at the option of the Government by either check of electronic funds transfer through the Treasury Fedline Payment System (FEDLINE). Offerors shall designate a financial institution for receipt of electronic funds transfer payments and provide the following information:

(1) Name and address of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to FEDLINE.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to FEDLINE, name and address of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the American Bankers Association identifying number for the correspondent institution.

EXHIBIT J

OFFER GUARANTEE CALCULATION WORKSHEET

MLI:

COLUMN ROW (000/$)	(A) MAXQ (000/bbls)	(B) UNIT PRICE	(C) DLI	(D) DESQ (000/bbls)	(E) MINQ (000/bbls)	(F) TOTAL DLI PRICE	(G) BOND FACTOR	(H) PRODUCT ($)
1		$				$	x50	$
2		$				$	x50	$
3		$				$	x50	$
4		$				$	x50	$
5		$				$	x50	$
6		$				$	x50	$
7		$				$	x50	$
8		$				$	x50	$
9		$				$	x50	$
10		$				$	x50	$
11		$				$	x50	$

Total

1. Using a separate worksheet for each MLI offered against, from the SPR Sales Offer Form, enter the MLI maximum quantity offered on (expressed in thousands of barrels) in Column (A), Row 1.

2. Starting with the highest DLI unit price offered on the MLI from the SPR Sales Offer Form (and the highest preference if the unit prices of two or more DLIs are the same) enter the unit price in Row 1, Column (B); the DLI letter in Row 1, Column (C); the DLI desired quantity is Row 1, Column (D) (in thousands of barrels) and the minimum quantity in Row 1, Column (E). (The minimum quantity is either the Government's minimum contract quantity, if the offer indicates the offeror will accept as little as that amount, or the desired quantity, if the offeror indicates he will accept no less than that amount. See instructions for the SPR Sales Offer Form.)

3. If either the desired quantity in Column (D), or the minimum quantity in Column (E) exceeds the maximum quantity in Column (A), you have made an error either on this form or the offer form and should recheck your figures.

4. Multiply the price in Row 1, Column (B) times the desired quantity in Column (D) (as expressed in thousands) and enter the total DLI price in Column (F).

5. Multiply the total DLI price in Column (F) times the factor in Column (G) and enter the product in Column (H). The factor is 5% of 1000.

6. Subtract the DLI desired quantity in Row 1, Column (D) from the maximum quantity in Row 1, Column (A). Enter the result in Row 2, Column (A). If the result is zero, go to step 11.

7. Enter the next highest unit price for the MLI from the offer form in Row 2, Column (B). Enter the DLI letter, desired quantity, and minimum quantity in their respective columns. If there is a maximum quantity remaining in Row 2, Column (A), but no more DLI offers, or the minimum quantity in Row 2, Column (E) exceeds the maximum quantity, you may have made an error and should recheck your figures.

8. Multiply the lesser of the remaining maximum quantity in Column (A) (even if this quantity is less than MINQ), or the desired quantity in Column (D) times the unit price and enter the resulting total DLI price in Column (F).

9. Multiply Column (F) times the factor in Column (G) and enter the product in Column (H).

10. Repeat steps 6-9 for the next higher unit price until the maximum quantity remaining is zero, then go to step 11.

11. Sum the amounts in Column (H) and enter the total in Row 8, Column (H). Sum this amount for all the worksheets. If the sum of all the worksheets is less than $10,000,000, enter the sum in the spaces marked offer bond on the SPR Sales Offer Form. If the sum exceeds $10,000,000, then enter $10,000,000 on the offer form. Send with the offer or wire concurrently to the U.S. Treasury (refer to instructions in the Notice of Sale) an offer guarantee in the amount indicated on the offer form. These worksheets need not be submitted with the offer and should be retained for your files.

[FR Doc. 92-18574 Filed 12-10-92; 8:45 am]

BILLING CODE 6450-01-C

federal register

Friday
December 11, 1992

Part VI

Department of the Interior

Fish and Wildlife Service
50 CFR Part 32
Refuge-Specific Hunting and Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

FIN 1018–AA71

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to insure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations. In addition, these refuge-specific regulations are consistent with the proposed new format which reorganizes all hunting and fishing regulations under one part as proposed in another document published in the **Federal Register** on November 25, 1992.

DATES: Comments must be received on or before December 28, 1992. See **SUPPLEMENTARY INFORMATION** below for discussion of comment periods.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) insure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values and (4) insure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to insure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Special circumstances in the reformatting of the hunting and fishing regulations as proposed to be revised at 57 FR 55686 on November 25, 1992, limit the amount of time that the Service can allow for public comment. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (**ADDRESSES** above) by the end of the comment period. All substantive comments regarding content or format will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting and fishing regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and

would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—
California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—
Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—
Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—
Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 W. Gate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8200.

Region 6—
Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—
Alaska (Hunting and fishing on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting and fishing regulations for these refuges).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, it is proposed to amend Part 32, as proposed to be revised at 57 FR 22686 on November 25, 1992, of chapter I of title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.20 Alabama is amended by revising paragraph C. of the Choctaw National Wildlife Refuge; by revising paragraphs A., B., and C. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, mourning doves, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

3. Section 32.22 *Arizona* is amended by revising paragraph C. of Buenos Aires National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of mule deer and white-tailed deer, javelina and feral hogs is permitted on designated areas of the refuge.

* * * * *

4. Section 32.23 Arkansas is amended by revising paragraph B. of Big Lake National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, beaver and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

5. Section 32.24 California is amended by removing paragraph A.4. and revising paragraph A.3. of Delevan National Wildlife Refuge; by revising paragraphs A.3. and paragraph B.2. of Lower Klamath National Wildlife Refuge; by revising paragraph A.3., and removing paragraph A.4., and by redesignating paragraph A.5. as paragraph A.4. of Sacramento National Wildlife Refuge; and by revising paragraphs A.4. and B.2. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Hunters assigned to the spaced blind unit are restricted to within 100 feet of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

* * * * *

3. Hunters assigned to the spaced blind unit are restricted to within 100 feet of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

* * * * *

4. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

6. Section 32.27 Delaware is amended by removing paragraph A.8. and redesignating paragraph A.9. as paragraph A.8. of Bombay Hook National Wildlife Refuge; and by removing paragraph A.7. and redesignating paragraphs A.8. and A.9. as A.7. and A.8., respectively, revising paragraphs C. introductory text, C.2., C.3., and C.4., and adding new paragraphs C.7. and C.8. of Prime Hook National Wildlife refuge to read as follows:

§ 32.27 Delaware.

* * * * *

Prime Hook National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. Deer hunting on Area A must be from designated stands only, unless actively tracking or retrieving wounded deer.

3. Hunting Areas A and B and the North Hunting Area are open to shotgun and muzzleloader deer hunting.

4. Archery deer hunting is permitted on the North Hunting Area only.

* * * * *

7. A shotgun only turkey hunt is permitted during the State spring season in Unit 1 north of Fowler's Beach Road and west of Slaughter Canal.

8. Hunters during firearms deer season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

7. Section 32.32 Illinois is amended by revising paragraph A.1., removing A.2. and redesignating A.3. as A.2., and adding a sentence at the end of newly designated A.2., revising paragraphs B.1., B.2. and C.3. and adding a new paragraph C.4. to Crab Orchard National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Crab Orchard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbriar land areas, plus Orchard, Turkey, and Sawmill and Grassy Islands, from sunrise to posted closing times each day during the goose season. Waterfowl hunting in these areas, including lake shorelines, is permitted only from existing refuge blinds. Hunters must comply with the special rules posted at the blind drawing site. Only waterfowl hunting is permitted in the controlled goose hunting areas during goose season.

2. * * * No person may establish or use a goose blind or pit within 100 yards of roads, right-of-ways, easements, and refuge public use boundaries.

B. Upland Game Hunting. * * *

1. Upland game hunting is not permitted in the controlled goose hunting areas during goose season.

2. No rifles or pistols with ammunition larger than .22 caliber rim fire, except black powder firearms up to and including .40 caliber may be used.

C. Big Game Hunting * * *

* * * * *

3. Deer hunting is not permitted in the controlled goose hunting areas during goose season.

4. Hunting stands must be removed at the end of each day's hunt.

* * * * *

8. Section 32.33 Indiana is amended by adding a new paragraph C.5. to Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Non-hunters must stay in vehicles when entering the hunt area during the second state deer muzzleloader season.

* * * * *

9. Section 32.37 Louisiana is amended by revising paragraph B. for Atchafalaya National Wildlife Refuge; by revising paragraph B.2. and adding a new paragraph B.5., by revising paragraph C. D'Arbonne National Wildlife Refuge; by revising paragraphs A., B., and C. of Delta National Wildlife Refuge; by revising paragraphs B.2. and B.4., and adding a new paragraph B.5., by revising paragraph C. for Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Atchafalaya National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver and otter is permitted on designated areas of the refuge

subject to the following condition: Hunting shall be in accordance with Sherburne Wildlife Management Area regulations.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Feral hogs, coyotes and beaver may be taken during all refuge hunts.

* * * * *

5. Dogs are allowed for hunting squirrels, rabbits and raccoon only from the end of the last refuge gun deer hunt to the end of small game season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Either-sex deer hunting with firearms is permitted during the second consecutive Saturday and Sunday and fourth consecutive Friday and Saturday in November only.

2. Feral hogs, coyotes, and beaver may be taken during all refuge hunts.

3. Only still hunting is permitted.

4. Deer stands may not be left unattended.

5. All deer must be checked at a designated check station.

* * * * *

Delta National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Feral hogs, coyotes and beaver may be taken during all refuge hunts.

* * * * *

4. Nontoxic shot is required while hunting upland game species.

5. Dogs are allowed for hunting squirrels, rabbits and raccoon only from the end of the last refuge gun deer hunt to the end of small game season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Either-sex deer hunting with firearms is permitted during the second consecutive Saturday and Sunday and fourth consecutive Friday and Saturday in November only.

2. Feral hogs, coyotes, and beaver may be taken during all refuge hunts.

3. Firearms must be unloaded while being transported in a vehicle or boat.

4. Only still hunting is permitted.

5. Deer stands may not be left unattended.

* * * * *

10. Section 32.38 Maine is amended by revising paragraph C.2. for Moosehorn National Wildlife Refuge; by adding new paragraph B.1. and by adding a new paragraph C.1. to Rachel Carson National Wildlife Refuge; and by revising paragraph C.1. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Moosehorn National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Rachel Carson National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

C. Big Game Hunting. * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Sunkhaze Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

11. Section 32.39 Maryland is amended by revising paragraph C.4. for Blackwater National Wildlife Refuge; and by revising paragraph C.5. for Eastern Neck National Wildlife Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Blackwater National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Eastern Neck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

12. Section 32.40 Massachusetts is amended by removing paragraph A.1. and redesignating paragraph A.2. as paragraph A.1., and removing paragraph B.3. of Oxbow National Wildlife Refuge; by removing paragraphs A.2. and A.5. and redesignating paragraphs A.3. and A.4. as paragraphs A.2. and A.3., and removing paragraph C.7. and redesignating paragraph C.8. as paragraph C.7. of Parker River National Wildlife Refuge.

13. Section 32.42 Minnesota is amended by revising paragraphs A. and C. of the Minnesota Valley National Wildlife Refuge; and by adding a new paragraph C.4. to Rice Lake National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Minnesota Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Archery hunting is permitted.

2. All stands must be removed from the refuge at the end of each day's hunt.

3. Permits are required to participate in the shotgun Alternative Deer Control Program.

* * * * *

Rice Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunting of deer on the Rice Lake Unit is by firearm only; hunting on the Sandstone Unit is by firearm and archery.

* * * * *

14. Section 32.45 Montana is amended by removing paragraph A.3. and by revising paragraph B. for Benton Lake National Wildlife Refuge to read as follows:

§ 32.45 Montana.

* * * * *

Benton Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use only non-toxic shot while in the field.

2. Hunting is permitted beginning on the opening day of Montana waterfowl hunting season and is closed at the end of the hunting day of November 30.

* * * * *

15. Section 32.49 New Jersey is amended by removing paragraphs A.1., A.3., A.4. and A.7. and redesignating paragraphs A.2., A.5. and A.6. as paragraphs A.1., A.2., and A.3., respectively, by adding new paragraphs A.4., A.5. and A.6., and revising paragraph C.3. for Edwin B. Forsythe National Wildlife Refuge; by revising paragraph C.3. and removing paragraph C.4. for Great Swamp National Wildlife Refuge; and by revising paragraph C.4. for Supawna Meadows to read as follows:

§ 32.49 New Jersey.

* * * * *

Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Hunters may not use or possess more than 25 shells per day in Hunting Areas A, B, and C in the Barnegat Division and in Hunting Unit 1 in the Brigantine Division.

5. In Hunting Area B of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. A minimum of six decoys per site is required.

6. No sites or areas may be occupied before 4:00 a.m. Access is by boat only.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Great Swamp National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Sapawana Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

16. Section 32.51 New York is amended by removing paragraph A.4. and redesignating paragraphs A.5. through A.8. as paragraphs A.4. through A.7., by adding a new paragraph B.3., and by revising paragraph C.1. for Iroquois National Wildlife Refuge; and by revising paragraph B., by removing paragraph C.1. and redesignating paragraphs C.2. and C.3. as paragraphs C.1. and C.2., and revising the newly designated C.2. of Montezuma National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Iroquois National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

C. Big Game Hunting. * * *

* * * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Montezuma National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge.

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

17. Section 32.52 North Carolina is amended by revising paragraphs A., B., and C. of Alligator River National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Alligator River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of swans, geese, ducks, coots, snipe, mourning doves and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

18. Section 32.56 Oregon is amended by revising paragraphs A.1. and B. for Lower Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

19. Section 32.57 Pennsylvania is amended by removing paragraph A.2. and redesignating paragraph A.3 as A.2., and by revising paragraphs C. introductory text and C.1. for Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open to turkey hunting during the State spring turkey season.

* * * * *

20. Section 32.60 South Carolina is amended by revising paragraph A. for Cape Romain National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Cape Romain National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of rails is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

21. Section 32.63 Texas is amended by revising paragraphs C.4. and C.7. for Aransas National Wildlife Refuge; by adding paragraph A.3. to Brazoria National Wildlife Refuge; by revising paragraph A.1., removing paragraph A.2., and redesignating paragraphs A.3.

and A.4. as A.2. and A.3. of San Bernard National Wildlife Refuge to read as follows:

§32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Archery hunting is permitted in October on specified days listed in the refuge hunt brochure.

* * * * *

7. Firearms hunting is permitted in November on specified days listed in the refuge hunt brochure.

* * * * *

Brazoria National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Permits are required to hunt on certain portions of the hunting area.

* * * * *

San Bernard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Permits are required to hunt on certain portions of the hunting area.

* * * * *

22. Section 32.65 Vermont is amended by removing paragraph A.7. and by revising paragraph C.2. for Missisquoi National Wildlife Refuge to read as follows:

§32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

23. Section 32.66 Virginia is amended by revising paragraph C.5. for Back Bay National Wildlife Refuge; by revising paragraphs A. introductory text, A.1., A.4., A.5., and A.6., and by revising paragraph C.3. for Chincoteague National Wildlife Refuge; and by revising paragraph C.4. for Great Dismal Swamp National Wildlife Refuge to read as follows:

§32.66 Virginia.

* * * * *

Back Bay National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl and rails is permitted on designated areas of the refuge subject to the following conditions:

1. Written permission is required to hunt on the nonguided public hunting areas.

* * * * *

4. Permanent blinds are permitted in compartments 1–4 in Wildcat Marsh.

5. Hunting parties are limited to a maximum of 4 hunters.

6. Public hunting is permitted only on Thursday, Fridays, and Saturdays during the State waterfowl and during the entire State rail season.

* * * * *

c. Big Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Great Dismal Swamp National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

24. Section 32.67 Washington is amended by revising paragraph A. for Conboy Lake National Wildlife Refuge to read as follows:

§32.67 Washington

* * * * *

Conboy Lake National Wildlife Reuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, coots, and common snipe is permitted on designated areas of the refuge.

* * * * *

25. Section 32.69 Wisconsin is amended by revising paragraph A.2. for Horicon National Wildlife Refuge; and by revising paragraph C. of the Trempealeau National Wildlife Refuge to read as follows;

§32.69 Wisconsin.

* * * * *

Horicon National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Only participants in the Young Wildfowlers and Special Programs are permitted to hunt.

* * * * *

Trempealeau National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitttted on designated areas of the Refuge subject to the following condition: Permits are required.

* * * * *

Dated: September 24, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–29030 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
December 11, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Stockbridge-Munsee Alcohol Beverage Control Law; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Stockbridge-Munsee Alcohol Beverage Control Law

December 4, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. This Notice certifies that Resolution No. 1317, the Stockbridge-Munsee Liquor Ordinance was duly adopted by the Stockbridge-Munsee Council on May 22, 1992. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale and consumption of liquor in the area of Indian Country under the jurisdiction of the Stockbridge-Munsee Tribe, Wisconsin.

DATES: This Ordinance is effective as of December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, DC 20240; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Stockbridge-Munsee Liquor Ordinance [No. 1317] is to read as follows:

Liquor Control Ordinance—Stockbridge-Munsee Community of Wisconsin

Whereas, Public Law 277, 83rd Congress, 1st Session, approved August 15, 1953, and codified at section 1161 of title 18, United States Code, provides that sections 1154, 1156, 3113, 3488, 3618 of Title 18 of the United States Code shall not apply within any area that is not Indian Country, nor to any act or transaction within any area of Indian Country, provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian Country, certified by the Secretary of the Interior, and published in the **Federal Register.**

Whereas, It is the desire of the Tribal Council of the Stockbridge-Munsee Community of Wisconsin to adopt a liquor control ordinance in the Indian Country that lies within the jurisdiction of the community; and

Whereas, The Tribal Council of the Stockbridge-Munsee Community of Wisconsin has the authority to adopt ordinances regulating liquor in the Indian Country that lies within the jurisdiction of the Community, by virtue of the provisions of Article VII, sections 1(a), (e) and (h) of the Constitution of the Stockbridge-Munsee Community of Wisconsin, adopted October 30, 1937;

Now therefore be it resolved, That the Tribal Council of the Stockbridge-Munsee Community of Wisconsin authorizes the issuance of licenses for on-premises sale of alcohol beverages within the Indian Country that lies within the jurisdiction of the Community, provided:

1. Licenses

A. Licenses for the sale of alcohol beverages may be issued only for the sale of such beverages within buildings used for casinos and restaurant-bar operations owned and regulated by the Stockbridge-Munsee Community.

B. Any restaurant-bar operation must produce more than 50% of its gross sales from food service in order to be licensed after the first year of operation.

C. Licenses issued to businesses owned by the Stockbridge-Munsee Community for the sale of alcohol beverages shall be issued by the Tribal Council of the Community, upon the receipt by the Tribal Council of a proper application containing the following information:

(1) The name of the entity that regulates the Community business at which the sale of alcohol beverages would take place. Such entity shall be the license applicant. No individual or private entity may apply for or receive a license under this Ordinance.

(2) A copy of the Community ordinance or resolution under which the applicant entity is organized.

(3) A description of the land or building owned by the Community and regulated by the applicant entity at which the applicant entity wishes to sell alcohol beverages.

(4) A statement that the applicant entity will conform to all requirements of applicable Tribal, State and Federal law, as they relate to the purchase and sale of alcohol beverages.

D. Upon receipt of a proper application under this Ordinance, licenses for the sale of alcohol beverages may be issued by the Tribal Council of the Community to a Tribal casino or restaurant-bar of the Community if the Tribal Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Tribal Council may deem relevant, that such issuance is in the interest of the Community.

E. Licenses for the sale of alcohol beverages issued by the Tribal Council shall contain the following requirements:

(1) Each license shall require its holder to conform its operations to the laws of the Community, the State of Wisconsin and the United States of America;

(2) No license shall be effective for a term of more than one year from the date of its issuance, and each renewal thereof shall be subject to the same procedures that apply to the initial issuance of a license.

(3) Each license shall explicitly state that its continued validity is dependent upon the compliance of its holder with all the provisions of this Ordinance and other applicable law.

(4) No licensee may give away or sell alcohol beverages at a loss.

F. The Tribal Council of the Community shall have the authority to suspend or revoke any license issued under this Ordinance, under the following procedures:

(1) Upon receiving information suggesting that the holder of a license under this Ordinance may have violated the terms of the license or applicable law, the Tribal Council shall give the license holder written notice that the Tribal Council intends to suspend or revoke the holder's license. Such notice shall be sent by certified mail, return receipt requested, to the agent of the license holder and shall specify the grounds for the proposed suspension or revocation.

(2) Any license holder who receives a notice of a proposed suspension or revocation may request a hearing by the Tribal Council, by sending a written request therefor, certified mail, return receipt requested, to the Chairman of the Stockbridge-Munsee Community, at the Community's Tribal Center, within seven (7) days of the license holder's receipt of the notice.

(3) Upon receipt of the request for a hearing under this Ordinance, the Tribal Council shall set a date for a hearing, which shall be no later than thirty days from the receipt of the hearing request.

(4) At a hearing held under this Ordinance, the holder of a license under this Ordinance shall be permitted to present evidence with respect to the holder's compliance with the terms of its license and applicable law. In reaching its decision, the Tribal Council may consider such evidence, together with all other evidence it deems relevant. Following a hearing, if in the judgment of the Tribal Council the license holder has not complied with

the terms of its license and applicable law, the Tribal Council shall suspend or revoke its license; and if in the judgment of the Tribal Council the terms of the license and applicable law have been complied with, the proceedings shall be dismissed. In either case, the decision of the Tribal Council shall be final.

G. The Tribal Council of the Stockbridge-Munsee Community may reject any application for a license, or for a renewal of a license, under this Ordinance, if the applicant previously has committed acts which have resulted in the suspension or revocation of a license under this Ordinance.

2. Agent

Any Tribally owned entity licensed under this Ordinance shall appoint, subject to the approval and confirmation of the Tribal Council, an agent who shall have full authority and control of the premises and of the conduct of all business on the premises relative to alcohol beverages. This person shall also be the person designated by Wis. Stats. § 125.04(6) requiring the appointment of agents.

3. Authority of the Tribal Council

A. The Tribal Council, or any individual member thereof or any person acting with prior written authorization of the Tribal Council may enter any premises licensed under this ordinance at any time to observe the activities taking place.

B. Written authorization may be enacted at a closed session of the Tribal Council and remain confidential until any report made by such person is before the Tribal Council for action or until such person seeks to gain access to the premises of any Tribally licensed facility during normal closed hours in which case it shall be presented to the manager on duty at the time, and said manager shall immediately admit the person to the premises.

C. Tribal Council members do not need such written authorization and may enter any Tribally licensed facility at any time upon identifying themselves if such admission is sought during normal closed hours.

4. Separate Licenses for Each Facility

Each Tribally owned entity licensed under this Ordinance shall be required to file a separate application and hold a separate license for each facility it operates.

5. Transfer of Licenses Prohibited

No license issued under this Ordinance may be transferred to any other entity or person.

6. State Law Applicable

The Stockbridge-Munsee Community recognizes the applicability of general State Law governing the sales of alcohol beverages.

7. State Law Adopted

The Stockbridge-Munsee Community hereby adopts for purposes of Tribal enforcement against any entity licensed by the Tribe under this ordinance the following provisions, as modified, of chapter 125 of the Wisconsin Statutes:

125.02	Definitions. Except as otherwise provided, in this ordinance.
125.02(1)	*Alcohol beverages* means fermented malt beverages, wine and intoxicating liquor as defined below.
125.02(6)	*Fermented malt beverage* means any beverage made by the alcohol fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more alchol by volume.
125.02(8)	*Intoxicating liquor* means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages".
125.02(22)	*Wine* means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agriculture products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain 0.5% or more of alcohol by volume.
125.02(8m)	*Legal drinking age* means 21 years of age.
125.02(14)	*Person* means natural person, sole proprietorship, partnership, corporation or association.
125.02(14m) ...	*Premises* means the area described in a license issued by the Tribal Council.
125.02(17)	*Regulation* means any rule or ordinance adopted by the Tribal Council.
125.02(20)	*Sell, sold, sale* or *selling* means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale of future delivery of, alcohol beverages.
125.02(20)	*Underage person* means a person who has not attained the legal drinking age.
125.04(1)	General licensing requirement. No person may sell, manufacture, rectify, or brew any alcoholic beverage, or engage in any other activity for which this ordinance provides a license without holding the appropriate license.
125.04(2)	No license to be issued in violation of this ordinance. No license may be issued to any person except as provided in this ordinance. Any license issued in violation of this ordinance is void.
125.04(10)	License to be framed and posted. (a) Frame. Licenses for the sale of alcohol beverages shall be enclosed in frame having a transparent front which allows the license to be clearly read. (b) Display. Licenses shall be conspicuously displayed for public inspection at all times in the room or place where the sale of alcohol beverages is carried on.
125.07	Underage and intoxicated persons; presence on licensed premises; possession; penalties. (a) Alcohol beverages; Restrictions relating to underage persons. 1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. 2. No licensee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. 3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises under the adult's control. 4. No adult may intentionally encourage or contribute to a violation of this section.
125.07(2)	(b) Sales of alcohol to intoxicated persons. 1. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated. 2. No licensee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.

125.085 ..... Any tribal entity selling alcohol beverages shall require the proof of age specified by this section.

(a) Definition. In this section, "official identification card" means a valid operator's license issued under chapter 343 of the Wisconsin Statutes that contains the photograph of the holder, an identification card issued under section 343.50 of the Wisconsin Statutes or an identification card issued under section 125.08 of the Wisconsin Statutes.

(b) Use. No card other than the identification card authorized under this section may be recognized as an official identification card by the Tribe for purposes of obtaining alcohol beverages at any Tribally licensed entity.

8. Closing Hours

Every entity licensed by the Stockbridge-Munsee Community shall observe the closing hours established by Wisconsin Statutes governing Class B Retail State licenses. Failure to do so shall be the basis for the revocation of licenses issued by the Tribal Council.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–30132 Filed 12–10–92; 8:45 am]

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federal register

Friday
December 11, 1992

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 314 and 601

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 91N–0278]

RIN 0905–AD66

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations under which the agency will accelerate approval of certain new drugs and biological products for serious or life-threatening illnesses, with provisions for any necessary continued study of the drugs' clinical benefits after approval or with restrictions on use, if necessary. These new procedures are intended to provide expedited marketing of drugs for patients suffering from such illnesses when the drugs provide meaningful therapeutic benefit compared to existing treatment. Accelerated approval will be considered in two situations: (1) When approval can be reliably based on evidence from adequate and well-controlled studies of the drug's effect on a surrogate endpoint that reasonably suggests clinical benefit or on evidence of the drug's effect on a clinical endpoint other than survival or irreversible morbidity, pending completion of studies to establish and define the degree of clinical benefits to patients; and (2) when FDA determines that a drug, effective for the treatment of a disease, can be used safely only if distribution or use is modified or restricted. Drugs or biological products approved under these procedures will have met the requisite standards for safety and effectiveness under the Federal Food, Drug, and Cosmetic Act (the act) or the Public Health Service Act (the PHS Act) and, thus, will have full approval for marketing.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 15, 1992 (57 FR 13234), FDA published proposed procedures under which the agency would accelerate approval of certain new drugs and biological products for serious or life-threatening illnesses, with provision for required continued study of the drugs' clinical benefits after approval or for restrictions on distribution or use, where those are necessary for safe use of the drugs. FDA provided 60 days for public comment, and, upon request, in the **Federal Register** of June 18, 1992 (57 FR 27202), extended the comment period for an additional 30 days until July 15, 1992. The final rule incorporates all of the provisions of the proposed rule and provides additional clarification regarding both timing and content of the submissions of promotional materials and regarding the nature of required postmarketing studies. The agency has added a new provision clarifying when certain postmarketing requirements of the rule will be terminated.

Highlights of the final rule are summarized below, followed by a summary and discussion of the comments.

II. Highlights of the Final Rule

This final rule establishes procedures under parts 314 and 601 (21 CFR parts 314 and 601) under which FDA will accelerate approval of certain new drugs and biological products for serious or life-threatening illnesses, with provision for required continued study of the drugs' clinical benefits after approval or for restrictions on distribution or use, where those are necessary for safe use of the drugs. These procedures are intended to provide expedited marketing of drugs for patients suffering from such illnesses when the drugs provide meaningful therapeutic advantage over existing treatment. The preamble of the proposed rule (57 FR 13234) provides a description of other mechanisms available to facilitate access, speed development, and expedite review of therapeutic products (e.g., treatment investigational new drug applications (IND's), subpart E, parallel track). Where appropriate, these mechanisms can be utilized in concert with accelerated approval. The major provisions of the final rule are as follows:

A. Scope

The new procedures apply to certain new drug, antibiotic, and biological products used in the treatment of serious or life-threatening diseases, where the products provide meaningful therapeutic advantage over existing treatment (21 CFR 314.500 and 601.40).

B. Criteria for Approval

Accelerated approval will be considered in two situations: (1) When approval can be reliably based on evidence of the drug's effect on a surrogate endpoint that reasonably suggests clinical benefit or on evidence of the drug's effect on a clinical endpoint other than survival or irreversible morbidity, pending completion of studies to establish and define the degree of clinical benefits to patients; and (2) when FDA determines that a drug, effective for the treatment of a disease, can be used safely only if distribution or use is modified or restricted. Drugs or biological products approved under this final rule will have met the requisite standards for safety and effectiveness under the act or the PHS Act and, thus, will have full approval for marketing (21 CFR 314.510, 314.520, 601.41, and 601.42). Ordinarily, products used to treat serious or life-threatening illnesses, for which approval is based on a surrogate endpoint that is recognized as validated by definitive studies, will be considered for approval under the traditional process rather than under accelerated approval.

C. Postmarketing Studies

Where a drug's approval under these provisions is based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity, the applicant will be required to conduct clinical studies necessary to verify and describe the drug's clinical benefit and to resolve remaining uncertainty as to the relation of the surrogate endpoint upon which approval was based to clinical benefit, or the observed clinical benefit to ultimate outcome. The requirement for any additional study to demonstrate actual clinical benefit will not be more stringent than those that would normally be required for marketing approval; it is expected that the studies will usually be underway at the time of approval. The proposed regulations have been revised to clarify that required postmarketing studies must also be adequate and well-controlled (21 CFR 314.510 and 601.41).

D. Restrictions on Use After Marketing

FDA may grant marketing approval of a drug or biological product shown to be effective where safe use can only be assured if distribution or use is restricted. Under this final rule, FDA may: (1) Restrict distribution to certain facilities or to physicians with special training or experience, or (2) condition distribution on the performance of

specified medical procedures. The restrictions on use will be tailored to the specific safety issue raised by the particular drug or biological product and agreed to by the applicant at the time of approval (21 CFR 314.520 and 601.42). FDA expects that the imposition of these restrictions on distribution will be rare.

E. Promotional Materials

The final rule requires submission of planned promotional materials, including promotional labeling and advertisements, both prior to approval (reflecting the initial campaign), and following approval, unless informed by the agency that such submission is no longer necessary, at least 30 days before the intended time of initial dissemination of the promotional labeling or initial publication of the advertisement (21 CFR 314.550 and 601.45).

F. Withdrawal of Approval

The final rule establishes an expedited procedure for the withdrawal of approval if: (1) Postmarketing clinical studies fail to verify clinical benefit; (2) the applicant fails to perform the required postmarketing study with due diligence; (3) use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the drug or biological product; (4) the applicant fails to adhere to the postmarketing restrictions agreed upon; (5) the promotional materials are false or misleading; or (6) other evidence demonstrates that the drug or biological product is not shown to be safe or effective under its conditions of use (21 CFR 314.530 and 601.43).

G. Termination of Requirements

In response to comments, the final rule provides that the requirements set forth in §§ 314.520, 314.530, and 314.550 for new drugs and antibiotics and §§ 601.42, 601.43, and 601.45 for biological products ordinarily will terminate when FDA determines that the results of required postmarketing studies have demonstrated that the drug or biological product has clinical benefit, or, where restrictions on distribution or use have been imposed, when FDA determines that safe use of the drug or biological product can be ensured without such restrictions, e.g., through appropriate labeling. FDA will notify the applicant when these requirements no longer apply (21 CFR 314.560 and 601.46).

III. Effective Date

This regulation will become effective on January 11, 1993.

IV. Comments on the Proposed Rule

FDA received 54 comments on the proposed rule. The comments came from individuals, specific disease organizations, universities, pharmaceutical manufacturers, trade associations, health professionals, and professional societies. The comments reflect broad support and acceptance of the goal of expediting the approval of drugs intended for the treatment of serious and life-threatening illnesses. A number of comments asked that the proposal be finalized expeditiously without change. Many comments posed specific questions and raised important concerns.

A. General Comments

1. One comment suggested that the term "conditional approval" was less confusing and ambiguous than the term "accelerated approval." The comment also referred to the statement in the proposal that "Drugs * * * approved under this proposal will have met the requisite standards * * * under the (act)" and argued that because postmarketing conditions may be imposed, this statement can only be read to say that the requisite standards under the act can only be met by a lower standard of evidence in hand, combined with assurance that further evidence will be obtained.

Another comment expressed concern that the proposal appears to establish a standard for the evaluation of drug product effectiveness that is inconsistent with the substantial evidence requirement of section 505(d) of the act (21 U.S.C. 355(d)), which means "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling * * *." The comment argued that, with few exceptions, the agency has consistently interpreted the "substantial evidence" requirement as an instruction that determinations of effectiveness be based on data unambiguously reflecting the clinical status of subjects evaluated under controlled conditions in bona fide clinical experiments. In the absence of compelling empirical evidence documenting that a drug-induced change in a surrogate measure reliably and consistently predicts improved clinical outcome, a surrogate indicator is no more than a hypothetical construct. The comment asserted that the proposed rule's endorsement of the use of unvalidated surrogate endpoints, therefore, appears to represent a significant departure from traditional agency interpretations of "substantial evidence" within the meaning of the act because it allows belief rather than evidence to serve as the basis for a conclusion about the effectiveness of a new drug.

Three comments asserted that the new regulations are not needed to approve drugs intended to treat serious or life-threatening illnesses. Two comments cited FDA's approval, without new regulations, of didanosine (formerly called ddi) and zalcitabine (formerly called ddc) in combination with zidovudine (formerly called AZT) based on a surrogate marker, i.e., an increase in CD4 cell counts and the "subpart E" procedures at 21 CFR part 312, which address the need for expediting the development, evaluation, and marketing of new therapies intended to treat life-threatening or severely debilitating illnesses as examples of existing mechanisms for the expedited approval of important new drugs. One comment argued that the act requires that drugs be shown to be "safe" and "effective," and proof of effectiveness is not limited by the act to demonstration of an effect on "survival or irreversible morbidity," as the proposed rule seems to assume. The comment further argued that FDA has considerable statutory discretion to define what type of data constitutes proof of effectiveness, and demonstration of an effect on a surrogate marker is one type of such proof.

The agency believes that what the procedures are called is much less important than what the procedures are. The shorthand term selected by the agency reflects the intent of the rule, especially that part related to use of surrogate markers, which is to make drugs that provide meaningful improvement over existing therapies for serious illnesses widely available (through marketing) at the earliest time consistent with the law. The essence of the proposal is thus acceleration, not the imposition of conditions. Approval under these procedures is dependent on compliance with certain additional requirements, such as timely completion of studies to document the expected clinical benefit. The evidence available at the time of approval under this rule will meet the statutory standard, in that there must be evidence from adequate and well-controlled studies showing that the drug will have

the effect it is represented to have in its labeling. That effect will, in this case, be an effect on a surrogate endpoint that is reasonably likely to predict a clinical benefit and labeling will refer to the effect on the surrogate, not to effect on clinical outcome.

While the act does not refer to particular endpoints or state a preference for clinical, as opposed to surrogate, endpoints, it is well established that the effect shown in well-controlled studies, must, in the judgment of the agency, be clinically meaningful. Moreover, the safety standard in the act, that a drug must be shown to be safe for its intended use, implies a risk/benefit judgment. The effect shown must be such as to outweigh the risks of the treatment under the conditions of use. Approval under this rule requires, therefore, that the effect shown be, in the judgment of the agency, clinically meaningful, and of such importance as to outweigh the risks of treatment. This judgment does not represent either a "lower standard" or one inconsistent with section 505(d) of the act, but rather an assessment about whether different types of data show that the same statutory standard has been met.

Approval based on surrogate endpoints is not new, although the issue has not previously been considered in regulations. The agency has, in a number of instances, approved drugs based on surrogate endpoints. For example, drugs for hypertension have been approved based on their effects on blood pressure rather than on survival or stroke rate. Similarly, drugs for hypercholesterolemia have been approved based on effects on serum cholesterol rather than on coronary artery disease (angina, heart attacks). But, in those cases there was very good evidence from clinical trials (in the case of hypertension) and from epidemiologic and animal studies (in the case of hypercholesterolemia) that improving the surrogate would lead to or is associated with the desired effects on morbidity and mortality. Even so, there is still today considerable debate about who will benefit from cholesterol lowering. Controlled trials assessing effects on clinical endpoints of morbidity and mortality from use of cholesterol-lowering drugs have been, and are being, conducted.

Reliance on a surrogate endpoint almost always introduces some uncertainty into the risk/benefit assessment, because clinical benefit is not measured directly and the quantitative relation of the effect on the surrogate to the clinical effect is rarely known. The expected risk/benefit relationship may fail to emerge because: (1) The identified surrogate may not in fact be causally related to clinical outcome (even though it was thought to be) or (2) the drug may have a smaller than expected benefit and a larger than expected adverse effect that could not be recognized without large-scale clinical trials of long duration. Reliance on surrogate markers therefore requires an additional measure of judgment, not only weighing benefit versus risk, as always, but also deciding what the therapeutic benefit is based upon the drug effect on the surrogate.

The sections of the final rule that address approval based upon a drug effect on a surrogate endpoint specifically clarify the regulatory approval criteria when the agency relies on a surrogate endpoint that, while "reasonably likely" to predict clinical benefit, is not so well established as the surrogates ordinarily used as bases of approval in the past. Postmarketing studies required to verify and describe actual clinical benefits would also be required to be adequate and well-controlled studies. Sections 314.510 and 601.41 have been revised to clarify this point. If, on completion of required postmarketing studies, the effect on the surrogate is not shown to correspond to a favorable effect on clinical benefit, the rule provides an expedited means of removing the drug from the market.

Approval of didanosine and zalcitabine under current procedures does not show that the rule is of no value. Although approval did rely on a surrogate endpoint that is of the kind specifically addressed by the rule, the fact that studies to define clinical benefit were nearly complete and were being conducted under the auspices of the National Institute of Allergy and Infectious Diseases made it less crucial to have additional guarantees that such studies would be conducted promptly. Moreover, the sponsors of didanosine and zalcitabine agreed prior to approval to expedited withdrawal of the drug from the market if benefit were not shown. The provisions of the final rule will ensure that appropriate safeguards exist for timely generation of data on actual clinical benefit, for appropriate promotional information about labeled indications, and for prompt withdrawal of the drug from the market if clinical benefit is not confirmed.

2. Pointing to a statement in the preamble to the proposed rule that it is in the public interest to make promising new treatments available at the earliest possible point in time for use in life-threatening and serious illnesses, one comment expressed concern that the proposed rule may lead to the marketing of large numbers of clinically ineffective, but pharmacologically active, drugs and this may not be in the interest of the public health. The comment argued that early access to so-called "promising" drugs is not the same as early access to safe and effective drugs, and the number of potential markers that may be advanced as surrogates of clinical outcome is exceedingly large. The comment suggested that it may be more appropriate to seek adoption of the proposed requirements through an amendment to the act.

FDA agrees with the contention that providing people who have serious or life-threatening illnesses with numerous clinically ineffective drugs would not be helpful. However, the agency does not agree that the rule can be expected to have this result. Although studies using surrogate endpoints may provide less assurance of clinical benefit than studies using clinical endpoints, FDA believes compliance with all of the elements of the accelerated approval program will not result in the marketing of large numbers of clinically ineffective drugs. The new procedures apply to a limited group of circumstances, namely, to drugs intended for serious or life-threatening illnesses when the drugs provide a meaningful therapeutic benefit over existing therapy. Reliance on a surrogate endpoint is not equivalent to reliance on any evidence of pharmacologic activity. The endpoint must be reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit.

Whether a given endpoint is, in fact, reasonably likely to predict clinical benefit is inevitably a matter of judgment. FDA, using available internal and external expertise, will have to make informed judgments in each case presented, just as it does now. The agency acknowledges that there are well-recognized reasons for caution when surrogate endpoints are relied on. Certain putative surrogates have ultimately been shown not to correspond to clinical benefit. Perhaps the most noteworthy example is the failure of antiarrhythmic agents in the Cardiac Arrhythmia Suppression Trial (CAST) to improve survival by depressing ventricular ectopic beats; effective suppression of ectopic beats was associated with increased mortality.

A sponsor must persuasively support the reasonableness of the proposed surrogate as a predictor and show how the benefits of treatment will outweigh the risks. Such presentations are likely to be persuasive only when the disease to be treated is particularly severe (so

that considerable risk is acceptable) and/or when the surrogate endpoint is well supported. In addition, it will be the sponsor's clear obligation to resolve any doubts as to clinical value by carrying out definitive studies.

FDA does not agree that it would be more appropriate to seek an amendment to the act than to adopt the proposed requirements. As discussed in the preamble to the proposed rule as well as elsewhere in this preamble to the final rule, existing provisions of the act and the PHS Act authorize promulgation of the requirements in the final regulations.

3. One comment expressed concern that because the proposed rule would establish conditions on a drug's approval, third-party payors may decline reimbursement because the so-called approval would have attributes of investigational status.

The agency expects that, because drugs approved under the accelerated approval process meet the statutory standards for safety and effectiveness, they would be eligible for reimbursement under State Medicaid programs or other third-party plans. Drug products granted accelerated approval will not be, under the law, investigational, as suggested by the comment.

4. One comment asked if all drugs considered for accelerated approval must be reviewed by an advisory committee. The comment stated that because advisory committees meet infrequently, waiting for the next meeting may slow down the approval process.

FDA is not required to consult with an advisory committee before approving an application under these accelerated approval regulations, or any other regulation. However, FDA intends to consult the appropriate committee in most instances. Advisory committee meetings can usually be scheduled to avoid significant delays in the review process. The agency will consider any request by an applicant for referral of the application to an advisory committee.

B. Scope

5. Four comments asked for further clarification of what diseases are covered by the rule. One comment stated that the terms "serious," and "life-threatening," are defined in the proposal by reference to 21 CFR 312.34, followed by a brief statement explaining the role of judgment and examples of diseases that are currently judged to be serious. The comment asked that FDA also describe: (1) Diseases that are not currently included in the category of "serious," (2) examples of diseases that are currently judged "life-threatening," and (3) examples of diseases that are not currently included in the category "life-threatening."

One comment contended that the statement in the preamble that "seriousness of a disease is a matter of judgment, but generally is based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one" too narrowly limits diseases covered by the proposed rule (57 FR 13234 at 13235). The comment argued that some "less severe" diseases, even if treated, may progress to a more serious state, and that these diseases should also be covered by the rule. On the other hand, two comments argued that the language in the preamble that classifies diseases as "serious" was overly broad and subjective and far too large a number of illnesses could be eligible as being "serious."

FDA discussed the meaning of the terms "serious" and "life-threatening" in its final rules on "treatment IND's" (52 FR 19466 at 19467, May 22, 1987) and "subpart E" procedures (54 FR 41516 at 41518–41519, October 21, 1988). The use of these terms in this rule is the same as FDA defined and used the terms in those rulemakings. It would be virtually impossible to name every "serious" and "life-threatening" disease that would be within the scope of this rule. In FDA's experience with "treatment IND's" and drugs covered by the "subpart E" procedures there have not been problems in determining which diseases fall within the meaning of the terms "serious" and "life-threatening," and FDA would expect no problems under this accelerated approval program. The likelihood of progression to a serious condition with available treatments would also be considered in assessing whether the disease is within the scope of the final rule. The preamble to the proposed rule (57 FR 13234 at 13235) referred to chronic illnesses that are generally well managed by available therapy, but can have serious outcomes for certain populations or in some or all of their phases. Applicants are encouraged to consult with FDA's reviewing divisions early in the drug development process if they have questions about whether their specific product is within the scope of this rule.

The concerns expressed in these and other comments about considering too many illnesses eligible for consideration under the accelerated approval procedures may arise from the underlying fear that reliance on surrogate endpoints will become routine, the "normal" way drugs are brought to the market. This fear is groundless. The vast majority of drugs are directed at symptomatic or short-term conditions (pain, heart failure, acute infections, gastrointestinal complaints) whose response to drugs, if it occurs, is readily measured and where there is no need to consider or accept surrogate endpoints. Surrogates, with few exceptions, are of interest in the following situations: (1) Where the clinical benefit, if there is one, is likely to be well in the future; and (2) where the implications of the effect on the surrogate are great because the disease has no treatment at all or the drug seems to treat people with no alternative (e.g., because they cannot tolerate the usual effective treatment). In the first case, great care is needed, and would be given, as there would generally be no experience linking an effect on the surrogate to clinical success, and there have been conspicuous examples of lack of linkage (CAST, referred to above; drugs that increase cardiac output in patients with heart failure but that decrease survival; imperfect agreement of effects on coronary artery patency and effects on survival in patients with myocardial infarction; lack of beneficial effect on bone fracture rate despite favorable effects on bone density in patients with osteoporosis). FDA and outside experts will be aware of these examples as proposed surrogates are considered. The implications are especially great when considering prophylactic therapy, i.e., treatments to prevent chronic illness (coronary artery disease, cancer), in an essentially well population. In the second case, there will generally have been experience (with the standard therapy) to evaluate in considering linkage of the surrogate to benefit; this was, for example, the case with didanosine, where evidence from zidovudine studies of the relationship of an effect on CD4 lymphocytes and clinical outcome could be assessed. Similarly, there is considerable experience to show that durable complete responses in many cancers correspond to improved survival, so that an agent inducing them in refractory illness or in primary

disease that had previously been poorly responsive would generally be seen as reasonably likely to provide a clinical benefit.

6. One comment stated that epilepsy is a serious and life-threatening condition and asked that it be included within the scope of the proposal. The preamble cited, among other illnesses, depression and psychoses as examples of chronic illnesses that can have serious outcomes even if they are generally well managed. One comment asserted that neither depression nor psychosis is a disease, nor is either one serious or life-threatening. The comment stated that depression and psychosis are diagnoses. The comment urged the agency to remove them from the definition of life-threatening "illnesses" or "diseases."

With respect to epilepsy, FDA notes that in the "treatment IND" final rule (52 FR 19466 at 19467, May 22, 1987), the agency listed "certain forms of epilepsy" as an example of a disease or stage of disease that would normally be considered "serious." Certain forms of epilepsy may also be considered "serious" under the accelerated approval program. It is unlikely, however, that a surrogate endpoint would be utilized in such a case, as seizure frequency, a clinical endpoint, is readily measured.

FDA's reference to depression and psychoses was intended to give examples of conditions or diseases that can be serious for certain populations or in some or all of their phases. While drugs for the treatment of depression and psychosis would be examples of those that could be covered by the accelerated approval program, it is not the use of surrogate endpoints that would be expected; the symptoms and signs of these diseases are readily studied. On the other hand, some of these drugs have been quite toxic (e.g., clozapine for refractory psychoses) and might be considered for approval with restrictions to ensure safe use.

7. Two comments asked how FDA will decide that a drug is eligible for accelerated approval. One comment asserted that the decision should be an option for the applicant to consider, not a decision for FDA to make unilaterally. Pointing to a statement in the preamble (57 FR 13234 at 13235) that FDA reserves the right not to apply accelerated approval procedures when it believes in good faith that the drug's foreseeable use is reasonably likely to be outside the scope of "life-threatening diseases without meaningful therapeutic benefit over existing therapy," the comments argued that, if there are patients with life-threatening conditions that can benefit from expedited approval, the needs of the patients should determine the procedures used to approve the drug. One comment contended that applicants of products considered candidates for accelerated approval may have their drug or biological product "forced" into the accelerated approval process and be forced to conduct a program of studies to substantiate that surrogate endpoints actually predict significant clinical benefits.

The medical reviewing divisions within FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) will determine the type of regulatory review that FDA may apply to an application. FDA encourages sponsors to meet with FDA early in the drug development process to discuss the applicability of the accelerated approval program to their product; however, FDA reserves the discretion to determine whether these procedures are applicable to a specific product.

With respect to the preamble statement cited by one comment, the comment misreads the preamble statement, which does not say that FDA will, in all cases, apply FDA's traditional approval mechanisms rather than this accelerated process for drugs where a majority of the drug's foreseeable uses are outside the scope of "life-threatening" diseases without meaningful therapeutic benefit over existing therapy. The statement merely informs applicants that FDA will consider the possible impact of widespread use of a drug for uses other than the one supporting accelerated approval; drugs approved under this program would often have only small safety data bases so that widespread off-label use might have serious implications. The agency does not believe that such a situation would regularly lead to exclusion from these provisions.

FDA does not agree that applicants seeking approval to market drug and biological products that would be candidates for accelerated approval will be forced to use the accelerated approval mechanism. It is true, however, that some proposed surrogate endpoints would not be considered acceptable bases for approval without assurance that the clinical studies to show clinical benefit will be conducted. A sponsor that wishes the application to be considered under the traditional approval process may request and receive such consideration.

The agency wishes to clarify the circumstances in which the accelerated approval regulations will apply. Sections 314.500 and 601.40 describe aspects of the scope of these regulations. Moreover, these regulations are intended to apply to applications based on surrogate endpoints whose validity is not fully established, to applications based on clinical endpoints that leave unanswered major questions about the product's effect on ultimate outcome, and to applications for products whose safe and effective use requires limitations on distribution or use. In all other situations, accelerated approval requirements will not apply.

Where approval is based on a surrogate endpoint that is accepted as validated to predict or correlate with clinical benefit, the product will be considered under the traditional process, and the postmarketing requirements under accelerated approval will not apply. Approvals of products for serious or life-threatening illnesses based on clinical endpoints other than survival or irreversible morbidity will usually also be considered under traditional procedures. Approvals based on such clinical endpoints will be considered under the accelerated approval regulations only when it is essential to determine effects on survival or irreversible morbidity in order to confirm the favorable risk/benefit judgment that led to approval. Applications for products for serious or life-threatening illnesses that provide a meaningful therapeutic benefit over existing therapy will receive a priority rating and expedited review, even when not considered under the accelerated approval procedures.

The agency also wishes to clarify that whenever an application is approved under § 314.510 or § 601.41, postmarketing studies confirming the product's clinical benefit will thus be required. Therefore, in order to eliminate potential confusion, the agency has amended §§ 314.510 and 601.41 to clarify these points.

FDA also recognizes that over time a particular surrogate, once acceptable as a basis for approval only under the accelerated approval regulations, could become recognized as validated by definitive studies (just as high blood pressure, for example, over time became validated as a surrogate with clinical significance). In such cases, a future application relying on such a surrogate would not require postmarketing studies confirming the surrogate's clinical benefit and the application would be considered under traditional procedures.

8. Two comments asked for clarification of the phrase "meaningful

therapeutic benefit over existing therapy" as used in the description of what drugs the accelerated approval program should apply to. Specifically, pointing to an example described in the preamble that a new therapy would be eligible for accelerated approval if there was "a clear improvement" over existing therapy in being more effective or better tolerated, one comment urged FDA to clarify the meaning of "clear improvement" to discourage applicants of "me-too" products from wasting the agency's time and resources by applying for accelerated approval of such products. The comment also asked that FDA specify that if a new drug is approved under the accelerated approval provisions because the drug exhibits a "clear improvement" over an existing drug that was also granted accelerated approval, then specific restrictions will be placed on the prior approved drug to limit its use only to patients who cannot tolerate the new drug, or whose physicians assess that a change to the new drug might involve significant risks to the patient that outweigh the benefits. One comment asked that the term "meaningful therapeutic benefit over existing therapy" be interpreted and consistently applied to both drugs and biological products.

FDA believes that the examples given to help clarify the phrase "meaningful therapeutic benefit over existing therapy" (ability to treat unresponsive or intolerant patients or improved response compared to available therapy) are readily understood illustrations of the intent of the requirement. A drug that is essentially the same as available treatment (what the comment refers to as a "me too" drug) will not have a credible claim to a meaningful therapeutic benefit over that existing treatment and this should be easily detected.

With respect to restricting use of a drug previously approved under accelerated approval procedures when a new drug granted accelerated approval is a clear improvement over the prior approved drug, this would rarely be appropriate. Although, in some instances, certain therapies are identified as "second-line," this requires essentially unequivocal evidence of an advantage of alternative therapy, not likely on the basis of a surrogate endpoint. Labeling for both drugs will be accurate, however, allowing physicians to prescribe both the newly approved drug and the prior drug properly.

9. One comment asked if a change in the route of administration would be considered as a meaningful benefit and within the scope of the proposal.

A change in the route of administration may be a candidate for accelerated approval depending upon the particular evidence presented.

10. One comment asked if subpart E drugs currently under investigation will be considered for accelerated approval. The comment assumed that new drug applications (NDA's) and supplemental NDA's considered for accelerated approval will have the highest priority for review.

Subpart E drugs will be considered for accelerated approval if they satisfy both eligibility criteria for accelerated approval, i.e., if they are being developed for the treatment of serious or life-threatening illnesses and the products will provide meaningful therapeutic benefits to patients over existing treatment. As discussed above, applicants should consult with FDA early in the development process to determine the nature of the regulatory review. Early consultations are a critical part of subpart E procedures. Drugs being reviewed under accelerated approval procedures will receive high priority review. However, applications for drugs for acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV)-related conditions will receive the highest priority review.

C. Criteria for Approval

11. Two comments expressed concern that the proposal did not provide enough detail on what constitutes an appropriate surrogate endpoint. One comment recommended that FDA adopt specific criteria for what constitutes an appropriate surrogate endpoint. The comment suggested that such criteria should include: (1) The surrogate endpoint must be biologically plausible in that it must be consistent with what is known about the pathophysiology and pathogenesis of the disease; (2) the surrogate endpoint must be present or abnormal in a large percentage of people who have the disease; (3) the surrogate endpoint must be a good predictor of the disease progression and should correlate closely with the significant clinical endpoint; (4) there should be a correlation between the quantitative aspect of the surrogate endpoint and the progression of the disease (e.g., the more severe the disease, the more deviant the surrogate endpoint from normal); (5) the regression of the surrogate endpoint should be significantly associated with clinical improvement (e.g., those with the greatest improvement in the surrogate endpoint should also show the greatest clinical effects); conversely, the lack of regression of the surrogate endpoint should be commonly associated with a lack of clinical improvement; and (6) the incidence of regression or improvement in the surrogate endpoint should be significantly greater in treated than untreated patients.

One comment asked if the use of microalbuminuria data is a surrogate for diabetic nephropathy and if all drugs relying on surrogate endpoints would be eligible for accelerated approval, e.g., an angiotensin receptor antagonist with potential utility for treatment of congestive heart failure. The comment also asked what would happen if postmarketing studies demonstrate beneficial changes of surrogate endpoints but not beneficial clinical endpoints. The comment also asked if FDA will consider publishing guidelines on which surrogate endpoints would be appropriate for the diseases that may be affected by the proposed rule. Another comment expressed the belief that there is no evidence that surrogate endpoints are necessarily good indicators of therapeutic benefit. The comment stated that a drug may have an effect on a surrogate endpoint, but will not make any clinical difference because the advanced stage of the patient's disease precludes any effective therapy or the surrogate marker is not synchronous with the patient's clinical condition.

Another comment asserted that the requirement to base an approval on a surrogate endpoint that is "reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit other than survival or irreversible morbidity" is not restrictive enough to assure adequate consumer protection. Terms like "reasonably likely" and "or other evidence" allow drug manufacturers too much latitude for claiming that there is a correlation between surrogate endpoints affected by their drugs and clinical endpoints. The comment argued that until a correlation between a surrogate endpoint and a clinical endpoint has been established, a particular surrogate endpoint should only be used to approve subsequent drugs, without adequate clinical evidence, if there is a very strong effect of the drug on the surrogate marker or, if the effect is not sufficiently strong, there is an additional surrogate marker which corroborates the results of the first.

FDA intends to publish informal guidance concerning surrogate endpoints, but does not believe specific requirements for an appropriate surrogate should be specified by

regulation. Any given specifications may not be applicable to a particular case. For example, the thoughtful suggested criteria supplied by the comment would rarely, if ever, be applicable to the first effective drug for a disease, because criterion 5 requires that regression of the surrogate endpoint be associated quantitatively with clinical improvement. If there had never been effective treatment, this would never be known. Yet the surrogate could be persuasive on other grounds, such as a well-documented etiologic relation. In general, it is likely that one or another strongly supportive piece of evidence might outweigh gaps in other areas.

In developing informal guidance on surrogate endpoints, FDA will consider the suggestions in this comment. Interested persons will have an opportunity to comment on any guidance documents in this area developed by the agency. In some cases, new or revised drug class, or disease-specific, clinical guidelines may refer to surrogate endpoints. FDA is not prepared, at this time, to comment on the acceptability of an endpoint that it has not specifically considered, e.g., microalbuminuria.

The final regulations make it clear that not all drugs submitted for approval based on surrogate endpoint data are eligible for accelerated approval (§§ 314.500 and 601.40). The drug in question must be for a serious or life-threatening condition and must provide meaningful therapeutic benefit over existing therapy. In the case of an angiotensin receptor antagonist posed by the comment, there is existing documented life-prolonging treatment for congestive heart failure. An application for a new agent, to be eligible for accelerated approval, would have to show potential benefit over available therapy as well as identify a reasonable surrogate endpoint. This is problematic since no accepted surrogate endpoint for studies to treat congestive heart failure has been identified to date. For example, some drugs with favorable effects on hemodynamic measures in heart failure patients have been clinically ineffective.

The regulations are clear in requiring that, for drugs approved under these provisions based on surrogate endpoints, the postmarketing studies must show clinical benefit, not just the previously shown effect on the surrogate (§§ 314.510, 314.530, 601.41, and 601.43).

Surrogates, or proposed surrogates, are not always good, nor necessarily bad, indicators of therapeutic benefit and must be judged on a case-by-case basis. Even very good surrogates may not be perfect: Blood pressure lowering has been a better predictor of effect on stroke than on coronary artery disease, cholesterol lowering has had a clearer effect on coronary artery disease than on survival. Moreover, a surrogate may be persuasive for a phase of disease with short expected survival but much less so in an earlier phase of the disease. Caution is always appropriate in evaluating surrogate endpoints and the particular therapeutic setting should always be considered. The agency believes that the evaluation of surrogate endpoint data and the safeguards built into these accelerated approval procedures will provide adequate consumer protection.

12. One comment expressed concern that if there is no accepted surrogate endpoint, an applicant's only option is to conduct a study using some clinical event as an endpoint, which may result in long, large studies that delay approval to the detriment of patients and sponsors. One comment suggested as an alternative that FDA permit approval of a drug based on a study using a clinical endpoint, but accept a less rigorous standard of statistical significance, e.g., 0.20 or 0.15 instead of 0.05. The comment further suggested that the sponsor could then complete postmarketing studies to establish statistical significance at conventional levels. The comment argued that this alternative is totally consistent with FDA's willingness to accept greater uncertainty in approving drugs for serious and life-threatening illnesses.

The intent of the rule is to allow FDA to utilize a particular kind of evidence, an effect on a surrogate endpoint, as a basis for approval, and, where appropriate, to ensure that remaining doubts about the relationship of the effect on the surrogate to clinical benefit are resolved by additional adequate and well-controlled studies with clinical endpoints. The rule is not intended to place into the market drugs with little evidence of usefulness. Although there is no statutory requirement for significance testing of any particular value, there are well-established conventions for assessing statistical significance to support the statutorily required conclusion that the well-controlled studies have demonstrated that a drug will have the effect it is represented to have. There is nothing about serious or life-threatening diseases that make them uniquely difficult to study. A meaningful effect on survival or morbidity where there is no effective therapy should be readily discerned. Such studies need be long and large only when the effect is small or difficult to detect. In that event, proper assessment of benefit, and valid weighing of its relation to risk, is especially critical.

13. One comment asked that FDA clarify that one study could be the basis of approval and that one postmarketing study should be all that is needed to establish the link between the endpoint used for approval and some relevant clinical benefit.

FDA interprets the statute, and good science, as requiring at least two adequate and well-controlled studies to establish effectiveness. In some instances, drugs have been approved on the basis of a single well-controlled study; this has been done where the study was of excellent design, showed a high degree of statistical significance, involved multiple study centers, and showed some evidence of internal replicability, e.g., similar effects in major study subsets. FDA encourages applicants to discuss with FDA early in a drug's development the basis for the applicant's choice of a specific endpoint and, where applicable, the basis for its belief that a single study would be a sufficient basis for approval. With respect to postmarketing studies, FDA anticipates that the requirement will usually be met by studies already underway at the time of approval. As stated in the proposed rule, the requirement for any additional study to demonstrate actual clinical benefit will not be more stringent than those that would normally be required for marketing approval of the same drug for the same claim.

14. One comment expressed concern that the preamble to the proposed rule implied that a sponsor of an AIDS drug might have to do a postmarketing study to establish an effect on survival after showing an effect on such endpoints as weight or incidence of opportunistic infection (57 FR 13234 at 13235–13236). The comment stated that FDA's own advisory committee indicated that it was pleased to see an effect from a nucleoside analogue on the incidence of opportunistic infections with AIDS patients but did not suggest that further work should be done to show an effect on mortality. The comment argued that in some cases direct correlation with clinical endpoints such as mortality is difficult to prove and urged FDA to be flexible on this issue to encourage sponsors to go through the accelerated approval process.

Ordinarily, an effect on a meaningful clinical endpoint, e.g., on rate of opportunistic infections in AIDS, is a sufficient basis for approval without need for followup studies. Other endpoints, however, might leave major questions unanswered. For example, a

modest effect on weight gain in AIDS without other demonstrated benefit, if considered an adequate basis for approval, while a clinical endpoint, might leave sufficient doubt as to the ultimate value of the effect so that further studies would be necessary. FDA intends to interpret this provision of the regulations with flexibility. This provision should also serve as a reminder, however, that for life-threatening diseases, the ultimate aim of therapy is improved survival as well as improved symptoms.

15. One comment asked FDA to clarify what a sponsor's obligation is to continue supplying medication on a compassionate basis if clinical efficacy is not demonstrated to FDA's satisfaction in postmarketing studies but individual patients appear to be benefiting from use of the drug.

Sponsors are not obligated to supply drugs on a "compassionate basis." Whether, if clinical studies did not show effectiveness, further availability of the drug would be appropriate under any mechanism would be determined case-by-case.

D. Promotional Materials

16. Three comments asserted that requiring advance submissions of promotional materials is both beyond FDA's statutory authority and is unnecessary. Although FDA stated in the proposal that it does not intend specifically to approve promotional materials, two comments contended that is the likely effect of advance submission. The comment cited section 502(n) of the act (21 U.S.C. 352(n)), which provides that no regulation promulgated under that provision shall require prior FDA approval of the content of any advertisement "except in extraordinary circumstances," and asserted that the "extraordinary circumstances" language would not apply to drugs approved under the accelerated approval program. One comment argued that submission of promotional material prior and subsequent to approval is unwarranted when dealing with treatments for serious or life-threatening illnesses where dissemination of the most current and timely information is important to the treating physician. One comment questioned why there would be any greater likelihood of misleading promotional claims for products approved under the proposed accelerated approval process than for drugs intended to treat serious or life-threatening diseases that are approved under the normal NDA procedures. The comment also expressed the hope that the proposed requirement for advance submission of promotional materials was not based upon an assumption that promotional materials for drugs intended to treat serious diseases are more likely to be misleading than promotional materials for other types of drugs because any such assumption would be unfounded. One comment argued that if an advertisement or labeling is inaccurate, the product is misbranded and FDA could then obtain injunctive relief, seize the product, and/or initiate criminal proceedings. Another comment considered requiring advance submission of promotional materials unreasonable because companies are not required to do so now. One comment questioned the legal authority for requiring presubmission of promotional material following approval of a drug product, and the reason for the requirement.

The agency believes that the requirements for submission of promotional materials in the context of accelerated approval are authorized by statute. Subsections 505(d)(4) and (d)(5) of the act provide that, in determining whether to approve a drug as safe and effective, the agency may consider not only information such as data from clinical studies but also "any other information" relevant to safety and effectiveness under the proposed conditions of use. Such information would include information about how the drug would be promoted. In determining whether the drug's proposed labeling would be "false or misleading" under section 505(d)(7) of the act, the agency is similarly authorized to evaluate "all material facts" during the approval process, including the facts about promotion.

FDA is also authorized by section 505(k) of the act to require reporting of information subsequent to approval necessary to enable the agency to determine whether there may be grounds for withdrawing the approval. Among the grounds for withdrawal specified in section 505(e) of the act are that the evidence reveals the drug is not shown to be safe and effective under its conditions of use. In addition, drug approval may be withdrawn if information shows the labeling to be false or misleading. Information on how the drug will be promoted is again relevant to whether the drug's marketing approval should be withdrawn. Section 701(a) of the act (21 U.S.C. 371(a)) generally authorizes FDA to promulgate regulations for the efficient enforcement of the act.

For biological products, additional authority in section 351 of the PHS Act (42 U.S.C. 262) authorizes the promulgation of regulations designed to ensure the continued safety, purity, and potency of the products. The content of promotional materials is important to the continued safe and effective use of biologicals.

Therefore, the provisions of the final rule requiring submission of promotional materials prior to approval under the accelerated approval procedures and subsequent to such approval are authorized by statutory provisions. FDA might also invoke the authority of section 502(n) of the act (21 U.S.C. 352(n)) to require prior approval of the content of any prescription drug advertisement in "extraordinary circumstances." Whether FDA could appropriately rely on section 502(n) of the act in promulgating §§ 314.550 and 601.45 need not be determined, however, because FDA is not relying upon section 502(n) of the act as legal authority for these (or any other) sections of the accelerated approval regulations.

The agency believes that advance submissions of promotional materials for accelerated approval products are warranted under the accelerated approval circumstances. The special circumstances under which drugs will be approved under these provisions and the possibility that promotional materials could adversely affect the sensitive risk/benefit balance justify review of promotional materials before and after approval. For example, if the promotional materials exaggerate the known benefits of the drug, wider and inappropriate use of the drug could be encouraged, with harmful results.

Similarly, high risk drugs that are approved based on postmarketing restrictions would not have been approved for use without those restrictions because the risk/benefit balance would not justify such approval. If promotional materials were to undermine the postmarketing restrictions, the health and safety of patients could be greatly jeopardized.

Although there is potential harm from any misleading promotion, and there is no reason to believe improper promotion is more likely in this setting than in others, the risk/benefit balance is especially sensitive in this setting. The relatively small data base available and the minimal published information available also can contribute to making the physician and patient populations particularly vulnerable under accelerated approval circumstances.

Reliance on court actions (such as seizures, injunctions, and criminal prosecutions) can be effective in ending false promotions, but can only be initiated after the fact, when harm has already occurred. Corrective efforts can

be helpful but are always somewhat delayed. Under the circumstances of accelerated approval, FDA believes that it is far preferable to avoid problems by reviewing the promotional materials in advance of drug approval and of dissemination of the materials.

17. Two comments supported the provision about submission of promotional materials. One comment urged the agency to require that specific patient information be included in promotional materials to indicate the fact that the drug's clinical benefit has not yet been established. For drugs approved under the restricted use provision, the comment recommended that the labeling specify in detail the exact restrictions placed on the drug. In both cases, the comment recommended that this patient information appear as boxed warnings.

Section 502(n) of the act and regulations at § 202.1(e)(1) (21 CFR 202.1(e)(1)) require prescription drug advertisements (promotional material) to contain, among other things, a true statement of information in brief summary relating to side effects, contraindications, and effectiveness, which would include warnings, precautions, and limitations on use. The information in brief summary relating to side effects, contraindications, and effectiveness is required to be based solely on the approved labeling. Therefore, to the extent that a drug's labeling reflects the extent of clinical exposure and includes appropriate warnings, a drug's promotional material would also include this information.

FDA regulations governing prescription drug labeling (21 CFR 201.56 and 201.57) require that serious adverse reactions and potential safety hazards, as well as limitations in use imposed by them, be included in the "Warning" section of the labeling. In the case of approval based upon effect on a surrogate endpoint, the "Indications and Usage" section of the labeling would reflect the nature of the demonstrated effect. If the approval is based on use restrictions, the label would also specify the restrictions.

FDA may require boxed warnings if there are special problems associated with a drug, particularly those that may lead to death or serious injury (21 CFR 201.57(e)). The agency does not agree that information related to clinical benefit or use restrictions for accelerated approval drugs would necessarily always require a boxed warning.

As indicated by §§ 314.550 and 601.45 of the final rule, applicants will be required to submit promotional materials prior to approval and in advance of dissemination subsequent to approval whether the product is a new drug, an antibiotic, or a biological product.

18. One comment contended that FDA review and approval of all promotional pieces before their use will indefinitely delay product marketing campaigns and other patient and physician educational activities, which are essential to market a product, thereby significantly diminishing the advantage of securing an early approval for the applicant. The comment further contended that the requirement to submit "all promotional materials * * * intended for dissemination or publication upon marketing approval" will be overly burdensome for FDA and will unnecessarily slow down the process for review of all materials, not just those for products subject to this proposed rule. The comment recommended that FDA only request for review the primary advertising pieces, such as the introductory letter to physicians, the main detail piece, and the main journal advertisement, but not the secondary materials, e.g., a letter to pharmacists, of the initial promotional campaign.

As previously discussed in this preamble, FDA will be reviewing an applicant's planned promotional materials both prior to approval of an application (reflecting the initial campaign) and subsequent to approval to ascertain whether the materials might adversely affect the drug's sensitive risk/benefit balance. Because all promotional materials, including those referred to by the comment as "secondary" materials, can have significant adverse effects if they are misleading, the agency does not agree that such materials should, as a matter of course, not be requested for review. Insofar as such materials may be directly derived from the introductory letter to physicians, or other materials characterized by the comment as "primary" materials, the additional time to review the derivative materials should not be extensive.

The agency does not agree with the comment's contention that the requirement to submit all promotional materials prior to and subsequent to approval will indefinitely delay marketing campaigns and educational activities or be overly burdensome to FDA reviewers. FDA is committed to rapid review and evaluation of all drugs considered for approval under this rule and will promptly review the promotional materials.

19. One comment suggested a passive, time-limited clearance system for review of advertising after the initial promotional campaign such as that used for review of IND's, which would allow the sponsor to proceed to use promotional materials after an allotted timeframe, such as 30 days, unless otherwise notified by FDA.

As indicated by this comment and others, additional clarification regarding both timing and content of the submissions of promotional materials seems useful. Therefore, the agency is revising proposed §§ 314.550 and 601.45 to make it clear that, unless otherwise informed by the agency, applicants must submit during the preapproval review period copies of all promotional materials intended for dissemination or publication within the first 120 days following marketing approval. The initial promotional campaign, sometimes referred to as the "launch campaign," often has a significant effect on the climate of use for a new product. As discussed elsewhere in this preamble, the risk/benefit balance of accelerated approval products is especially sensitive, and inappropriate promotion may adversely affect the balance with resulting harm.

There may be some instances in which promotional materials that had not been completed and submitted by the applicant prior to approval would be beneficial in fostering safe and effective use of the product during the first 120 days. Under revised §§ 314.550 and 601.45, FDA would have the discretion to consider such materials at a later time. An applicant who requested permission to include additional materials among those disseminated within the first 120 days following product approval would be notified of FDA's determination. If FDA agreed that dissemination of such materials was acceptable, the materials could then be disseminated or published upon notification.

For promotional materials intended for dissemination subsequent to the initial 120 days under §§ 314.550 and 601.45 FDA would review the submitted materials within 30 days of receipt. This 30-day period is meant to be time-limited, so that the applicant will be assured of no unnecessary delay. It will be important for the applicant to identify the materials being submitted appropriately, so that it is clear that the materials are subject to the 30-day review period. The agency intends to review all such materials promptly, and to notify the applicant of any identified problems as soon as possible. The agency expects that, if the agency notifies the applicant of significant objections to the proposed materials, no materials will be disseminated or published until the agency's objections are resolved. The applicant should plan to allow sufficient time after receiving

FDA's comments for resolving differences and incorporating requested changes in the submitted materials prior to dissemination or publication.

When FDA removes the requirement for advance submission of promotional material, the agency will continue to offer a prompt review of all voluntarily submitted promotional material.

E. Postmarketing Restrictions

FDA received many comments on the proposed requirement to limit distribution to certain facilities or physicians with special training or experience, or condition distribution on the performance of specified medical procedures if such restrictions are needed to counterbalance the drug's known safety concerns.

20. Several comments questioned FDA's authority to impose restrictions on distribution or use after an approved drug is marketed. Two comments disagreed with the statutory provisions cited by FDA in the proposed rule as its authority to impose restrictions on distribution or use stating that they refer only to FDA's general authority to ensure that drugs are not misbranded, which is an entirely separate issue. Another comment argued that section 503(b) of the act (21 U.S.C. 353(b)) contemplates that the issues warranting a restriction as to distribution are not factors in whether a drug product is "safe" for purposes of approval, but rather only whether the product must be limited to prescription status. Two comments said that, in the absence of specific statutory authority, the courts clearly have refused to permit FDA to impose restrictions on distribution and cited *American Pharmaceutical Association (APhA)* v. *Weinberger*, 377 F. Supp. 824, 829 n. 9 (D.D.C. 1974), *aff'd sub nom. APhA* v. *Mathews*, 530 F.2d 1054 (D.C. Cir 1976), a case concerning conditions placed on the approval of the drug methadone.

Some comments asserted that placing restrictions on the distribution of an approved drug to only certain facilities or physicians, or restricting use to certain medical procedures interferes with the practices of medicine and pharmacy, which the comments contended FDA does not have the authority to regulate.

The agency believes that the restrictions to ensure safe use contemplated for approvals under §§ 314.520 and 601.42 are authorized by statute. As discussed in the preamble to the proposed rule (57 FR 13234 at 13237), sections 501, 502, 503, 505, and 701 of the act provide broad authority for FDA to issue regulations to help assure the safety and effectiveness of new drugs.

The agency does not agree with the comments' contention that the misbranding provisions of the act are irrelevant. Section 502(a) of the act prohibits false or misleading labeling of drugs, including (under section 201(n) of the act) failure to reveal material facts relating to potential consequences under customary conditions of use. Section 502(f) of the act requires drugs to have adequate directions for use and adequate warnings against unsafe use, such as methods of administration, that may be necessary to protect users. In addition, section 502(j) of the act prohibits use of drugs that are dangerous to health when used in the manner suggested in their labeling. Each of these misbranding provisions is intended, at least in significant part, to protect consumers against the marketing of drugs that would not be safe under certain conditions of use. Section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the act. The restrictions on use contemplated by §§ 314.520 and 601.42 help to ensure that products that would be misbranded under section 502 of the act are not marketed.

The restrictions on use imposed under section 503 of the act, which relate to prescription use limitations, primarily concern whether a drug is safe for use except under the supervision of a licensed practitioner. While the agency agrees that the restrictions imposed under §§ 314.520 and 601.42 concerning distribution to certain facilities or physicians with special training or experience would be in addition to ordinary prescription limitation, FDA believes these restrictions are consistent with the spirit of section 503 of the act, as well as the other provisions of the act referred to, in ensuring safe use.

New drugs may be approved under section 505(d) of the act only if they are safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling. In addition, for approval, a drug's labeling must not be false or misleading based on a fair evaluation of all material facts, which would include details about the conditions of use. For biological products, section 351(d) of the PHS Act also authorizes the imposition of restrictions through regulations "designed to insure the continued safety, purity, and potency" of the products.

The agency disagrees with the comments' implication that the courts' rulings in *American Pharmaceutical Association (APhA)* v. *Weinberger* mean there is no statutory authority to impose restrictions on distribution for accelerated approval drugs. The situation considered in that case is readily distinguishable from the situation addressed in §§ 314.520 and 601.42 of the accelerated approval regulations. The *APhA* case concerned a regulation that withdrew approval of NDA's for methadone, but permitted distribution to certain maintenance treatment programs and certain hospital and community pharmacies. Because methadone is a controlled substance within the provisions of the Controlled Substances Act, which is implemented by the Drug Enforcement Administration with the Justice Department, the district court concluded that the question of permissible distribution of the drug was within the jurisdiction of the Justice Department, not FDA. The Court of Appeals determined that the type of misuse associated with methadone, i.e., misuse by persons who have no intent to try to use drugs for medical purposes, differed from safety issues contemplated for control under section 505 of the act. In contrast, the restrictions contemplated under §§ 314.520 and 601.42 are precisely those deemed necessary to ensure that section 505 criteria have been met, i.e., restrictions to ensure that the drug will be safe under its approved conditions of use. It is clearly FDA's responsibility to implement the statutory provisions regarding new drug approval.

Nor does FDA agree that the provisions placing restrictions on distribution to certain facilities or physicians, or conditioned on the performance of certain medical procedures, impermissibly interfere with the practice of medicine and pharmacy. There is no legal support for the theory that FDA may only approve sponsors' drugs without restriction because physicians or pharmacists may wish to prescribe or dispense drugs in a certain way. The restrictions under these provisions would be imposed on the sponsor only as necessary for safe use under the extraordinary circumstances of the particular drug and use. Without such restrictions, the drugs would not meet the statutory criteria, could not be approved for distribution, and would not be available for prescribing or dispensing. The agency, as a matter of longstanding policy, does not wish to interfere with the appropriate practice of medicine or pharmacy. In this instance, the agency believes that rather than interfering with physician or pharmacy practice, the regulations permit, in exceptional cases,

approval of drugs with restrictions so that the drugs may be available for prescribing or dispensing.

21. One comment asserted that postmarketing restrictions on distribution to certain facilities or physicians with certain training or experience should be limited to rare occasions in cases of extreme hazard to patient safety in which toxicity of a particular drug may require it, but should not be applied because of insufficient efficacy data. Some comments argued that safety issues in the context of drug use should be addressed through patient management and effective product labeling, not through restricted distribution. In support of this argument, the comments cited the labeling of oncologic drugs, which provides physicians with adequate warnings and recommendations for their use without limiting distribution.

FDA agrees with these comments in part and intends to impose restrictions on distribution or use under this rule only in those rare instances in which the agency believes carefully worded labeling for a product granted accelerated approval will not assure the product's safe use. As stated in the preamble to the proposed rule (57 FR 13234 at 13237), FDA believes that the safe use of most prescription drugs will continue to be assured through traditional patient management by health professionals and through necessary safety warnings in the drug's labeling.

22. Two comments asked who will determine if restricted distribution should occur and what facilities or physicians with special training or experience will participate. Several comments expressed concern that restricted distribution and/or conditional use may not include all health care professionals who should participate in safe and effective patient care. Two organizations representing pharmacists asked that FDA develop functional and objective criteria that clearly establish the activities of pharmacists, physicians, and others in the care of patients receiving a drug under restricted distribution. The comments asserted that any health care professional that met these criteria should be allowed to participate in distribution of the drug and care of the patient. One comment recommended that any postmarketing restrictions on distribution or use of a drug approved under the accelerated approval process be developed by appropriate FDA advisory committees or panels expanded to include physicians and pharmacists with expertise in the therapeutic area being considered and in relevant drug distribution systems. Where appointment of pharmacists to these committees or panels is not feasible, the comment recommended that FDA use pharmacists in a consultant capacity. Another comment argued that current systems for drug distribution incorporate "checks and balances" such that prescribers and pharmacists work together to assure safe use of a drug by a patient. Two comments would oppose any restricted distribution system that allows manufacturers exclusively to deliver prescription drugs directly to patients. One comment asked whether FDA or the applicant would monitor the criteria for restricted distribution sites or physicians.

The medical reviewing divisions within FDA's CDER and CBER will determine if restricted distribution or use should be imposed. FDA will usually seek the advice of outside expert consultants or advisory committees before making this determination, and will, of course, consult with the applicant.

The agency does not agree that FDA should develop criteria that clearly establish the activities of health care professionals in the care of patients receiving a drug approved under this rule and for which restricted distribution has been imposed. Any postmarketing restrictions required under this rule will impose an obligation on the applicant to ensure that the drug or biological product is distributed only to the specified facilities or physicians. FDA will seek the advice of outside consultants with expertise in distribution systems or advisory committees when necessary in determining the need for or type of restricted distribution. The limitations on distribution or use imposed under this rule, including specific distribution systems to be used and the applicant's plan for monitoring compliance with the limitations, will have been agreed to by the applicant at the time of approval. The burden is on the applicant to ensure that the conditions of use under which the applicant's product was approved are being followed. As appropriate, FDA may monitor the sponsor's compliance with the specified terms of the approval and with the sponsor's obligations.

23. One comment recommended that proposed § 314.520 be modified to include therapeutic outcomes monitoring as a third example of a permissible postmarketing restriction. The comment defined therapeutic outcomes monitoring as the systematic and continual monitoring of the clinical and psychosocial effects of drug therapy on a patient which achieves the objective of preventing problems with drug therapy. Some comments argued that through therapeutic outcomes monitoring, a physician, a pharmacist, and a patient can work together to prevent problems with drug therapy by being constantly alert to signs of trouble. One comment said that indicator data can be routinely reported to a central collection point for utilization review by health care professionals, followed by educational programs to further improve the efficacy of drug therapy.

The postmarketing restrictions set forth in the proposal and in this final rule are intended to enhance the safety of a drug whose risks would outweigh its benefits in the absence of the restriction. Therapeutic outcomes monitoring does not contribute to that enhancement, and would not be required under this rule.

24. Some comments asked that FDA clarify how products will move from restrictive status to a regular prescription drug status. The comments asserted that all conditions associated with accelerated approval should automatically terminate following completion of confirmatory clinical trials; one comment urged FDA to explicitly state this in the final rule. One comment asserted that restrictions should automatically be removed 180 days after a supplemental application containing the data from the postmarketing study has been filed if FDA has not yet acted upon the supplemental application and the product should be deemed approved as if by "traditional" procedures and all other provisions of the act should apply, e.g., the applicant must have a formal hearing before removal of the product from the market.

FDA will notify the applicant when a particular restriction is no longer necessary for safe use of the product. In the case of drugs approved with a requirement for postapproval studies, FDA would expect that all of the postapproval requirements set forth in this rule, i.e., submission of promotional material and use of expedited withdrawal procedures, would no longer apply after postmarketing studies have verified and described the drug's clinical benefit. Concurrent with the review of the postmarketing studies, if requested, FDA will also review the need to continue any restrictions on distribution that have been imposed. In the case where restrictions on distribution or use have been imposed, such restrictions would be eliminated only if FDA determines that safe use of the product can be assured without them, through appropriate labeling. In

some cases, however, that assurance could not be expected and the nature of the specific safety issue raised by the product might require continued restrictions. FDA has added new §§ 314.560 and 601.46 to state when postapproval requirements will no longer apply and state that the applicant may petition the agency, in accordance with 21 CFR 10.30, at any time to remove specific postapproval requirements.

With respect to the suggested time period for removing restrictions on distribution or use following submission of a supplemental application containing the data from a postmarketing study, FDA does not believe it should prescribe any specific time period. These applications will receive a priority rating and FDA is firmly committed to expedited review of an application considered for accelerated approval and all data submitted from a postmarketing study to verify clinical benefit and believes most reviews will be completed and action taken within 180 days.

25. One comment argued that, as proposed, it is not clear how accelerated approval would apply to drugs which fall under the conditions described in §§ 314.520 and 601.42, which state the postmarketing restrictions on distribution or use that FDA may apply, because the language of these sections explicitly states that the sections apply to products "shown to be effective," which are already adequately covered by the act. To the comment, the language "shown to be effective" implies that full Phase 3 efficacy trials have been conducted, assessed, and deemed to demonstrate that the drug is effective for its proposed use. If the clinical data demonstrate that the product has an acceptable safety profile, the safe use of the drug should be addressed in the product labeling. Thus, the comment argued that §§ 314.520 and 601.42 should not be included in new subpart H of part 314 and subpart E of part 601, respectively, which deal with accelerated approval because these sections explicitly apply to products shown to be effective under a full drug development program.

Sections 314.520 and 601.42 apply not only to drugs and biological products approved on the basis of an effect on a surrogate endpoint but also to drugs and biological products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses using clinical endpoints and that have serious toxicity. In either case, if the products are so potentially harmful that their safe use cannot be assured through carefully worded labeling, FDA will approve the products for early marketing only if postmarketing restrictions on distribution or use are imposed. The phrase "shown to be effective" was not intended to distinguish drugs approved under new subpart H from drugs approved under any other subpart of the regulations. All drugs approved will have had effectiveness demonstrated on the basis of adequate and well-controlled studies, whether the endpoint of the studies is a surrogate endpoint or a clinical endpoint.

26. One comment expressed concern that the proposed restricted distribution or use provisions would restrict or eliminate the wholesale distribution of drugs approved through the accelerated approval process.

The limitations on distribution or use required under this rule are imposed on the applicant. Therefore, the burden is on the applicant to ensure that the conditions of use under which the applicant's product was approved are being followed. This rule does not specify how a manufacturer will distribute its product to those receiving the product under the approval terms. FDA will only determine which facilities or physicians may receive the drug, and the applicant will have agreed to this limitation on distribution or use.

27. One comment expressed concern that the proposed postmarketing restriction provision does not preclude a physician to whom restricted distribution applies from prescribing drugs approved under the accelerated approval process for unapproved (off-label) uses.

The comment is correct that this rule does not itself prevent a physician from prescribing a drug granted accelerated approval for an unapproved use. Under the act, a drug approved for marketing may be labeled, promoted, and advertised by the manufacturer only for those uses for which the drug's safety and effectiveness have been established and that FDA has approved. Physicians may choose to prescribe the drug for a condition not recommended in labeling. Such off-label use would, of course, be carried out under the restrictions imposed under this section. FDA also believes that physicians will be cognizant of the product's special risks and will use such drugs with particular care. The labeling of products approved under this rule will include all necessary warnings and full disclosure labeling would generally reflect the extent of clinical exposure to the drug.

F. Postmarketing Studies

28. Three comments argued that FDA does not have the authority to require postmarketing studies to be performed as a condition of approval based on a "surrogate" endpoint. One comment stated that it is widely accepted that the act empowered the agency to define the type and extent of efficacy data necessary to approve a product application. If a surrogate marker can be shown to be sufficiently related to actual patient benefit, then, the comment asserted, data regarding the effect of a drug on a surrogate marker constitute acceptable proof of efficacy under the act. Two comments urged FDA to continue to ask applicants to agree voluntarily to perform postmarketing studies when medically warranted as is the current policy under the traditional approval process. One comment expressed concern that requiring postmarketing studies may become the norm rather than the exception.

The agency's response to comment 1. explained the circumstances in which FDA might conclude that a drug should be marketed on the basis of an effect on a surrogate endpoint reasonably likely to predict clinical benefit only if studies were carried out to confirm the presence of the likely benefit. As discussed in the preamble to the proposed rule (57 FR 13234 at 13236), FDA believes that it is authorized by law to require postmarketing studies for new drugs and biological products. Section 505(d) of the act provides for the approval of new drugs for marketing if they meet the safety and effectiveness criteria set forth in section 505(d) of the act and the implementing regulations (21 CFR part 314). As discussed in the proposed rule, to demonstrate effectiveness, the law requires evidence from adequate and well-controlled clinical studies on the basis of which qualified experts could fairly and responsibly conclude that the drug has the effect it is purported to have. Under section 505(e) of the act, approval of a new drug application is to be withdrawn if new information shows that the drug has not been demonstrated to be either safe or effective. Approval may also be withdrawn if new information shows that the drug's labeling is false or misleading.

Section 505(k) of the act authorizes the agency to promulgate regulations requiring applicants to make records and reports of data or other information that are necessary to enable the agency to determine whether there is reason to withdraw approval of an NDA. The agency believes that the referenced reports can include additional studies to evaluate the clinical effect of a drug approved on the basis of an effect on a surrogate endpoint. Section 701(a) of the act generally authorizes FDA to issue

regulations for the "efficient enforcement" of the act.

With respect to biological products, section 351 of the PHS Act provides legal authority for the agency to require postmarketing studies for these products. Licenses for biological products are to be issued only upon a showing that they meet standards "designed to insure the continued safety, purity, and potency of such products" prescribed in regulations (42 U.S.C. 262(d)). The "potency" of a biological product includes its effectiveness (21 CFR 600.3(s)).

The agency notes that it has in the past required postmarketing studies as a prerequisite for approval for some drugs (see 37 FR 201, January 7, 1972; and 37 FR 26790, December 15, 1972).

29. One comment recommended that FDA require that specific timelines for completion of the required postmarketing studies be included in the marketing application. The comment further suggested that, if the sponsor fails to meet its timelines, approval of its application be withdrawn, or in the event it is difficult to withdraw approval of drugs for serious or life-threatening diseases, FDA should establish substantial fines and penalties for sponsors that deliberately withhold information from FDA regarding the preliminary results and the progress of their postmarketing studies, or delay the completion of such studies. The comment also urged FDA to publish in the **Federal Register** identification of manufacturers who are not meeting their obligation to complete the required postmarketing studies on time. These recommendations were prompted by the comment's concern that once a manufacturer is granted approval for its product, the manufacturer will have little incentive to complete postmarketing studies in a timely manner, especially if the preliminary results of such studies indicate that the drug may not be safe and/or effective. Another comment urged FDA to include in the final rule language that requires the participation of pharmacists in postmarketing studies because pharmacists can serve as an additional source of information on therapeutic outcomes of patients taking drugs approved under this rule and monitoring for such drugs.

The agency expects that the requirement for postmarketing studies will usually be met by studies already underway at the time of approval and that there will be reasonable enthusiasm for resolving the questions posed by those studies. The plan for timely completion of the required postmarketing studies will be included in the applicant's marketing application. In addition, in accord with the annual reporting requirements at § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii), an NDA applicant is required to provide FDA with a statement of the current status of any postmarketing studies. FDA declines to impose the sanctions suggested by the comment for failure of an applicant to meet its plans for completion of a postmarketing study. FDA believes this rule applies appropriate regulatory sanctions. Under the proposed rule and this final rule, FDA may withdraw approval of an application if the applicant fails to perform the required postmarketing study with due diligence.

FDA believes that it is not within the scope of this rule to establish the role of pharmacists in postmarketing studies. That role should more properly be defined by the clinical investigator and each institution or facility at which a postmarketing study is conducted.

30. One comment asserted that the proposal sets forth an inherent contradiction between the way FDA evaluates the benefit and risk for drugs today and the way the proposal contemplates. The comment argued that now, if postmarketing data raise questions about the risk associated with a drug product, FDA considers that data along with the other data known about the product, and determines whether, based on the overall knowledge about the drug, there is a need to seek withdrawal of approval. Under this proposal, if the postmarketing study data raised questions about the risk of the product, FDA would seek withdrawal of approval, whether or not the new data really made a fundamental difference to what is known about the benefit and risk of the product.

FDA does not agree that the contradiction described by the comment exists. Under the circumstances of accelerated approval, approval would be based on a weighing of the benefit suggested by the effect on the surrogate endpoint against known and potential risks of the drug. Should well-designed postapproval studies fail to demonstrate the expected clinical benefit, the benefit expected at the time of approval (reasonably likely to exist) would no longer be expected and the totality of the data, showing no clinical benefit, would no longer support approval. This evaluation of the data is not different from considerations that would apply in evaluating data in the case of a drug approved under other provisions of the regulations.

31. Two comments expressed the view that the proposed requirement for postmarketing studies may raise important ethical questions because once a drug product is approved, it may be unethical, depending on the circumstances, for a physician to conduct a study using a placebo control. One comment also contended that a postmarketing study requirement could compromise the NDA holder's ability to enroll sufficient numbers of patients in the study when the new approved drug and possible alternative therapies are widely available to patients.

Usually, and preferably, because of problems suggested in the comment, the requirement for postmarketing studies will be met by studies already underway at the time of approval, e.g., by completion of studies that showed an effect on the surrogate. FDA recognizes that ethical considerations will play a central role in the type of study carried out, a choice that will depend upon the type and seriousness of the disease being treated, availability of alternative therapies, and the nature of the drug and the patient population. There often are alternatives to use of a placebo control, including active control designs and dose-response studies that can satisfy both the demands of ethics and adequacy of design.

32. One comment contended that the term "postmarketing study" is used inconsistently in the proposed rule. The comment argued that "postmarketing study" is an accepted regulatory term of art which, to this point, has referred to studies conducted to confirm safety (not efficacy), after an approval has been granted, whereas in this proposal, a "postmarketing study" refers to a study required to establish clinical efficacy (i.e., a Phase 3 study), but not necessarily safety, although safety data will be collected. To prevent confusion and to differentiate between these required postmarketing confirmatory efficacy studies and safety studies traditionally conducted after approval and to clarify that products granted accelerated approval have been approved on the basis of Phase 2 (surrogate endpoint) data, the comment suggested changing the term "postmarketing study" to "Phase 3 study" in this rule except where traditional postmarketing studies are intended. The comment also suggested that the term "Phase 3 study" be defined as a study required to confirm findings of efficacy based upon surrogate data collected in Phase 2, which will be conducted after an accelerated approval has been granted and will be required before restrictions set forth in § 314.520 are removed.

The agency does not believe that the comment has accurately described accepted meanings of various terms.

The term postmarketing study does not refer to any particular kind of study, but to studies carried out after a drug is marketed, often as part of an agreement by a sponsor to do so. These have included pharmacokinetic, drug-drug interaction, and pediatric studies, studies of dose-response or of higher doses, and studies of new uses. The term is not limited to safety studies. Moreover, Phase 2 and 3 studies are not distinguished by the endpoints chosen. Phase 3 hypertension studies, for example, still measure blood pressure, not stroke rate. The agency believes that the use of the "postmarketing study" in the final rule is appropriate and consistent.

G. Withdrawal of Approval

33. One comment supported the proposed withdrawal of approval procedure. Other comments asserted that the proposed procedure does not provide the applicant with the procedural safeguard of a formal evidentiary hearing guaranteed by section 505 of the act and the Administrative Procedure Act (APA). As an example, the comments said that based on a finding of a single study failing to show clinical benefit or misuse of any promotional material, an approved new drug would be subject to withdrawal from the market with only a minimal opportunity for the NDA holder to be heard. The comments argued that section 505(e) of the act guarantees applicants "due notice and opportunity for a hearing" on withdrawal of an NDA in compliance with APA hearing standards, thus FDA must conduct hearings on withdrawals of NDA's using the formal adjudicatory procedures of the APA. One comment asserted that, under the proposed procedure, there is the absence of a discernible legal standard, an inability to cross-examine, the prosecuting attorney and judge are one and the same person, and there is a lack of even minimal formal evidentiary procedures. The comment expressed doubt that the proposed procedure would be sufficient to create a record suitable for review by a Court of Appeals, which must be able, on the basis of such a record, to determine whether the approval is supported by "substantial evidence."

FDA believes the withdrawal procedures set forth in proposed §§ 314.530 and 601.43 and in this final rule are consistent with relevant statutes and provide applicants adequate due process. As stated in the proposed rule, in issuing its general procedural regulations, FDA decided to afford NDA holders an opportunity for a formal evidentiary hearing even though the courts had not decided that such a hearing was necessarily legally required (see 40 FR 40682 at 40691, September 3, 1975). In promulgating its procedural regulations, FDA also determined that a formal evidentiary hearing is not required before withdrawing approval of biological products, but that it would be appropriate to apply the same procedures to biological products as to drug removal (see 40 FR 40682 at 40691).

Through the hearing process in this final rule, as in the proposed rule, applicants will be afforded the opportunity to present any data and information they believe to be relevant to the continued marketing of their product. The proposed process also would have permitted the presiding officer, the advisory committee members, a representative of the applicant, and a representative of the Center that initiates the withdrawal proceedings to question any person during or at the conclusion of the person's presentation. As discussed below in response to a comment, FDA has decided to allow up to three representatives of the applicant and of the Center to question presenters. Participants could comment on or rebut information and views presented by others. As with ordinary 21 CFR part 15 hearings, the hearing will be transcribed. Subsequent to the hearing, the Commissioner of Food and Drugs would render a final decision on the matter. The agency believes that the administrative record created through this process would be sufficient for judicial review.

The agency emphasizes that, as part of the approval process under this rule, applicants will have agreed that these withdrawal procedures apply to the drug for which they seek approval; applicants objecting to these procedures may forego approval under these regulations and seek approval under the traditional approval process. Under such circumstances, applicants would not have the benefit of accelerated approval; if the drug were subsequently approved, however, before withdrawal of the approval, the applicant would have an opportunity for a 21 CFR part 12 hearing.

34. One comment noted that the "imminent hazard" provision of section 505(e) of the act allows FDA to suspend approval of a product, immediately, if it is found to pose an imminent hazard to the public health. As an alternative to the proposed withdrawal procedure or in addition to the "imminent hazard" statutory provision, the comment suggested that, when confronted with a dangerous product on the market, FDA could request that the applicant voluntarily withdraw its product, and most applicants would comply if a legitimate hazard exists.

As noted in the proposed rule, FDA and applicants have often reached mutual agreement on the need to remove a drug from the market rapidly when significant safety problems have been discovered. However, applicants usually have been unwilling to enter into such agreements when doubts about effectiveness have arisen, such as following the review of effectiveness of pre-1962 approvals carried out under the Drug Efficacy Study Implementation (DESI) program. For drugs approved under the accelerated procedure regulations, the risk/benefit assessment is dependent upon the likelihood that the surrogate endpoint will correlate with clinical benefit or that postmarketing restrictions will enable safe use. If the effect on the surrogate does not translate into a clinical benefit, or if restrictions do not lead to safe use, the risk/benefit assessment for these drugs changes significantly. FDA believes that if that occurs, rapid withdrawal of approval as set forth in this rule is important to the public health.

35. Under the proposed withdrawal procedures, in addition to other persons, one representative of the Center that initiates the withdrawal proceedings may question participants at a withdrawal of approval hearing. One comment objected to limiting the Center to one representative because detailed knowledge about a drug product is likely to be available from several scientists.

The proposed limitation of questioning to single representatives of the initiating Center and the applicant was intended to make the proceedings manageable. On further consideration, the agency has determined that it would be appropriate and manageable to allow up to three persons to be designated as questioners for the applicant and for FDA. Sections 314.530(e)(2) and 601.43(e)(2) have been revised accordingly.

36. Some comments questioned FDA's ability to withdraw approval under the proposed procedures efficiently or effectively because of: (1) The lack of assurance that the results of postmarketing studies will be promptly provided to FDA; (2) limited agency resources to review study results and act upon them promptly; (3) the difficulties associated with establishing that an approved drug is "ineffective;" and (4) political pressure not to rescind the approval of NDA's for drug products that may lack evidence of effectiveness,

especially if no clearly effective alternative treatments are available. One comment offered the opinion that where a drug shows only modest evidence of benefit, perhaps on a surrogate endpoint, and only shows equivocal evidence of clinical efficacy in postmarketing studies it would be difficult and socially disruptive to withdraw approval and remove the drug from the market if the drug has become well established and accepted, and there is no issue of toxicity. Another comment believed it would be difficult to withdraw approval of a drug that may be beneficial in a subpopulation but which, in fact, has not been shown to be efficacious in broader patient population studies. The comments suggested the need for a lesser sanction.

Another comment suggested that expediting removal of a product from the market could be accomplished by using a procedure like the "imminent hazard" provision of the act, i.e., immediate removal of the drug from the market if any of the conditions listed in proposed § 314.530 were met followed by a hearing.

Although the potential difficulties cited by the comments are real, they are not fundamentally different from determinations FDA regularly must make in carrying out its responsibilities. The new regulations provide for an expedited procedure to withdraw approval; they do not guarantee that results of studies will be wholly unambiguous or that FDA will always be able to prevail in its view as to the need for withdrawal, any more than current withdrawal procedures do. The studies being carried out under these provisions will be conspicuous and important and their completion will be widely known. There is no reason to believe their results would or could be long hidden. A study that fails to show clinical effectiveness does not prove a drug has no clinical effect but it is a study that, under § 314.530, will lead to a withdrawal procedure because it has failed to show that the surrogate endpoint on which approval was based can be correlated with a favorable clinical effect. This may have occurred because the study was poorly designed or conducted; while FDA will make every effort to avoid this, the commercial sponsor has the responsibility for providing the needed evidence confirming clinical benefit. As previously discussed, §§ 314.510 and 601.41 have been revised to clarify that required postmarketing studies must also be adequate and well-controlled. The possibility that an ineffective drug has become "accepted" is not a basis for continued marketing. FDA intends to implement the provisions of § 314.530 as appropriate; data that are ambiguous will inevitably lead to difficult judgments.

A drug with clear clinical effectiveness in a subset of the population, but not in the population described in labeling, would have its labeling revised to reflect the data. Withdrawal would be inappropriate under such circumstances.

If an imminent hazard to the public health exists, the Secretary of Health and Human Services may suspend approval of an application and then afford the applicant an opportunity for an expedited hearing. In the absence of a significant hazard requiring immediate withdrawal, FDA believes the expedited procedure described in the rule satisfies the need for prompt action while, at the same time, allowing opportunity for discussion and debate before withdrawal.

37. One comment noted that the proposed rule would allow FDA to withdraw approval for failure to perform the required postmarketing studies with due diligence. The comment asserted that the act does not permit FDA to withdraw approval on this ground. Another comment, however, suggested that because proposed §§ 314.530 and 601.43 cite grounds for withdrawal of approval that are not grounds under the act, the language of these proposed sections should be revised to use language that closer aligns to that used in the act, e.g., describe a "postmarketing study" in statutory language.

FDA reaffirms the position expressed in the preamble to the proposal (57 FR 13234 at 13239) that there is adequate authority under the act to withdraw approval of an application for the reasons stated under proposed §§ 314.530 and 601.43, which include failure of an applicant to perform the required postmarketing study with due diligence. Section 505(e) of the act authorizes the agency to withdraw approval of an NDA if new information shows that the drug has not been demonstrated to be either safe or effective. Approval may also be withdrawn if the applicant has failed to maintain required records or make required reports. In addition, approval may be withdrawn if new information, along with the information considered when the application was approved, shows the labeling to be false or misleading.

For biological products, section 351(d) of the PHS Act authorizes approval of license applications under standards designed to ensure continued safety, purity, and potency. "Potency" for biological products includes effectiveness (21 CFR 600.3(s)). The PHS Act does not specify license revocation procedures, except to state that licenses may be suspended and revoked "as prescribed by regulations."

For drugs approved under § 314.510, FDA will have determined that reports of postmarketing studies are critical to the risk/benefit balance needed for approval; if those reports are not forthcoming, then, under authority of section 505(d) of the act, the drug cannot on an ongoing basis meet the standards of safety and efficacy required for marketing under the act. Therefore, it is important to ensure that the applicant make a good faith effort to complete any required postmarketing studies in a timely manner so that FDA can rapidly determine whether the surrogate endpoint upon which the drug was approved has been confirmed to correlate with clinical benefit. Failure to submit the study results in a timely fashion would also constitute failure to make a required report. Similarly, without submission of the information from required postmarketing studies on biological products approved under these procedures, the biological product is not assured of continued safety and effectiveness. The license application may, therefore, appropriately be revoked as described in § 601.43.

FDA does not find the statements of the grounds for withdrawal of approval under §§ 314.530 and 601.43 of this rule inconsistent with statutory language or ambiguous. The agency notes that, in the event none of the grounds for withdrawal specifically listed in § 314.530 or § 601.43 applies, but another ground for withdrawal under section 505 of the act or section 351 of the PHS Act and implementing regulations at 21 CFR 314.150 or 601.5 does apply, the agency will proceed to withdraw approval under traditional procedures.

38. Two comments expressed concern that it may be difficult for the agency to enforce the requirement that postmarketing studies be pursued with due diligence. The comments asked what would happen if a sponsor using due diligence is unable to recruit enough patients, or if the sponsor questions the validity of the data from the required postmarketing study, and would clumsy data management be seen as sufficient reason to rescind approval for a marketed drug? Another comment stated that once a product is approved and, by definition, provides a "meaningful therapeutic benefit over existing therapies," study accrual may drop off dramatically as patients may refuse to receive the "old" therapy or

placebo, or physicians may consider it unethical not to treat all patients with the approved indication with the new drug or biological product. Under these circumstances, the comment expressed the opinion that neither the sponsor nor the product should be penalized, nor should there be a threat to withdraw approval. Based on FDA's past history in postmarketing studies, which one comment characterized as resulting in poorly done studies, studies conducted much later than agreed upon, or not at all, the comment expressed the opinion that the "due diligence" with which applicants are expected to carry out postmarketing studies may be an overly great expectation. One comment asked FDA to give examples of when it may withdraw approval if "other evidence demonstrates that the drug product is not shown to be safe or effective under its conditions of use" (proposed §§ 314.530(a)(6) and 601.43(a)(6)).

FDA does not agree that it will be difficult to enforce the "due diligence" provision of this rule. The "due diligence" provision was designed to ensure that the applicant makes a good faith effort to conduct a required postmarketing study in a timely manner to confirm the predictive value of the surrogate marker or other indicator. Any requirement for postmarketing studies will have been agreed to by the applicant at the time of approval, and if the study is not conducted in a timely manner as agreed to by the applicant, approval of the applicant's application will be withdrawn. FDA will expect any required postmarketing study to be conducted in consultation with the agency. Therefore, should the applicant encounter problems with subject enrollment in a study or ethical difficulties about the type of study to conduct, FDA expects the applicant to discuss these problems with the agency and reach agreement on their resolution.

Examples of other evidence demonstrating the drug product is not shown to be safe and effective could include further studies of the effect of the drug and the surrogate endpoint that fail to show the effect seen in previous studies, new evidence casting doubt on the validity of the surrogate endpoint as a predictor of clinical benefit, or new evidence of significant toxicity.

39. Some comments objected to withdrawal of approval of a drug product approved under the accelerated approval process because of perceived misconduct by the applicant, such as failure to perform a required postmarketing study with due diligence or use of promotional materials that are false or misleading. The comments argued that the primary purpose of the accelerated approval process is to provide improved treatments to desperately ill patients at the earliest possible time, and withdrawal of approval of the new treatments for reasons not directly related to safety or efficacy undermines the purpose of the proposed rule. Two comments suggested that correction of the promotional material without interruption of access to the drug would be a better approach. Another comment suggested that there may be circumstances where continued access to the drug, if accompanied by informed consent, would be appropriate even if substantial questions arise about a product's safety and effectiveness. One comment urged that anticipated withdrawal of approval be preceded by measures to ensure that patients and their physicians will have an uninterrupted supply until alternative treatment arrangements can be made.

The need for "due diligence" in conducting the agreed to postmarketing studies is discussed in paragraph 37. The reasons for concern about misleading promotional materials are discussed under paragraph 16. With respect to promotional materials, FDA expects that, in most cases, any disagreements between the applicant and FDA will be resolved through discussion and modification of the materials, so that the drug or biological product can continue to be marketed. If, however, FDA concludes that the promotional materials adversely affect the risk/benefit conclusion supporting the drug's marketing, the agency intends to minimize the risk to the public health by removing the product from the market through the withdrawal procedures in this rule.

40. One comment expressed concern that the proposed withdrawal procedure may give the appearance of bias or preconceived notions on the part of the agency because the final decision to withdraw approval of a drug would be made by the Commissioner of Food and Drugs and the intention to withdraw approval of the drug will already have been determined by the agency.

Under the withdrawal provisions of this rule, FDA's CDER or CBER, rather than the Commissioner, will initiate the withdrawal proceedings. The withdrawal process will begin with a letter from CDER or CBER notifying the applicant that the Center proposes to withdraw marketing approval and stating the reasons for the proposed action. Although separation of functions will not apply under the provisions of §§ 314.530 or 601.43, the Commissioner's decision regarding withdrawal would not occur until after the applicant had an opportunity for hearing as described in those sections. The Commissioner would then expect to review the issues with objectivity and fairness having had the benefit of the presentations and discussions at the hearing and of the advisory committee's recommendations.

H. Safeguards for Patient Safety

41. One comment asked if drugs approved under the accelerated approval process will be held to the same standards concerning postmarketing safety as drugs approved by the traditional process.

As discussed in the preamble to the proposed rule, applicants gaining approval for new drugs through the accelerated approval procedures will also be expected to adhere to the agency's longstanding requirements for postmarketing recordkeeping and safety reporting (see 21 CFR 314.80 and 314.81). Information that comes to FDA from the applicant or elsewhere that raises potential safety concerns will be evaluated in the same manner that such information is evaluated for drugs approved under the agency's traditional procedures. If the postmarketing information shows that the risk/benefit assessment is no longer favorable, the agency will act accordingly to remove the drug from the market.

42. One comment urged FDA, if the proposed rule were adopted, to require written informed consent so that patients would know that the drugs with which they were being treated had risks and that the benefits had not been adequately established.

The agency does not agree that patients using drug products approved under the accelerated approval regulations should be asked to provide written informed consent. Drugs approved under these provisions are not considered experimental drugs for their approved uses. Like all approved drugs, drugs approved under these provisions will have both risks and benefits. As previously discussed in this preamble, for drugs approved based on studies showing an effect on a surrogate endpoint, the approved labeling will describe that effect. In addition, the labeling will contain information on known and potential safety hazards and precautionary information. As with all prescription drugs, the physician has the responsibility for appropriately advising the patient regarding the drug being prescribed.

43. One comment asked that FDA require manufacturers to maintain an updated list of names, addresses, and phone numbers of physicians prescribing their products approved

under this rule, and in the case of recall or withdrawal of approval, require manufacturers to contact these physicians and encourage them to notify their patients.

FDA does not believe such a procedure is necessary. Furthermore, maintaining such a registry for drugs prescribed through pharmacies would be very difficult. Agency experience with recalls and product withdrawals indicates that the methods of notification that have been developed for such circumstances are adequate.

44. One comment recommended that FDA require patient package inserts (PPI's) for all drugs granted accelerated approval that would state the specific restrictions placed on a drug product and/or the reason for requiring postmarketing studies. In addition, the comment recommended that FDA require the manufacturer to include an adverse drug reaction "hotline" phone number in the PPI along with an FDA phone number. The PPI should inform the patient to report immediately any adverse drug reaction experienced to his or her doctor, the manufacturer, and FDA, and the manufacturer should be required to contact FDA immediately after receiving a report of a serious adverse reaction.

FDA concludes that patient package inserts are not routinely needed for drugs granted accelerated approval, although if circumstances made one appropriate, one would be developed for a particular drug. As with any prescription drug, the approved labeling for a product granted accelerated approval will contain information about the safe and effective use of the product, including all necessary warnings and the extent of clinical exposure. In addition, the conditions of use will be carefully worded to reflect the nature of the data supporting the product's approval. Physicians have the responsibility to inform patients about the safe and effective use of an approved product. Labeling includes suggestions to the physician concerning information to be provided to patients.

The agency notes that in this final rule limited editorial changes have been made to the wording of the proposed rule. The agency has determined that these changes do not affect the intent of the proposed rule.

V. Economic Impact

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that it is not a major rule as defined by the Order. Indeed, because firms will not be forced to use the accelerated approval mechanism, applicants will most probably choose to take advantage of the program only where its use is expected to reduce net costs, Similarly, the final rule does not impose a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis under the requirements of the Regulatory Flexibility Act of 1980.

VI. 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.

VII. Paperwork Reduction Act of 1980

This rule does not contain new collection of information requirements. Section 314.540 does refer to regulations that contain collection of information requirements that were previously submitted for review to the Director of the Office of Management and Budget (OMB) under section 3504 of the Paperwork Reduction Act of 1980 (Adverse Drug Experience Reporting, OMB No. 0190–0230).

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Biologics, Confidential business information.

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, 21 CFR parts 314 and 601 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

2. Subpart H consisting of §§ 314.500 through 314.560 is added to read as follows:

Subpart H—Accelerated Approval of New Drugs for Serious or Life-Threatening Illnesses

Sec.

314.500 Scope.
314.510 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.
314.520 Approval with restrictions to assure safe use.
314.530 Withdrawal procedures.
314.540 Postmarketing safety reporting.
314.550 Promotional materials.
314.560 Termination of requirements

Subpart H—Accelerated Approval of New Drugs for Serious or Life-Threatening Illnesses

§ 314.500 Scope.

This subpart applies to certain new drug and antibiotic products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses and that provide meaningful therapeutic benefit to patients over existing treatments (e.g., ability to treat patients unresponsive to, or intolerant of, available therapy, or improved patient response over available therapy).

§ 314.510 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.

FDA may grant marketing approval for a new drug product on the basis of adequate and well-controlled clinical trials establishing that the drug product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. Approval under this section will be subject to the requirement that the applicant study the drug further, to verify and describe its clinical benefit, where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit, or of the observed clinical benefit to ultimate outcome. Postmarketing studies would usually be studies already underway. When required to be conducted, such studies must also be adequate and well-controlled. The applicant shall carry out any such studies with due diligence.

§ 314.520 Approval with restrictions to assure safe use.

(a) If FDA concludes that a drug product shown to be effective can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the drug product, such as:

(1) Distribution restricted to certain facilities or physicians with special training or experience; or

(2) Distribution conditioned on the performance of specified medical procedures.

(b) The limitations imposed will be commensurate with the specific safety concerns presented by the drug product.

§ 314.530 Withdrawal procedures.

(a) For new drugs and antibiotics approved under §§ 314.510 and 314.520, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the required postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to assure safe use of the drug product;

(4) The applicant fails to adhere to the postmarketing restrictions agreed upon;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the drug product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Drug Evaluation and Research will give the applicant notice of an opportunity for a hearing on the Center's proposal to withdraw the approval of an application approved under § 314.510 or § 314.520. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the Federal Register in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of the Center may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner's decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 314.540 Postmarketing safety reporting.

Drug products approved under this program are subject to the postmarketing recordkeeping and safety reporting applicable to all approved drug products, as provided in §§ 314.80 and 314.81.

§ 314.550 Promotional materials.

For drug products being considered for approval under this subpart, unless otherwise informed by the agency, applicants must submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 314.560 Termination of requirements.

If FDA determines after approval that the requirements established in § 314.520, § 314.530, or § 314.550 are no longer necessary for the safe and effective use of a drug product, it will so notify the applicant. Ordinarily, for drug products approved under § 314.510, these requirements will no longer apply when FDA determines that the required postmarketing study verifies and describes the drug product's clinical benefit and the drug product would be appropriate for approval under traditional procedures. For drug products approved under § 314.520, the restrictions would no longer apply when FDA determines that safe use of the drug product can be assured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30.

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 376, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

4. Subpart E consisting of §§ 601.40 through 601.46 is added to read as follows:

Subpart E—Accelerated Approval of Biological Products for Serious or Life-Threatening Illnesses

Sec.

601.40 Scope.
601.41 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.
601.42 Approval with restrictions to assure safe use.
601.43 Withdrawal procedures.
601.44 Postmarketing safety reporting.
601.45 Promotional materials.
601.46 Termination of requirements.

Subpart E—Accelerated Approval of Biological Products for Serious or Life-Threatening Illnesses

§ 601.40 Scope.

This subpart applies to certain biological products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses and that provide meaningful therapeutic benefit to patients over existing treatments (e.g., ability to treat patients unresponsive to, or intolerant of, available therapy, or improved patient response over available therapy).

§ 601.41 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.

FDA may grant marketing approval for a biological product on the basis of adequate and well-controlled clinical trials establishing that the biological product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic,

pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. Approval under this section will be subject to the requirement that the applicant study the biological product further, to verify and describe its clinical benefit, where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit, or of the observed clinical benefit to ultimate outcome. Postmarketing studies would usually be studies already underway. When required to be conducted, such studies must also be adequate and well-controlled. The applicant shall carry out any such studies with due diligence.

§ 601.42 Approval with restrictions to assure safe use.

(a) If FDA concludes that a biological product shown to be effective can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the biological product, such as:

(1) Distribution restricted to certain facilities or physicians with special training or experience; or

(2) Distribution conditioned on the performance of specified medical procedures.

(b) The limitations imposed will be commensurate with the specific safety concerns presented by the biological product.

§ 601.43 Withdrawal procedures.

(a) For biological products approved under §§ 601.40 and 601.42, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the required postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the biological product;

(4) The applicant fails to adhere to the postmarketing restrictions agreed upon;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the biological product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Biologics Evaluation and Research will give the applicant notice of an opportunity for a hearing on the Center's proposal to withdraw the approval of an application approved under § 601.40 or § 601.41. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the Federal Register in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of the Center may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner's decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 601.44 Postmarketing safety reporting.

Biological products approved under this program are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products.

§ 601.45 Promotional materials.

For biological products being considered for approval under this subpart, unless otherwise informed by the agency, applicants must submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 601.46 Termination of requirements.

If FDA determines after approval that the requirements established in § 601.42, § 601.43, or § 601.45 are no longer necessary for the safe and effective use of a biological product, it will so notify the applicant. Ordinarily, for biological products approved under § 601.41, these requirements will no longer apply when FDA determines that the required postmarketing study verifies and describes the biological product's clinical benefit and the biological product would be appropriate for approval under traditional procedures. For biological products approved under § 601.42, the restrictions would no longer apply when FDA determines that safe use of the biological product can be assured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30.

Dated: December 7, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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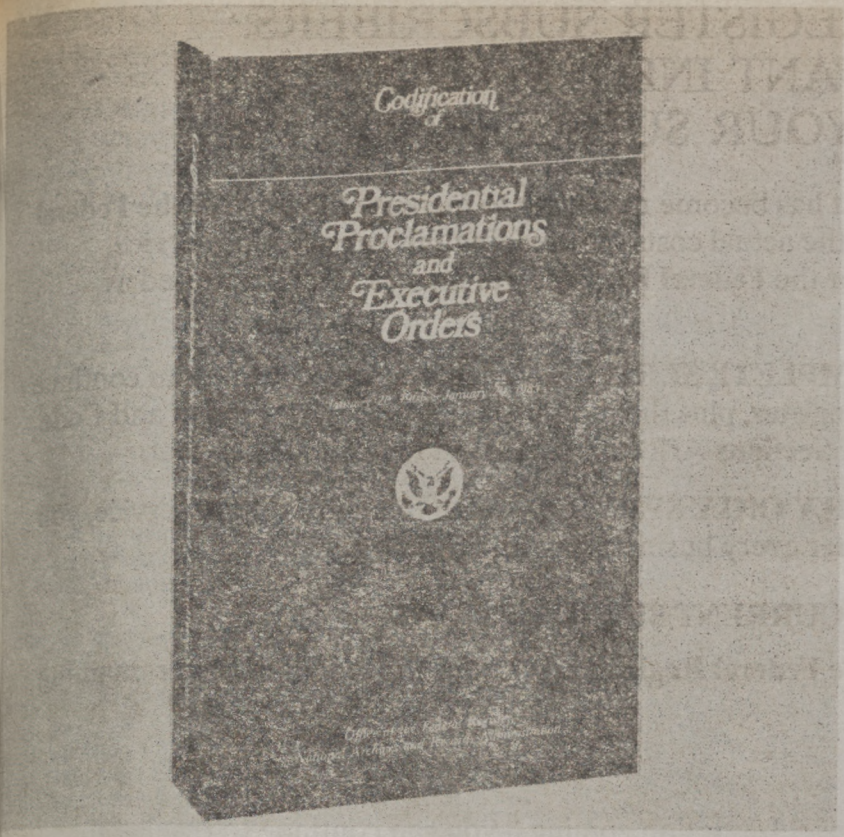
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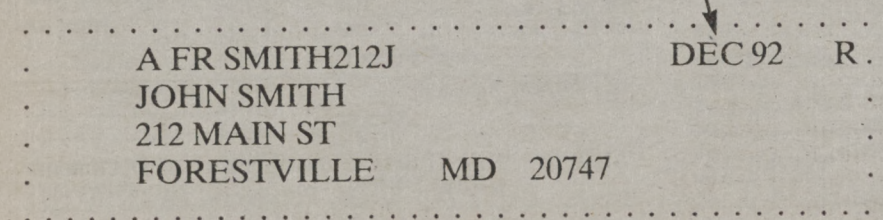
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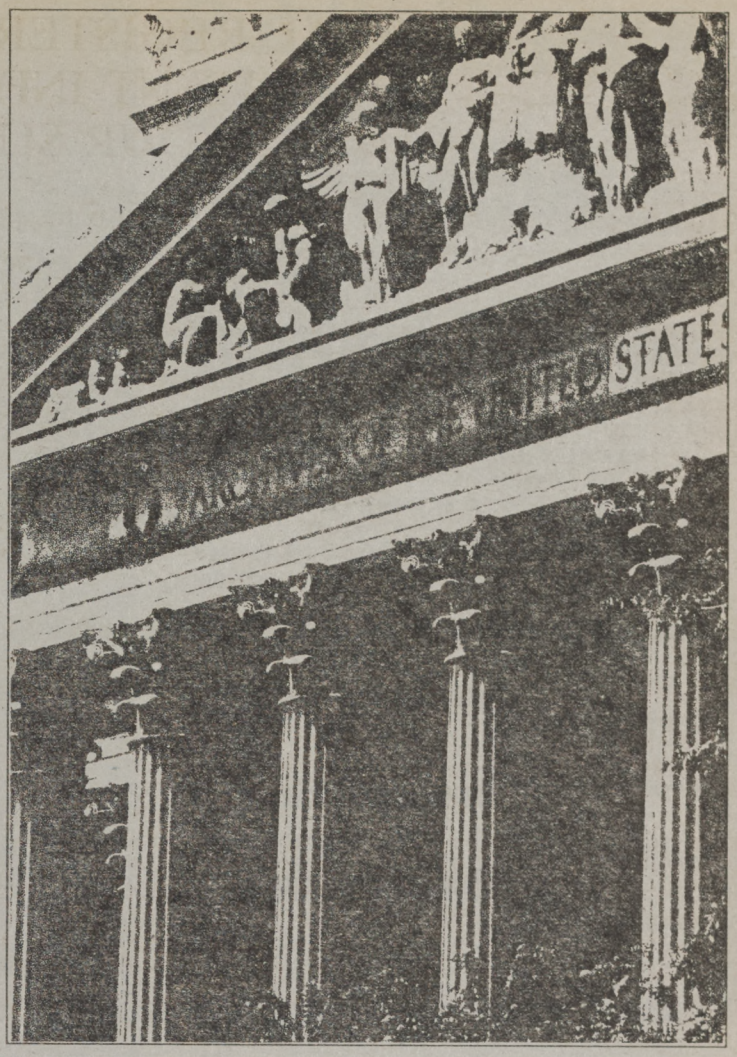
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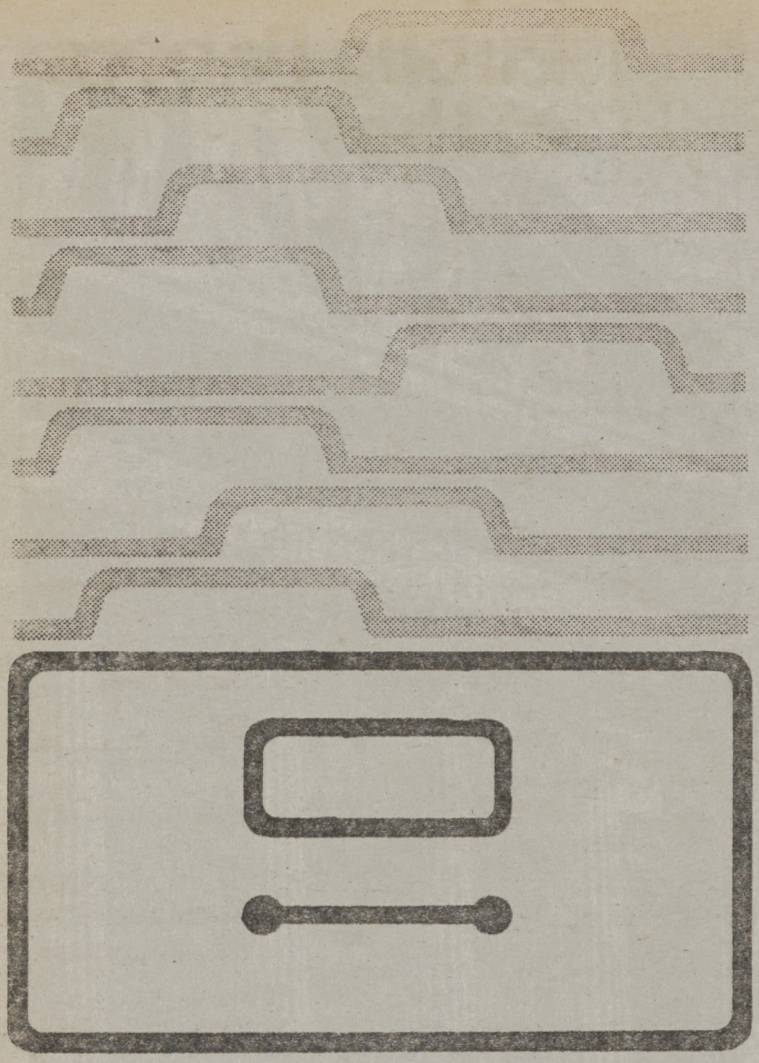
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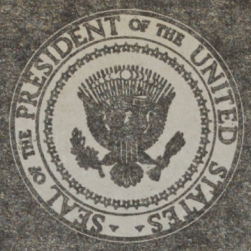
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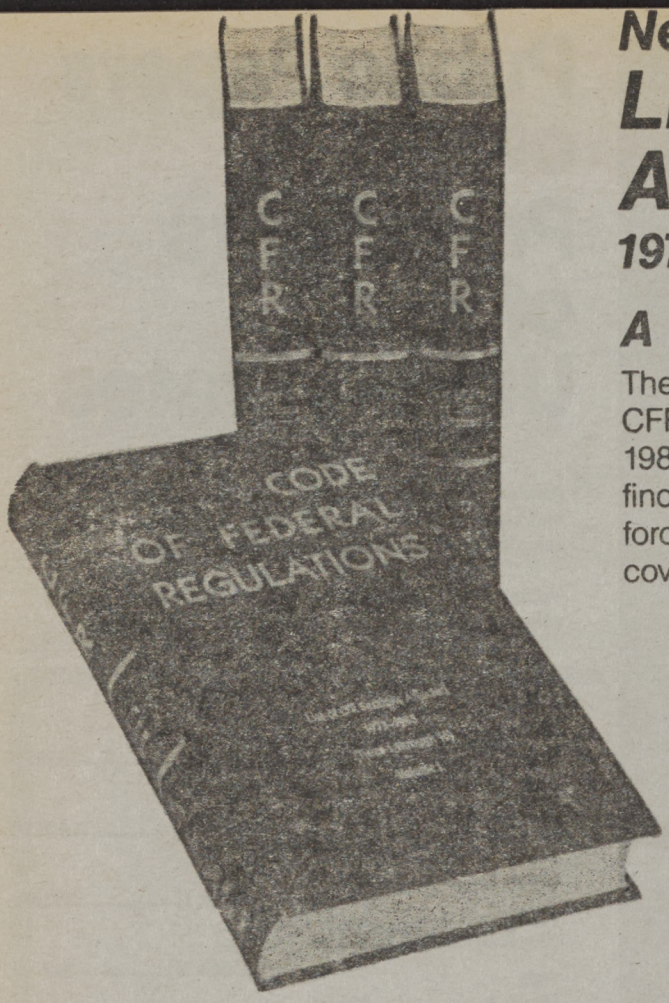
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