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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 AGRICULTURE

Agriculture Stabilization and Conservation Service

7 CFR Part 702

Colorado River Basin Salinity Control (CRSC) Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The final rule adopts, with changes, an interim rule published at 52 FR 16738 for the Colorado River Basin Salinity Control (CRSC) Program authorized by Section 201(c) of the Colorado River Basin Salinity Control Act (the Act), as amended. The Secretary of Agriculture is authorized by this section to identify salt source areas in the Colorado River Basin and develop project plans for implementing salinity control measures in those areas.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James R. McMullen, Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service (ASCS), or Mr. Peter Tidd, Director, Land Treatment Program Division, Soil Conservation Service (SCS), United States Department of Agriculture (USDA), Washington, DC 20013–2415, telephone numbers 202–720–6221, and 202–720–1870, respectively (8 a.m.–4 p.m.).

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1, and has been classified as "non-major." It has been determined that these provisions will not result in: (1) An annual effect on the national economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) significant adverse effects on competition, employment, investment, productivity, innovation; or (4) a substantial effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

In accordance with the Act, SCS, USDA and the Bureau of Reclamation of the United States Department of Interior (USDI) investigate and identify salt source areas in the Colorado River Basin on a continuing project-by-project basis. Before implementing salinity reduction measures to reduce the amount of salt delivered to the Colorado River, these agencies evaluate, assess, and prepare statements on the environmental impacts of salinity reduction measures, if it is determined by either or both agencies to be desirable to implement their respective program activities in an area.

Environmental impact statements have been prepared for the Grand Valley Project, Colorado; Uinta Basin Project, Utah; the Lower Gunnison Project, Colorado; and the Big Sandy Project, Wyoming.

Copies of the completed documents are available for inspection at room 6036, South Agriculture Building, 14th and Independence Avenue, Washington, DC.

The information collection requirements contained in these regulations have been approved through September 30, 1995, by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., chapter 35, and has been assigned OMB #0560–0128 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3505). The changes to the interim rule set forth in this final rule do not revise or impose any new information collection or record keeping requirements from those previously approved by OMB.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Colorado River Basin Salinity Control Program—10.070.

This program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Discussion of Program

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with this rule. Before any judicial action may be brought regarding this rule, administrative appeal remedies at 7 CFR must be exhausted.

Section 201(c) of the Act authorizes the Secretary of Agriculture to establish a voluntary cooperative salinity control program with landowners to improve on-farm water management and reduce watershed erosion on non-Federal lands and on lands under the control of the Department of Agriculture. The Secretary is authorized to: (1) Identify salt-source areas and determine the salt load resulting from irrigation and watershed management practices in the Colorado River Basin; (2) develop plans for implementing measures that will reduce the salt load in the Colorado River by improving on-farm irrigation water management and by improving watershed erosion management practices including the voluntary replacement of incidental fish and wildlife values foregone; (3) provide financial assistance for voluntary implementation of such conservation measures and practices; (4) provide technical assistance; (5) monitor and evaluate changes in salt contributions to the Colorado River; and (6) perform related research, demonstration, and education activities.

Sixteen comments were received concerning the interim rule implementing the program published on May 5, 1987 (52 FR 16738). The rule is codified in 7 CFR Part 702.

Comments were received from the Arizona Department of Water Resources, the Colorado River Basin Salinity Control Forum, the Colorado River Board of California, the State of Utah, the USDI, and the United States Environmental Protection Agency.

Discussion of Comments

Section 702.1 General

Section 702.1(e) in the interim rule identified the authority granted to the Secretary of Agriculture by the Act to monitor and evaluate changes in salt contributions to the Colorado River. One respondent commented that monitoring and evaluation requirements should be set forth in sufficient detail to: (1) Establish a baseline data set of salinity conditions before installing Salinity Reduction Practices (SRP's); (2) determine the cost-effectiveness of SRP's; (3) determine whether changes, improvements, or replacement of SRP's are needed; (4) gather data for use in future projects; (5) measure program success; and (6) monitor program compliance.

It was determined that no modification of this section was needed. The regulations contain provisions for ASCS and SCS to monitor and evaluate projects. ASCS and SCS will perform random spot-checks or SRP's and complete annual status reviews to ensure participant compliance of program contract terms and conditions, including any Operation an Maintenance (O&M) agreement.

Section 702.2 Definitions

Five respondents were concerned that the definition of "conservation treatment" in § 702.2(a)(6) of the interim rule could be interpreted as meaning that the replacement of lost incidental fish and wildlife values by program participants is mandatory rather than voluntary, as specified in section 202(c) of the Act. The respondents recommended that the word "may" be inserted in the last sentence of the definition to read "Such treatment may include replacement of incidental fish and wildlife values foregone as a result of salinity control treatment applied by the participant under the CRSC Program."

The suggestion to insert the word "may" was adopted, as the Act requires no mandatory mitigation of fish and wildlife values foregone.

One respondent was concerned that using the word "foregone" in defining the term "fish and wildlife values foregone" in § 702.2(a)(12) is ambiguous and should be replaced with a less obscure term, such as, "adversely impacted." The same respondent was also concerned that in this same definition the word "incidental" in reference to fish and wildlife habitats is misleading, and appears to imply that the impacted habitats are minor or inconsequential.

The definition in the interim rule has been determined to be sufficiently descriptive and to be consistent with the Act. Accordingly, no changes have been made.

The definition of "Deputy Administrator" which means the Deputy Administrator, State and County Operations of ASCS, is being added to the final rule, since it was not in the interim rule. The remaining definitions of the interim rule will be renumbered to accommodate this addition.

Section 702.3 Administration

One respondent recommended that in § 702.3(b)(3), the role of cooperation and coordination among other USDA agencies, the USDI, and the Environmental Protection Agency be described in greater detail.

The interim rule was determined to be sufficiently descriptive in this respect. These administrative matters are covered in greater detail in interagency agreements, and need not be covered within the rule itself.

Section 702.5 Eligible land

The provisions of § 702.5 concerning land eligibility have been amended to specify that land, to be considered eligible, must have been irrigated in at least two years between 1982 and 1986, inclusive, to avoid subsidizing irrigation of new land which may contribute to additional salt loading. There are discretionary exceptions for other land to become eligible. These other land exceptions are dependent upon the approval of the Deputy Administrator, State and County Operations, ASCS, before they are deemed eligible.

Section 702.9 CRSC Contract and Obligations of the Participant

One respondent questioned whether the provision in § 702.9(f), that requires entities with a present possessory interest or noncontingent future possessory interest in the land to sign such CRSC contract, was meant to cover financial institutions with a security interest in the land. If so, it was recommended the section be amended to limit its coverage to land purchasers. The wording "present possessory or noncontingent future possessory interest" will not, by its terms, normally cover lending institutions and is sufficiently descriptive. The provisions of this section require signatures of owners, including, but not limited to, minors, who own or have possessory rights of land which are held outright or in trust.

One respondent recommended amending § 702.9(h), as promulgated in the interim rule, to require that all participants grant a recordable security interest to ensure that cost-share payments are recovered in the event of a default.

Not all entities that are eligible to enter into a CRSC contract own the land on which SRP's will be installed. For example, irrigation districts or canal companies would not, usually, own the land, but may nonetheless participate in a CRSC project. Such entities either hold long term leases, rights of way, easements, or other land permits. These contracts may involve narrow land strips with little independent real property value. It was determined that the interim rule should be changed to state that all participants and/or landowners may be required to grant a security agreement; however, the interim regulations specifically provide for the filing of either a security interest in realty or in the equipment and personal property used for the SRP.

One respondent suggested that the contract priorities established under § 702.9(j), as promulgated in the interim rule, could conflict with those identified in § 702.2(a)(20).

Section 702.2(a)(20) applies to setting priorities for treating areas of land within the project area. Section 702.9(j), however, deals with establishing priorities for development of salinity control plans for applicants within the priority areas as identified in § 702.2(a)(20).

The authority for the County Agricultural Stabilization and Conservation Committees (COC) and for Conservation Districts (CD), as set out in § 702.9(j) of the interim rule, does not supersede any authorities stated in § 702.2(a)(20) priorities.

Since there does not appear to be any conflict between these provisions, no change was made.

Section 702.10 Operation and Maintenance Agreements

One respondent suggested that § 702.10(c)(3) of the interim rule should be clarified regarding how often a compliance inspection will be performed.

No change was deemed needed. Detailed operating procedures and requirements are documented in ASCS and SCS field operating procedures. ASCS and SCS will conduct annual status reviews of all active CRSC contracts and randomly inspect SRP's under continuing operation and maintenance agreements after the installation period of the contract has expired. All participants will be required to operate, maintain, and inspect the SRP's according to a schedule established in the operation

and maintenance plan developed by the SCS for the SRP.

Section 702.13 Levels and Rates of Cost-share Payments

One respondent commented that § 702.13(c)(3) should be corrected grammatically to read "The need for and cost of implementing voluntary SRP's to replace incidental fish and wildlife values foregone."

This change is consistent with the Act and was adopted.

Section 702.15 Payments Not Subject to Claims

Section 702.15, as promulgated in the interim rule, provided that cost-share payments would be made to the participant or entity regardless of questions of title under State law and without regard to any claim or lien against the practice in favor of the owner or other creditor except claims or liens of agencies of the United States Government. One respondent inquired whether a cost-share payment may be made to the entity or participant that installed the practice regardless of claim or lien against the practice in favor of the owner.

This respondent also questioned what property a program participant, other than the landowner, could provide as a security interest and whether the landowner must sign the contract if the program participant is someone other than the landowner.

Security agreements have been discussed in connection with § 702.9. Further, § 702.9(f) requires that the CRSC contract be signed by all entities that have a present possessory or a noncontingent future possessory interest in the land which includes all landowners. With regard to payments in the case of any claim or lien against the practice by entities other than agencies of the United States government, such claims or liens are not recognized since the purpose of these payments is to ensure compliance with program objectives. Honoring such claims or liens would likely defeat the purpose of the program. However, to the extent agreed to by the creditor and the participant, an assignment of payments made are done in accordance with 7 CFR part 1404.

Section 702.18 Violations

One respondent commented that it appears that § 702.18(b)(1) would allow the ASCS and SCS to approve variations from the contract.

The same respondent stated that § 702.18(d), as promulgated in the interim rule, should be consistent with § 702.18(a)(1), to require the COC to obtain CD and SCS recommendations before the COC determines that a participant's failure to perform the terms and conditions of the contract does not warrant termination of the contract.

This recommendation was adopted since it will allow a consistent policy of program administration.

Section 702.25 Miscellaneous

One respondent suggested that cost-share payments should only be made to a participant's successor in the case of death, incompetence, or disappearance of the participant, and only if such successor becomes a participant to the CRSC contract and agrees to fulfill the terms and conditions of the contract.

After review of this comment, it was decided that a change in this provision was not needed. The regulations in 7 CFR 707 set forth the procedures and order of precedence to follow when making payments in case of death, incompetence, or disappearance of a participant where the payment is already earned.

List of Subjects in 7 CFR Part 702

Administrative practices and procedures, Agriculture, Natural resources, Rural areas, Salinity control, Technical assistance, Water resources, Wildlife.

Final Rule

Accordingly, the interim rule published at 52 FR 16738 on May 5, 1987, is adopted as a final rule with the following changes:

PART 702—COLORADO RIVER BASIN SALINITY (CRSC) CONTROL PROGRAM

1. The authority citation for 7 CFR part 702 is revised to read as follows:

Authority: Sec. 201, Pub. L. 93–320, 88 Stat. 271; Sec. 2, Pub. L. 98–569, 98 Stat. 2933 (43 U.S.C. 1592(c)).

2. Section 702.2 is amended by revising the second sentence of the definition of "conservation treatment" in paragraph (a)(6), redesignating paragraphs (a)(11) through (a)(28) as (a)(12) through (a)(29), and adding a new paragraph (a)(11) to read as follows:

§ 702.2 Definitions.

(a) * * *

(6) * * * Such treatment may include replacement of incidental fish and wildlife values foregone as a result of salinity control treatment applied by the participant under the CRSC program.

* * * * *

(11) Deputy Administrator means the ASCS Deputy Administrator for State and County Operations, or designee.

* * * * *

3. Section 702.5 is amended by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d) to read as follows:

§ 702.5 Eligible land.

* * * * *

(a) Has been identified by SCS as a salt source area;

(b) Is the subject of a published USDA Salinity Control Report and an approved project implementation plan;

(c) Has been irrigated at least two years during the period between 1982 and 1986, inclusive; and

(d) Notwithstanding the criteria articulated in paragraphs (a) through (c) of this section, the Deputy Administrator has final authority to approve land for CRSC program eligibility if one of the following conditions is satisfied:

(1) If it is determined impossible to reorganize the existing irrigation system to increase irrigation efficiencies to obtain salt load reduction, irrigated land may be exchanged for nonirrigated land.

(2) Nonirrigated wildlife areas devoted to replacing incidental fish and wildlife values foregone because of the CRSC program.

(3) Incidental land, which in the course of improving or reorganizing the existing irrigation system, becomes irrigable.

4. Section 702.9, paragraphs (e) through (i) are redesignated as paragraphs (f) through (j), respectively New paragraphs (f) and (h) are revised to read as follows:

§ 702.9 CRSC contract and obligations of the participant.

* * * * *

(f) All entities who have a present possessory interest in the land, to be eligible for CRSC cost share, must sign a CRSC contract.

* * * * *

(h) The CRSC contract may require that all participants and/or landowners, as a condition of eligibility for cost-share assistance, grant to the Secretary a recordable security interest in the property or equipment of the SRP's that are installed, with the value of the granted interest to be determined by ASCS.

* * * * *

5. Section 702.13 is amended by revising paragraphs (a) and (c)(3) to read as follows, and redesignating the last paragraph as paragraph (d).

§ 702.13 Levels and rates of cost-share payments.

(a) The level of Federal cost-share assistance for the required SRP's for the project shall be determined by formulas as established in the USDA Salinity Control Report.

* * * * *

(c) * * *

(3) The need for and the cost of implementing voluntary SRP's to replace incidental fish and wildlife values foregone;

* * * * *

6. Section 702.18 is amended by revising paragraph (d) to read as follows:

§ 702.18 Violations.

* * * * *

(d) If the participant fails to perform the terms and conditions of the CRSC contract and the Deputy Administrator determines, after considering the recommendations of the CD and SCS, that such failure does not warrant termination of the CRSC contract, the Deputy Administrator may require such participant to refund all or part of the payments received under the CRSC contract, or to accept such adjustments in the payment as are determined to be appropriate by the Deputy Administrator.

Signed this 22nd day of February, 1993 in Washington, DC.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

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BILLING CODE 3410–05–M

Commodity Credit Corporation

7 CFR Part 1493

Commodity Credit Corporation Emerging Democracies Facilities Guarantees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule amends regulations which govern the Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Export Credit Guarantee Program (GSM–103) by adding new provisions which permit the use of CCC export credit guarantees ("payment guarantees") to facilitate the financing of "eligible projects" which would improve or establish facilities, provide services, or United States goods, in relation to an agriculture-related project in an emerging democracy.

This action is authorized by section 1542 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (1990 Act), and section 202 of the Agriculture Trade Act of 1978, as amended (1978 Act). This program will be administered by the Office of the General Sales Manager (GSM), U.S. Department of Agriculture on behalf of the Commodity Credit Corporation.

CCC payment guarantees for the above-stated purpose have not previously been made available under the GSM–102/103 programs. In addition, it is recognized that political and economic conditions in those countries most likely to be determined by the President to qualify as "emerging democracies" are in a state of transition. Accordingly, this interim rule represents an attempt by CCC to formulate a pilot structure under which a limited number of payment guarantees for eligible projects will be issued in the near term. CCC anticipates that significant revision and refinement to the rule may be required as CCC gains experience in making guarantees available in connection with eligible projects. After CCC has had the benefit of public comment on this interim rule, and some initial experience in issuing payment guarantees for eligible projects, it will develop and publish a final rule.

DATES: Interim rule effective March 1, 1993; comments must be submitted on or before June 1, 1993.

ADDRESSES: Comments must be submitted in writing to L.T. McElvain, Director, CCC Operations, GSM, USDA, room 4523–S, 1400 Independence Avenue, SW., Washington, DC 20250–1000, telephone (202) 720–6211. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: L.T. McElvain at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12778 and it has been determined that the interim rule meets the applicable standards of that order.

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

The paperwork requirements which are imposed by the current regulations found at 7 CFR part 1493 were approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned numbers for those requirements in OMB No. 0551–0004. The public reporting burden for collections made under this new subpart C is estimated to average 5.32 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551–XXXX), Washington, DC 20503.

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

Background

A. Statutory Authority

Section 1542 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (1990 Act) requires in subsection (a) that the Commodity Credit Corporation (CCC) make available, during fiscal years 1991 through 1995, not less than $1 billion in export credit guarantees under section 202 of the Agriculture Trade Act of 1987, as amended (1978 Act) in connection with exports to emerging democracies, in addition to such amounts that are generally required by

the 1978 Act to be made available under CCC's Export Credit Guarantee (GSM–102) and Intermediate Export Credit Guarantee (GSM–103) programs. Subsection 1542(f) of 1990 Act defines the term emerging democracy to mean any country that the President determines is taking steps towards political pluralism, economic reform, respect for internationally recognized human rights and friendly relations with the United States.

Subsection 1542(b) requires that a portion of such CCC export credit guarantees be made available for the improvement or establishment of facilities or the provision of services or United States produced goods (hereinafter referred to as "eligible projects") in those emerging democracies. Subsection 1542(b) also requires that, to be eligible for CCC payment guarantees, a "U.S. person" must carry out eligible projects that result in improved handling, marketing, processing, storage, or distribution of imported agricultural commodities or products thereof.

The Secretary of Agriculture must determine that such guarantees will primarily promote the export of U.S. agricultural commodities and will not primarily benefit other countries within close geographical proximity to the emerging democracy. CCC is required to give priority consideration to: (1) Those projects identified by teams of agricultural consultants and government officials selected pursuant to subsection 1542(d); (2) to projects that encourage the privatization of the agricultural sector or that benefit private farms or cooperatives in emerging democracies; or (3) to projects for which non-governmental persons agree to assume a relatively larger share of the costs.

B. Types of Payment Guarantees

GSM–102/103 export credit guarantees have been made available under section 202 of the 1978 Act in connection with export sales of U.S. agricultural commodities. The use of export credit guarantees in connection with the "improvement or establishment of facilities" or "the provision of services or U.S. goods" will involve adaptation of existing program structure to address areas with which CCC has had no experience. The phrase "improvement or establishment of facilities" is undefined in the statute but appears broad enough to allow for varied types of projects ranging from the sales of U.S. goods to the provision of specialized services and may involve larger facility projects requiring equipment, other U.S. goods needed to alleviate specific barriers to increasing export sales of U.S. agricultural commodities; such as feed additives, animal growth stimulants, veterinary medicines, and services; such as equipment installation, testing, and operational management.

The term "United States goods" or "U.S. goods" is undefined by the statute. Because CCC has had no experience administering a program to guarantee the credit made available for the export of U.S. goods and services, CCC has adopted the long-standing guidelines and procedures used by the Export Import Bank of the United States (Eximbank). In particular, where the statute is unclear, the time-tested measures of the Eximbank regarding U.S. content and eligibility for guarantee coverage will be used in CCC's issuance of facility payment guarantees.

In the pilot phase of making export credit guarantees available in connection with eligible projects, it is anticipated that the payment guarantees will be issued predominantly in connection with projects involving the sale of U.S. goods, services, or both. Issuance of such guarantees can be accomplished following the procedures analogous to operations of the GSM–102/103 programs. In the longer term, however, the issuance of payment guarantees in connection with sales of specialized services or with large "greenfield" or "turn-key" projects may require the development of more complex program structures.

C. CCC's Payment Guarantee Mechanism

Subsection 1542(a) of the 1990 Act provides that CCC shall provide facility payment guarantees in accordance with section 202 of the 1978 Act. Section 202, which authorizes CCC to make credit guarantees available to encourage private sector financing of foreign purchases of U.S. agricultural commodities, is the statutory basis for the GSM–102/103 programs. Thus, Congress intends that CCC utilize the basic GSM–102/103 mechanism to encourage private sector financing for agriculture-related eligible projects in emerging democracies.

The GSM–102/103 regulations issued pursuant to section 202 are codified at subparts A and B of 7 CFR part 1493. These regulations establish the general terms and conditions of a CCC payment guarantee, which is an agreement under which CCC promises to pay an exporter or its assignee, in the event of default, specified amounts of principal and interest due from a foreign bank which has issued an irrevocable letter of credit in favor of the exporter in connection with the purchase of U.S. agricultural commodities. Under new subpart C, payment guarantees will now also be issued in favor of the exporter in connection with the purchase of U.S. goods or services in emerging democracies.

CCC's facility payment guarantee will be issued to a U.S. person in consideration of a fee paid and in reliance on information provided and certifications made by the exporter in its application. CCC expects, consistent with its experience in guaranteeing sales of agricultural commodities, that guarantees will normally be assigned, along with the proceeds payable under the sale, to a U.S. bank or other financial institution. CCC will permit such initial assignment to a U.S. financial institution, but will not permit further assignments without CCC's advance approval. Thus, the facility payment guarantee will serve, essentially, to encourage the extension of U.S. private sector credit to finance eligible projects in the emerging democracies. In the case of default by the foreign borrowing bank on payments due under the credit provided, CCC will pay claims submitted in good order by the holder of the guarantee (i.e., the exporter or the assignee financial institution).

The use of GSM–102/103 payment guarantees in connection with eligible projects will require some modification to the traditional program structure designed to assist the export of agricultural commodities. For example, GSM–102 payment guarantees have covered repayment terms up to three years, and GSM–103 guarantees up to seven years. Facility payment guarantees, however, will involve export financing of capital goods and services, an area in which the United States has certain international obligations as a member of the Organization for Economic Cooperation and Development (OECD). The program will conform to the rules of the OECD Arrangement on Guidelines for Officially Supported Export Credits.

The OECD Arrangement sets out the most favorable terms allowable for government credits and guarantees. It requires that the importer pay at least 15 percent of the value of the transaction in cash. Principal must be paid in semiannual installments and maximum repayment terms are set depending upon the recipient country. For category I countries (currently defined as developed countries including Czechoslovakia and the Republics of the Former Soviet Union), the maximum repayment term is 5 years. Credits to 8.5 years may be made on an exceptional basis with prior notification of the OECD members. For category II

countries, the maximum repayment term is 8.5 years. For category III countries, the maximum repayment term is 10 years. Copies of the OECD Arrangement and classification of country categories are available from the Department of Treasury, Mr. William L. McCamey, Director, Office of Trade Finance, Room 4448, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

It is CCC's intention to initially offer facility payment guarantee coverage for: (a) 95 percent of the eligible principal (exclusive of the 15 percent minimum cash payment requirement of the OECD); and (b) interest on covered principal at an annual rate of 80 percent of the coupon equivalent yield of the most recent 52-week Treasury bill auction as of a date prior to the date the eligible interest is established or adjusted (the same floating interest coverage applied in the GSM–103 credit guarantees for semi-annual payments of interest and principal). Eligible principal will be defined consistent with the guidelines of the Eximbank under which only the value of the U.S. content of goods and the value-added portion of eligible foreign components may be guaranteed. CCC may change the principal and interest coverage for facility payment guarantees based upon comments received pursuant to this interim rule, the types of offers that are submitted by exporters, and the experience gained in operation of the program. The terms of CCC's coverage will be set forth in each facility payment guarantee, pursuant to the provisions of the applicable Invitation for Applications.

CCC anticipates that there may be need for modifications in other areas but realizes that some experience in making available payment guarantees in connection with facilities will be necessary to determine precisely what modifications are required and appropriate. Accordingly, this interim rule is designed to establish general terms and conditions but will allow sufficient flexibility, through the issuance of Invitations for Applications, to make adjustments as experience is gained.

D. Program Implementation

CCC will periodically issue Program Announcements informing the public of allocations of GSM–102/103 payment guarantees in connection with projects to improve or establish facilities in an emerging democracy. The Program Announcement will identify the country(ies) and the amount of credit guarantees to be made available for this purpose.

Subsequently, CCC will issue an Invitation for Applications (Invitation), specifically requesting the submission of applications by eligible U.S. persons for facility payment guarantees. An Invitation will refer to a specific Program Announcement but may contain additional requirements to provide information that are necessary for CCC's evaluation of applications. It may also establish special and additional terms and conditions that will govern the facility payment guarantee to be issued. U.S. persons will make application by reference to a specific Invitation and, if the application is ultimately approved, the resulting facility payment guarantee agreement will be subject to both the general terms and conditions of this subpart, as well as to the specific terms and conditions set forth in the applicable Invitation.

CCC intends to conduct an initial review of all applications for which required application fees have been paid to CCC and to identify those which are sufficiently promising to merit a more comprehensive final review. CCC will inform all applicants whether the initial application has been rejected or whether it is under continued consideration. Where an application remains under consideration, CCC will inform the applicant of any additional information it requires in order for CCC to conduct a final review of the application. CCC anticipates that, as it gains experience in dealing with applications for the various types of facility or improvement projects, it will be able to develop and publish more specific procedural guidelines to aid potential program participants in formulating their applications.

When CCC has, after final review, determined that it is willing to issue a guarantee, it will so inform the applicant. In making decisions in final review of applications for U.S. goods, services, or greenfield projects, CCC will attempt to address infrastructure barriers to increasing export sales of U.S. agricultural commodities.

When CCC contacts the applicant regarding an approved final application, it will establish an appropriate guarantee fee. Such guarantee fees will be calculated to result in fees comparable to the total of the commitment fees and exposure fees that would be charged to applicants by the Eximbank for similar guarantees and projects.

CCC will issue its facility payment guarantee only where a firm contract has been reached between the parties for an eligible project in an emerging democracy, where the contract calls for the issuance of an irrevocable letter of credit from an eligible foreign bank as a means of payment, where the buyer has demonstrated it is capable of making the required 15 percent down payment, and where the applicant has tendered the appropriate guarantee fee.

CCC anticipates that claims under a facility payment guarantee will be handled in the same manner as other GSM–102/103 claims. However, CCC realizes that, in the case of certain contracts, such as those involving the provision of services, there may have to be adjustments to program requirements to insure proper documentation of claims. The interim regulations are designed to allow CCC to make those adjustments, by establishing, in Invitations for Applications, special terms, or conditions which would supplement the general terms and conditions set forth in this regulation.

It is necessary that this regulation be placed in effect as soon as possible. The purpose of the regulation is to promote the export of U.S. agricultural commodities to emerging democracies. Other countries are taking steps to expand their markets in these countries and the U.S. should act as promptly as possible in order to be competitive.

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agriculture, Agricultural commodities, Credit, Exports, Reporting and recordkeeping requirements, Technical assistance, United States investments abroad.

PART 1493—[AMENDED]

Accordingly, part 1493 of title 7 of the Code of Federal Regulations is amended as follows:

1. The table of contents for part 1493 is amended by adding the following:

Subpart C—Facility Payment Guarantees

Sec.

1493.200 General statement.
1493.210 Definition of terms.
1493.220 Procedures.
1493.230 Contents of applications.
1493.240 Certification requirements.
1493.250 Additional information and application guidelines.
1493.260 CCC evaluation of applications.
1493.270 Facility payment guarantee.
1493.280 Guarantee rates and fees.
1493.290 Evidence of export.
1493.300 Proof of entry.
1493.310 Notice of default and claims for loss.
1493.320 Payment for loss.
1493.330 Recovery of losses.
1493.340 Miscellaneous provisions.

2. The authority provision of part 1493 is revised to read as follows:

15 U.S.C. 714b(d), 714c(f), 7 U.S.C. 5602, 5622, 5622 note, 5661, 5662, 5663, 5664, 5676.

3. Subpart C is added to part 1493 to read as follows:

Subpart C—Facility Payment Guarantees.

§ 1493.200 General statement.

This subpart sets forth the general terms and conditions governing export credit guarantees issued in connection with the financing of projects to improve or establish facilities or the provision of services or United States produced goods in emerging democracies (hereinafter referred to as "eligible projects"). The eligible projects must enhance the effectiveness of food and rural business systems in emerging democracies in order to develop, maintain, or expand United States agricultural exports. CCC may, from time to time, announce the availability of facility payment guarantees and will accept and evaluate applications for such guarantees from United States persons. CCC will give priority consideration to those eligible projects:

(a) That are identified by teams of agricultural consultants and government officials pursuant to subsection 1542(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended;

(b) That encourage the privatization of the agricultural sector or that benefit private farms or cooperatives in emerging democracies; and

(c) For which non-governmental persons agree to assume a relatively larger share of the costs. Facility credit guarantees will not be issued in connection with projects where it is determined that the primary benefits of the project will accrue to a country, other than the United States, which is in close geographic proximity to the emerging democracy.

§ 1493.210 Definition of terms.

The terms set forth at subpart B, § 1493.20 (except for § 1493.200 (f), (h), (v), and (z)) will apply to this subpart as well as the following definitions:

(a) *Acceptable substitute*—Foreign origin components or materials that are the same specification, quality, function or commercial availability as a U.S. component or material and have a price equal to or less than a U.S. component or material.

(b) *A country in close geographic proximity*—Any country within 1,000 miles of the border of the particular emerging democracy for which a facility guarantee is sought.

(c) *Eligible foreign content*—Foreign produced components of U.S. goods that are value-added in the United States.

(d) *Eligible project*—A project to either improve or establish facilities, provide services, or United States-produced goods, or a combination of the above, in relation to an agriculture-related project in an emerging democracy.

(e) *Emerging democracy*—Any country that the President determines is taking steps toward political pluralism, economic reform, respect for internationally recognized human rights, and friendly relations with the United States.

(f) *Facility payment guarantee*—An agreement under which CCC, in consideration of a fee paid, in reliance upon information provided and certifications made by the applicant, and subject to the terms and conditions set forth in this subpart, in the applicable Invitation and on the face of the written guarantee, agrees to pay the guaranteed party or its assignee in the event of default by a foreign bank on its payment obligation under the foreign bank letter of credit, or under the foreign bank's related obligation, issued in connection with an eligible project.

(g) *Greenfield project*—A project to establish a new facility that stores, processes, distributes, and/or markets, agricultural commodities, and products.

(h) *Ineligible foreign content*—Goods included in the total contract price that are produced outside the U.S., which are not value-added within the United States.

(i) *Invitation*—An Invitation for applications issued to the public by CCC inviting U.S. persons to make applications for a facility payment guarantee in connection with eligible projects in specified emerging democracies, and containing special or additional terms or conditions that will apply to facility payment guarantee agreements issued in connection with such applications.

(j) *U.S. good*—Equipment or materials produced, manufactured, value-added, or originating from the United States. Agricultural commodities, raw materials, or military goods are not considered to be U.S. goods for the purpose of this subpart.

(k) *U.S. person*—One of the following:

(1) An individual who is a citizen or a resident of the United States: or

(2) An entity constituted or organized in the United States, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association with business activities in the United States.

(l) *Value-added*—Manufacturing, processing or assembling in the United States components of foreign origin with components of U.S. manufacture or origin so that such components are fully integrated or incorporated together in the finished product.

§ 1493.200 Procedure.

(a) From time to time, CCC may announce the availability of GSM–102 or GSM–103 credit guarantees in connection with the financing of eligible projects in one or more emerging democracy. Such announcement will be made by press release and will identify the specific emerging democracy and the maximum amount of facility payment guarantees to be made available.

(b) Subsequent to the program announcement, CCC will issue an Invitation, requesting U.S. persons to apply for facility payment guarantees in connection with specific types of eligible projects in an emerging democracy, and specifying any special terms or conditions that will apply to, or information that will be required in connection with, applications for such facility payment guarantees.

(c) Interested U.S. persons may submit applications, in writing and certified as true and correct, to CCC at the address specified in the Contacts P/R as defined by § 1493.20(c). Such applications will:

1. Contain the information required in § 1493.230 as well as any additional information specified in the applicable Invitation; and

(2) Be accompanied by a non-refundable filing fee of $200.

(d) CCC will, after initial review of each application, inform the applicant in writing:

(1) Of any additional information that is necessary for CCC to make a final assessment of the application; or

(2) That, after initial review, the application has been rejected.

(e) In situations where CCC requests additional information pursuant to paragraph (d)(1) of this section, it will afford the interested U.S. person a reasonable period to submit the additional information. After receipt, CCC will conduct a final review and assessment of all information submitted in support of the application and will inform the interested U.S. person whether the application has been accepted or rejected.

§ 1493.230 Content of application.

An application for a facility credit guarantee must include the following information:

(a) The applicant's name and address.

(b) The applicant's legal form of doing business (e.g., sole proprietorship, corporation, partnership, etc.)

(c) A narrative description of the applicant's experience, during the

preceding three calendar years, in selling the U.S. goods or providing services similar to those which the applicant intends to sell or provide in connection with the proposed eligible project.

(d) A narrative description of the applicant's participation, during the preceding three years, in United States government programs, contracts or agreements;

(e) The name and address of the party in the emerging democracy that will purchase the U.S. goods or services from the applicant.

(f) A narrative description of the facility to be established or the nature of improvements to be made to an existing facility and the U.S. goods to be provided or services to be rendered, by the applicant in connection with such project;

(g) Identification of any U.S. agricultural commodity or commodities affected by the proposed project, including a narrative describing how the distribution, marketing, processing, storage, or handling of such commodities will be enhanced, and how the export of such U.S. agricultural commodities will be developed, maintained, or expanded.

(h) The contract value of the U.S. goods to be provided by the applicant and a calculation of the percentage of that value which represents United States content and the contract value of any services to be rendered by the applicant.

(i) The delivery schedule for the U.S. goods to be provided, or the service to be rendered, by the applicant.

(j) The name and address of the foreign bank or financial institution that will issue a letter of credit in connection with the purchase of U.S. goods or services, and a copy of any documentation evidencing that bank's commitment to issue the letter of credit.

(k) The number and date of the specific Invitation to which the application is responding.

(l) All other information that is required by the applicable Invitation.

(m) The applicant's statement that: "ALL SECTION 1493.240 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION," which, when included in the application will constitute a certification that the application conforms to the requirements of § 1493.240.

§ 1493.240 Certification requirements.

By providing the statement in § 1493.230(m), the applicant certifies as follows:

(a) That the information provided in support of the application is, to the best of the applicant's knowledge and belief, true and correct:

(b) That the applicant has reviewed the terms and conditions of a CCC facility payment guarantee, as set forth in this subpart C, and any additional terms and conditions that have been set forth in the applicable Invitation, and understands that all such terms and conditions will govern the facility payment guarantee agreement for which application is being made.

(c) That there have not been and will not be any corrupt payments, extra sales services, or other items extraneous to the transaction to be provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(d) That no person or selling agency has been employed or retained to solicit or secure the facility payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the applicant for the purpose of securing business;

(e) That, to the best of the applicant's knowledge and belief, neither the applicant nor any of its principals has been debarred, suspended, proposed for debarment, or otherwise determined ineligible from contracting with or participating in programs administered by a United States Government agency; and

(f) That the applicant is a U.S. person within the meaning of § 1493.210(k).

(g) That if the U.S. goods to be exported contain a component that is not produced or manufactured in the United States that:

(1) Such foreign component is an acceptable substitute (as defined by § 1493.210(a)) for a component commercially produced in the United States; or

(2) Such foreign component in a de minimus component of the product.

§ 1493.250 Additional information and application guidelines.

(a) After CCC has made an initial assessment of an application, it may extend a preliminary commitment which requires that the applicant submit additional information necessary for a final assessment of the project before making a final commitment to enter into a facility payment guarantee agreement. Such request for additional information will be made directly to the applicant in writing, and the applicant will be afforded a reasonable period to provide such information.

(b) CCC may, where it determines appropriate, issue Application Guidelines which will provide potential applicants with additional guidance regarding the type and quality of information considered necessary by CCC to make a final assessment of different types of eligible projects and provide other information and requirements.

§ 1493.260 CCC evaluation of applications.

(a) An application for a CCC facility payment guarantee, including the information contained in the initial application and any supplemental information supplied by the applicant, will be reviewed and evaluated against the following criteria:

(1) The applicant qualifies as a U.S. person;

(2) The information submitted provides reasonable assurance that the proposed eligible project will improve the handling, marketing, processing, storage, or distribution of imported agricultural commodities or products thereof in the merging democracy;

(3) The information submitted provides a reasonable assurance that a primary benefit of the proposed eligible project will be to promote significant exports of the United States agricultural commodities or products thereof;

(4) The information submitted provides a reasonable assurance that the proposed eligible project will not primarily benefit the agricultural export trade of a country in close geographic proximity to the emerging democracy;

(5) The information submitted provides reasonable assurance that the obligation incurred as a result of the proposed project will be repaid without default.

(b) CCC will give priority consideration to applications for eligible projects:

(1) That have been recommended by teams of agricultural consultants and government officials pursuant to subsection 1542(d) of the 1990 Act;

(2) That encourage the privatization of the agricultural sector or that benefit private farms or cooperatives in emerging democracies; or

(3) For which non-governmental persons agree to assume a relatively larger share of the costs.

§ 1493.270 Facility payment guarantee.

(a) *Eligible transactions.* CCC will issue a facility payment guarantee only in connection with transactions involving a firm contract for sale of U.S. goods in connection with the improvement or establishment of facilities or the provision of U.S. goods or the rendering of services for an

agriculture-related facility in an emerging democracy, and only where the applicant has submitted the required guarantee fee, as specified in § 1493.280.

(b) *CCC's obligation.* The facility payment guarantee will provide that CCC agrees to pay the U.S. person or its assignee an amount not to exceed the guaranteed value of the contracted U.S. goods or services, plus eligible interest, in the event that the foreign bank issuing the letter of credit or related obligation in connection with the covered sale fails to pay. Payment by CCC will be in U.S. dollars.

(c) *U.S. content guidelines.* CCC's facility payment guarantee may cover up to 100% of the U.S. content of the goods. However, CCC's facility payment guarantee will not exceed 85% of the total contract price. The following guidelines apply to the guarantee coverage that CCC will extend to goods, services and freight.

(1) *Goods.*

(i) U.S. content is the value of goods entirely produced in the U.S. A CCC facility payment guarantee will not be provided unless U.S. content is at least 50% of the total contract price of all components to be supplied by the exporter. U.S. content is calculated by deducting the acquisition cost of all eligible foreign content from the contract price.

(ii) Ineligible foreign content must be deducted from the total contract price to determine the basis for determining the guarantee value.

(2) *Services.*

Services must be performed by U.S.-based personnel or U.S.-based personnel temporarily assigned in the eligible emerging democracy and be performed in connection with the eligible project. Such services must be payable in U.S. dollars and invoiced from the U.S. office of the applicant.

(3) *Freight.*

(i) U.S. flag shipping costs are considered U.S. content if they are included in the total contract price for the goods and their delivery to the emerging democracy.

(ii) Foreign flag shipping costs are considered to be a foreign component if they are included in the total contract price for the goods and their delivery to the emerging democracy.

(d) *Period of guarantee coverage.* In establishing the applicable period of coverage and effective date of the facility payment guarantee, CCC may specify and establish on the face of the guarantee either a specific date or an event or occurrence that will serve to establish the specific date. In most instances, the period of coverage and the effective date will be as follows:

(1) *U.S. Goods.* The facility payment guarantee will apply to the period beginning on one of the following dates as specified in the payment guarantee:

(i) The date(s) of export(s);

(ii) The date(s) of final installation; or

(iii) The date when interest begins to accrue.

The period of coverage will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee only becomes effective on the date(s) of export of the U.S. goods specified in the application for facility payment guarantee.

(2) *Services.* The facility payment guarantee will apply to the period beginning on one of the following dates as specified in the payment guarantee:

(i) The date(s) of disbursement of payment by the U.S. bank for services rendered by the applicant; or

(ii) The date when interest begins to accrue.

The period of coverage will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee only becomes effective on the date(s) of disbursement of payment for services rendered by the applicant for services specified in the application for facility payment guarantee.

(e) *Terms and conditions of the facility payment guarantee agreement.* The terms and conditions governing the facility payment guarantee will include the general terms and conditions set forth in this subpart, any additional terms or conditions specified in the applicable Invitation, and any terms and conditions specified on the face of the facility payment guarantee issued by CCC.

(f) *Guaranteed amount.*

(1) *Principal.* Unless otherwise specified in the applicable Invitation, the CCC facility payment guarantee will cover up to 100 percent of the U.S. content of U.S. goods or related services, or up to a maximum of 85 percent of the total contract price for the U.S. goods and/or related services, whichever is less, as set forth in the payment guarantee.

(2) *Interest.* Unless otherwise specified in the applicable Invitation, the terms and conditions of a CCC facility payment guarantee with regard to the eligible interest will be governed by the provisions of § 1493.20(g) and the interest rate coverage will be as stated on the payment guarantee issued by CCC.

§ 1493.280 Guarantee rates and fees.

Unless otherwise specified in the applicable Invitation, the terms and conditions of a CCC facility payment guarantee with regard to guarantee rates and fees will be governed by the provisions of § 1493.70, except that a different fee schedule will apply and that the payment of the guarantee fees will not be required to be remitted until after the explorer receives final approval of its application.

§ 1493.290 Evidence of export.

Exporters will be required to submit to CCC evidence of export of U.S. goods, or the performance of services, which are covered by the payment guarantee or are otherwise related to the export sales contracts as specified in the applicable Invitation or Application Guideline.

§ 1493.300 Proof of entry.

Unless otherwise specified in the applicable Invitation, the terms and conditions of a CCC facility payment guarantee with regard to proof of entry will be governed by the provisions of § 1493.100.

§ 1493.310 Notice of default and claims for loss.

Unless otherwise specified in the applicable Invitation, the terms and conditions of a CCC facility payment guarantee with regard to notice of default and claim for loss will be governed by the provisions of § 1493.110.

§ 1493.320 Payment for loss.

Unless otherwise specified in the applicable Invitation, the terms and conditions of a CCC facility payment guarantee with regard to payment for loss will be governed by the provisions of § 1493.120.

§ 1493.330 Recovery of losses.

Unless otherwise specified in the applicable Invitation, the terms and conditions of a CCC facility payment guarantee with regard to recovery of losses will be governed by the provisions of § 1493.130.

§ 1493.340 Miscellaneous provisions.

Unless otherwise specified in the applicable Invitation, the miscellaneous provisions of § 1493.140 are applicable to CCC facility payment guarantees.

Signed this 23rd day of February 1993 at Washington DC.

Christopher E. Goldthwait,

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

[FR Doc. 93–4501 Filed 2–26–93; 8:45 am]

BILLING CODE 3410–10–M

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; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 614 on November 20, 1992 (57 FR 54683). The final regulation amends 12 CFR part 614 to set forth minimum standards for performing a collateral evaluation, establish evaluation requirements for various types of transactions, distinguish those transactions requiring the services of an evaluator from those requiring the services of either a State certified or a State licensed appraiser, require the board of directors of each Farm Credit System (System) institution engaged in lending or leasing to adopt policies and standards for the evaluation of all real, personal, and intangible property and to prescribe qualifications for evaluators that are consistent with the regulations, and to require the board of directors of each System institution to adopt collateral evaluation policies and standards for appraisals of real property and to prescribe qualifications of real estate appraisers that are consistent with the requirements of the regulation and the Uniform Standards of Professional Appraisal Practices as adopted by the Appraisal Foundation. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 1, 1993.

EFFECTIVE DATE: The effective date of the final regulation published on November 20, 1993 (57 FR 54683) is March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: February 24, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–4654 Filed 2–26–93; 8:45 am]

BILLING CODE 6705–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–31911]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its regulation concerning Organization and Program Management to delegate authority to the Director of the Division of Market Regulation to authorize the issuance of orders designating securities as "standardized options," pursuant to Rule 9b–1(a)(4) under the Securities Exchange Act of 1934 ("Exchange Act"). This amendment should facilitate review and consideration of such designations.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Michael A. Walinskas, Esq., (202) 504–2545, Branch of Options Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to Rule 30–3 of its regulation concerning Organization and Program Management [1] governing delegation of authority to the Director of the Division of Market Regulation ("Director").

The amendment adds to the rule new paragraph (a)(51), to allow the Director to authorize the issuance of orders designating securities as "standardized options" pursuant to Rule 9b–1(a)(4) under the Exchange Act. Rule 9b–1(a)(4) provides as follows:

> "Standardized options" are options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, *or such other securities as the Commission may, by order, designate.* (Emphasis Added) [2]

Under Rule 9b–1(a)(4) the Commission currently has authority, "by order," to designate whether a particular security is a "standardized option." By delegating this authority to the Director, the amendment will facilitate prompt and careful review in instances where it is necessary to designate whether a security is a "standardized option." In addition, the amendment will help conserve the resources of the Commission and the Division, since the staff will not be required to present proposals to designate a security as a "standardized option" to the Commission, but can act upon such proposals pursuant to delegated authority.[3]

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act,[4] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment prior to its effective date is also unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

The Commission hereby amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 70b–11, unless otherwise amended.

2. Section 200.30–3 is amended by adding paragraph (a)(51) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(51) Pursuant to paragraph (a)(4) of § 240.9b–1 of this chapter, to authorize the issuance of orders designating securities as "standardized options."

* * * * *

By the Commission.

[1] 17 CFR 200.30–3.

[2] 17 CFR 240.9b–1(a)(4).

[3] In any particular proposal where the Director believes it appropriate, the Director still may submit a proposal to designate a security as a "standardized option" to the Commission. 17 CFR 200.30–3(e).

[4] 5 U.S.C. 553(b)(A).

Dated: February 23, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4626 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Final rule.

SUMMARY: This rule would reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 5 months in the United States for the remainder of FY 1993, effective April 1, 1993.

The reduction is necessitated by the limited funds appropriated for transitional and medical services (TAMS) for Federal FY 1993. Refugee assistance under section 412 of the Immigration and Nationality Act is expressly limited by the extent of available appropriations.

EFFECTIVE DATE: April 1, 1993.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401–9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), to be provided to States for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) "during the 12-month period beginning with the first month the refugee entered the United States (except during Federal FY 1993, 8-month period)." The 8-month eligibility period was first established by regulation on January 10, 1992.

Description of the Final Regulation

This final rule would reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 8 months in the United States to a refugee's first 5 months in the United States for the remainder of FY 1993, effective April 1, 1993.

The reduction is necessitated by the limited funds appropriated for transitional and medical services (TAMS) for Federal FY 1993. Refugee assistance under section 412 of the Immigration and Nationality Act is expressly limited by the extent of available appropriations. 8 U.S.C. 1522(a)(1)(A); 45 CFR 400.202.

The decision to reduce the period of time-eligibility is based on the Department's analysis of FY 1992 costs and cost trends in the RCA and RMA programs and on the number of refugees who entered the United States during the latter part of FY 1992 and those who will be admitted during FY 1993 under the refugee admissions ceiling of 122,000 publicly funded refugees established by the President after consultation with Congress. (Memorandum from the President to the United States Coordinator for Refugee Affairs, Determination of FY 1993 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, Presidential Determination No. 93–1, October 2, 1992.)

While the refugee admissions ceiling of 122,000 for FY 1993 is approximately 7% lower than the 131,624 publicly funded admissions in FY 1992, the fixed appropriation of $245,810,656 available for TAMS to cover the costs of refugee cash and medical assistance, unaccompanied minors, State administration, and the voluntary agency matching grant program represents a reduction of 10% from the amount available for these programs in FY 1992.

In part as a result of a reduction in appropriated funds for FY 1993, ORR had issued a Notice of Proposed Rulemaking (NPRM) on November 2, 1992, to terminate the RCA and RMA programs effective January 31, 1993. ORR planned to replace them, through the grant and contract process, with a new private resettlement program and a private medical program. However, this action was challenged in a suit filed on December 7, 1992, in the United States District Court, Western District of Washington at Seattle in the case of *Nguyen* v. *Sullivan* (No. C92–1867WD), and the Department has been preliminarily enjoined from terminating the State-administered refugee cash and medical assistance program. In order to enable the State-administered RCA/RMA program to operate for the remainder of FY 1993 within the fixed appropriation available, it is necessary to reduce the period of time-eligibility for RCA and RMA to a refugee's first 5 months in the U.S.

Analysis shows that the fixed appropriation of $245,810,656 for TAMS for FY 1993 will be insufficient to provide funding for a period longer than a refugee's first 5 months in the U.S. during the remainder of FY 1993, effective April 1, 1993. If the current State-administered RCA and RMA programs were to be continued with an 8-month eligibility period, it is estimated that all available funds would be exhausted by July 31, 1993, and no RCA or RMA would be available to needy refugees during the last 2 months of the fiscal year.

In determining the number of months of benefits to provide under the RCA and RMA programs, it was assumed that the funds appropriated for TAMS, less the amounts necessary for the matching grant program and the unaccompanied minors program, were available for the RCA and RMA programs, including State administrative costs. This totals approximately $176 million of the $245,810,656 appropriated for TAMS for FY 1993.

The estimate is derived from refugee arrival, eligibility, and participation data. Arrival data are derived by forecasting refugee arrival patterns based on previous years and the annual refugee admissions ceiling set by the President. Eligibility data are computed by determining the number of refugees who have been in the country only for the number of months that will be paid through RCA/RMA funds. The participation data are derived by estimating what fraction of the time-eligible refugees will actually be RCA/RMA eligible (because they are not eligible for AFDC or SSI), as well as relying on dependency rates based on historical rates.

Using quarterly estimates of RCA and RMA participation, costs are determined by multiplying the number of participants by the per capita amount of cash and medical assistance expected to be paid to the refugees in FY 1993. These per capita costs are based on full-year State-reported expenditures for FY 1992, plus inflation estimates. In determining administrative costs, FY 1992 administrative costs are adjusted for inflation for FY 1993. Varying the number of months of RCA/RMA benefits changes the size of the time-eligible population. It was determined that funds were sufficient to cover 8 months of benefits from October 1, 1992,

through March 31, 1993, and 5 months of RCA/RMA benefits from April 1, 1993, through September 30, 1993. The reasons for such a substantial reduction in the RCA/RMA eligibility period are threefold: Higher medical costs, an increase in participation rates, and the fact that the RCA/RMA eligibility period was continued at an 8-month level during the first half of the year, resulting in the expenditure of a sizeable portion of TAMS funds during that period and thus leaving a smaller balance of available TAMS funds for the remainder of the fiscal year.

The Department considers it of the utmost importance to provide refugee support in a manner that ensures the availability of refugee support throughout the year. Failure to decrease the months of eligibility would mean that funds available would be insufficient to carry the program through the end of the year, with the result that, during the latter months of FY 1993, an estimated 25,000 needy refugees would be without Federally-funded refugee assistance.

This rule is applicable to both current and newly-arriving refugees effective April 1, 1993.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), 400.203(b), 400.204(b), and 400.209(b) are being amended to reduce the duration of RCA and RMA in FY 1993 from a refugee's first 8 months in the U.S. to a refugee's first 5 months in the U.S.

Justification for Dispensing With Notice of Proposed Rulemaking

A period for public comment is not being provided because it would be impracticable, unnecessary, and not in the public interest for the following reasons:

Under the current statute and regulations, the duration of benefits is a function of the level of appropriations. The resulting computation is a matter which public comment would not significantly aid because Congressional funding limitations effectively establish the eligibility period, rendering notice of proposed rulemaking and comment procedures unnecessary. In addition, although consideration of alternatives may be assisted by public input, there is insufficient time to consider other options without adversely impacting the public interest. The public interest is clearly served by avoiding the premature exhaustion of funds and in having a finite account equitably distributed throughout the fiscal year.

Because there is a continuing flow of refugees into the United States and because continuing costs for RCA and RMA are being incurred by the States, any delays in applying a reduced period of time-eligibility would result in the need for ever-greater reductions in the RCA and RMA programs in order to avoid their abrupt and complete termination and the absence of such assistance to both current and newly arriving refugees.

Accordingly, the agency finds good cause for issuance of a final rule effective April 1, 1993.

Regulatory Procedures

Regulatory Impact Analysis

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor will they result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This final rule reduces the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 8 months in the U.S. to a refugee's first 5 months, in order to contain refugee cash and medical assistance costs within the FY 1993 appropriation level.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: February 5, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: February 18, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended by amending the definitions of "Refugee cash assistance" and "Refugee medical assistance" by removing the words "(except during Federal FY 1993, less than an 8-month period)" and by adding in their places "(except during Federal FY 1993, less than a 5-month period)".

§§ 400.60 and 400.100 [Amended]

3. Sections 400.60(b) and 400.100(b) are amended by removing the words "(except during Federal FY 1993, 8-month period)" and adding in their place "(except during Federal FY 1993, 5-month period)".

§§ 400.203 and 400.204 [Amended]

4. Sections 400.203(b) and 400.204(b) are amended by removing the words "(except during Federal FY 1993, 8-month period)" and adding: "(except during Federal FY 1993, 5-month period)".

§ 400.209 [Amended]

5. Section 400.209(b) is amended by removing the words "(except during Federal FY 1993, 8-months)" and adding in their place "(except during Federal FY 1993, 5 months)".

[FR Doc. 93–4724 Filed 2–26–93; 8:45 am]
BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21 and 74

[PR Docket No. 92–80, FCC 93–31]

Use of the Frequencies in the 2.1 and 2.5 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order amending its rules in a manner designed to streamline the regulatory scheme of the Multipoint Distribution Service (MDS) and to curtail the filing of speculative MDS applications. The rule changes adopted in the Report and Order will serve the public interest by improving the conditions for competition in the multichannel video distribution marketplace in accordance with the Commission's goal and the Congressional directives recently set forth in the Cable Television Consumer Protection and Competition Act of 1992.

FOR FURTHER INFORMATION CONTACT: Robert James, Common Carrier Bureau, (202) 634–1706.

EFFECTIVE DATE: June 1, 1993, except for the ban on settlements which is effective April 1, 1993.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 92–80, adopted January 14, 1993 and released February 12, 1993. The Report and Order 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 be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), suite 140, 2100 M Street NW., DC 20037, telephone (202) 857–3800.

Paperwork Reduction Statement

The Commission will submit the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501, *et seq.*).

Title: Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands.

Action: New and modified collections.

Respondents: Businesses (including small businesses); individuals or households.

Frequency of Response: On occasion.

Public reporting burden for the collections of information is estimated as follows:

Sections	Est. Avg. hours per response	Est. annual responses
Section 21.15(a) certifications.	10 minutes (.166).	1,000
Section 21.902(c)(2)(i)–(ii).	30 minutes (.50).	1,000
Section 21.913(g) certifications.	15 minutes (.25).	100
Section 74.985(g) certifications.	15 minutes (.25).	20
Section 21.915 (June 1993 amendments).	10 minutes (.166).	[1]20
Section 21.33(d) (June 1993 amendments).	10 minutes (.166).	[1]20

[1] Once.

Total Annual Burden: 702.64 hours.

These estimates include the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, room 416, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of Report and Order

1. The competitive potential of MDS/MMDS licensees has not yet been fully realized due in part to the fact that approximately 20,000 MDS applications, some dating back as far as 1983, remain pending before the Commission. Due in part to this backlog, wireless cable operators have had difficulty amassing the number of channels necessary to meet subscriber demand and match competitors' offerings.[1] Meanwhile, delays in the processing of MDS applications and other obstacles to the expansion of wireless cable systems, such as, unfair or discriminatory practices in the sale of video programming, have allowed traditional cable television systems to further strengthen their position in the multichannel video distribution marketplace, making it more difficult for rival providers to come forth as meaningful competitors.

2. The instant proceeding was initiated with the principal objective of promoting the expansion of wireless cable by expediting the processing of MDS applications. Since the adoption of the *Notice*,[2] the Commission has made significant headway toward reducing the backlog of pending MDS applications. The Commission credits the imposition of the freeze on the filing of applications for new MDS stations and the hiring of additional staff with this progress.[3] The Commission now believes that the advances made in eliminating the backlog render superfluous the proposals to relocate the processing and/or regulation of the MDS to another bureau and to replace the existing interference protection criteria. Accordingly, the Commission has decided not to proceed with these proposals.

3. The Commission has, however, adopted several other rule changes. Specifically, the Commission is amending 47 CFR 21.15(a) to provide for the use of certifications by MDS applicants instead of the detailed showing of site availability currently required under this rule. In this connection, it should be noted that the Commission stated its intention to respond to the submission of a false certification under section 21.15(a) by employing all available remedies, including the dismissal with prejudice of all applications filed by the offending applicant or the revocation of authorizations. In addition, if evidence of intent exists, we will refer such cases to the Department of Justice for criminal prosecution under 18 U.S.C. 1001. Furthermore, we will treat the submission of an intentionally falsified certification as a reflection on an applicant's basic qualifications to become or to remain a licensee.

[1] "Wireless cable" is a multichannel video distribution medium that resembles cable television service, but that uses microwave channels to transmit programming to subscribers. Report and Order, CC Docket No. 86–179, 2 FCC Rcd 4251, 4252 (1987). The term "wireless cable" as used in this context does not imply that the service constitutes cable television for any statutory or regulatory purpose. See Report and Order, MM Docket No. 89–35, 5 FCC Rcd 7638, 7639–41 (1990) (the definition of a cable system does not include transmissions such as MDS), vacated on other grounds sub nom. Beach Communications, Inc. v. FCC, 965 F.2d 1103 DC Cir. 1992).

[2] This proceeding was initiated by a Notice of Proposed Rule Making, 57 FR 24006 (June 5, 1992).

[3] The freeze on the filing of applications for new MDS stations was effective immediately upon adoption of the Notice of Proposed Rule Making, PR Docket No. 92–80, 7 FCC Rcd 3266, 3270 (1992). See also Public Notice, PR Docket No. 92–80 (Private Radio Bureau April 15, 1992) (delineating the terms of the freeze). The freeze does not apply to MDS/MMDS modification, assignment, transfer of control, extension, or signal booster applications. The specific frequencies affected by the freeze include those identified in 47 CFR 21.901 and the ITFS frequencies available to MDS entities pursuant to 47 CFR 74.990. The Commission is continuing the freeze on the filing of new MDS applications and amendments imposed in the Notice until the backlog is further decreased.

4. The Commission also adopted several proposals set forth in the Notice that seek to deter the filing of speculative MDS applications. First, the Commission adopted its proposal to disallow partial and full settlement agreements among MDS applicants, and to apply this prohibition to both pending and future applications. The Commission amended 47 CFR 21.33 and 21.901(f)(1) to delete those portions thereof that previously permitted the formation of settlement agreements among MDS applicants. In addition, the Commission adopted its proposal to prohibit MDS applicants from holding any interest, including a corporate interest of less than one percent, in more than one application for the same channel or channels at sites in the same geographic area, and to apply this new rule, 47 CFR 21.915, to pending applications.* See 47 CFR 21.901(d)(2). Finally with respect to rule changes aimed at curtailing speculation, the Commission amended 47 CFR 21.23, 21.28, 21.29, 21.31 and 21.39 to provide that the sale, transfer, assignment or other alienation of any interest in an MDS application or conditional license will be prohibited prior to the completion of construction except: (1) In cases involving involuntary ownership changes, assignments, or transfers (bankruptcy, death or legal disability); and (2) in cases involving *pro forma* ownership changes, assignments or transfers that do not involve a substantial change in ownership or control of the application or authorized MDS facilities.

5. The Commission adopted various rule changes designed to expedite the processing of future MDS filings. First, the Commission modified 47 CFR 21.913(g) and 74.985(g) to provide that MDS and ITFS licensees need not submit an application to install a low power signal booster. Licensees seeking to install a low power signal booster must, however, submit certification demonstrating compliance with the components of §§ 21.913(g) and 74.985(g). This certification must be submitted within 48 hours of installation of the booster station.

6. In addition, the Commission amended 47 CFR 21.902 to add the requirement that MDS applications filed after the lifting of the freeze on applications for new stations must include the following two maps: (1) A map showing the boundaries of the protected service areas of each authorized or previously-proposed cochannel station with a transmitter site within 100 miles of the applicant's proposed transmitter site, and the 45 dB desired signal to undesired signal contour line of the applicant's proposed MDS station for cochannel stations; and (2) a map showing the boundaries of the protected service areas of each authorized or previously-proposed adjacent-channel station with a transmitter site within 100 miles of the applicant's proposed transmitter site, and the 0 dB desired signal to undesired signal contour line of the applicant's proposed MDS station for adjacent-channel stations.

*This rule becomes effective June 1, 1993. Any applicants with MDS/MMDS applications pending on that date that violate the provisions of this new rule may amend their applications to divest themselves of any interests held in other applications during the fourteen day period beginning on June 2, 1993 and ending on June 15, 1993.

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

The adoption of this Report and Order will promote the public interest by furthering the Commission's goal of facilitating the development of a video distribution marketplace characterized by competition and a variety of consumer choices.

Summary of the Issues Raised

The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in response to the Initial Regulatory Flexibility Analysis. In these comments, the SBA stated that certain rule changes proposed in the Notice, particularly the proposal for pre-set interference separation standards, could disadvantage small businesses by making it more difficult to secure financing.

Significant Alternatives Considered

Several alternatives were discussed in the Notice and the Report and Order. In addition, a number of alternatives were raised in the comments. All significant alternatives have been addressed. Those proposals deemed problematic by the SBA are not being adopted. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

Ordering Clauses

7. Accordingly, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934; as amended, 47 CFR 154(i) and 303(r), it is ordered that 47 CFR parts 2, 21 and 74 of the Commission's Rules are amended as shown below, effective June 1, 1993, except for the ban on settlements which is effective April 1, 1993. It is further ordered that applicants for stations in the MDS whose applications are currently pending before this Commission and who wish to amend their applications to bring them into conformance with the rule changes adopted in this proceeding may do so during the fourteen-day period beginning June 2, 1993 and ending June 15, 1993. It is further ordered that PR Docket No. 92–80 is terminated.

List of Subjects

47 CFR Part 2

Radio, Television.

47 CFR Part 21

Multipoint distribution service, Communications common carriers, Domestic public fixed radio services.

47 CFR Part 74

Television broadcasting, experimental, auxiliary, and special broadcast and other program distributional services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

47 CFR parts 2, 21 and 74 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. 47 CFR 2.106 is amended by removing note NG47 from column 5 in frequency band 2500–2655 MHz, and by adding "AUXILIARY BROADCASTING (74)" and "DOMESTIC PUBLIC FIXED RADIO (21)" under column 6 in frequency band 2500–2655 MHz, and by revising note NG47 to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

NG47 In Alaska, frequencies between the band 2655–2690 MHz are not available for assignment to terrestrial stations.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. Secs. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

4. 47 CFR 21.15 is amended by revising paragraph (a) to read as follows:

§ 21.15 Technical content of applications.

* * * * *

(a) (1) Except in the case of applicants for Multipoint Distribution Service stations, applicants proposing a new station location (including receive-only stations and passive repeaters) must indicate whether the station site is owned. If it is not owned, its availability for the proposed radio station site must be demonstrated. Under ordinary circumstances, this requirement will be considered satisfied if the site is under lease or under written option to buy or lease.

(2) Where any lease or agreement to use land limits or conditions in any way the applicant's access or use of the site to provide public service, a copy of the lease or agreement (which clearly indicates the limitations or conditions) must be filed with the application, except in the case of applicants for stations in the Multipoint Distribution Service. Multipoint Distribution Service applicants must instead certify compliance with the limitations and conditions contained in the lease or option agreement.

(3) Multipoint Distribution Service applicants proposing a new station location must certify the proposed station site will be available to the applicant for timely construction of the facilities during the initial construction period.

(4) An applicant's failure to include a certification required under this Section will result in dismissal of the application. The submission of a false certification will subject the applicant to all remedies available to the Commission, including the dismissal with prejudice of all applications filed by the offending applicant and the revocation of authorizations of the offending applicant. Also, if evidence of intent exists, the case will be referred to the Department of Justice for criminal prosecution under 18 U.S.C. 1001. In addition, the submission of an intentionally falsified certification will be treated as a reflection on an applicant's basic qualifications to become or to remain a licensee.

* * * * *

5. 47 CFR 21.20 is amended by revising paragraph (b)(5) to read as follows:

§ 21.20 Defective applications.

* * * * *

(b) * * *

(5) The Multipoint Distribution Service application does not certify the availability of the proposed station site, or the Point-to-Point Microwave Radio Service, Local Television Transmission Service, or Digital Electronic Message Service application does not demonstrate the availability of the proposed site of a new facility;

* * * * *

6. 47 CFR 21.23 is amended by revising paragraphs (a) and (b) to read as follows:

§ 21.23 Amendment of Applications.

(a) (1) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to § 21.35, or for the random selection process, provided, however, that the amendments must comply with the provisions of § 21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(2) A Multipoint Distribution Service application tentatively selected for qualification review by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, provided, however, that the amendments must comply with the provisions of § 21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(3) Provided, however, applications may not be amended if the amendments seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any amendment or application will be dismissed if the amendment or application seeks more than a *pro forma* change of ownership or control.

(b) Requests to amend an application designated for hearing or for comparative evaluation or for tentative selection for qualification review by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record, except that Multipoint Distribution Service applications tentatively selected in a random selection process may be amended as a matter of right as provided in paragraph (a) of this section. Provided, however, requests to amend applications will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any application seeking more than a *pro forma* change of ownership or control will be dismissed.

* * * * *

7. 47 CFR 21.28 is amended by adding paragraph (f) to read as follows:

§ 21.28 Dismissal and return of applications.

* * * * *

(f) A Multipoint Distribution Service application will be dismissed if the applicant seeks to change ownership or control, except in the case of a *pro forma* change of ownership or control (bankruptcy, death, or legal disability).

8. 47 CFR 21.29 is amended by adding paragraph (f) to read as follows:

§ 21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

* * * * *

(f) Notwithstanding § 21.29(e), amendments will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death, or legal disability) of a pending Multipoint Distribution Service application, and any Multipoint Distribution Service application will be dismissed that seeks more than a *pro forma* change of ownership or control.

9. 47 CFR 21.31 is amended by revising paragraphs (e) (3) and (4) to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(e) * * *

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted, unless the amendment is for more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application in which event the application will be dismissed;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 21.29 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration, unless the amendment is for one (or more) pending Multipoint Distribution Service application (or applications) in which

event the application (or applications) will be dismissed;

* * * * *

10. 47 CFR 21.33 is revised to read as follows:

§ 21.33 Grants by random selection.

(2) If an application for an authorization in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 21.31, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.825 of this chapter.

(b) If an application for an authorization for a Multichannel Multipoint Distribution Service (MMDS) station or for a Multipoint Distribution Service (MDS) H-channel station is mutually exclusive with another such application, and satisfies the requirements of §§ 21.31 and 21.914, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.824 of this chapter.

(c) Renewal applications shall not be included in a random selection process.

(d) If Multipoint Distribution Service applicants enter into settlements, the applicants in the settlement must be represented by one application only and will not receive the cumulative number of chances in the random selection process that the individual applicants would have had if no settlement had been reached.

11. 47 CFR 21.39 is amended by redesignating paragraphs (a) and (b) and (c) as paragraphs (b) and (c) and (d) respectively, and by adding a new paragraph (a) to read as follows:

§ 21.39 Considerations involving transfer or assignment applications.

(a) A Multipoint Distribution Service conditional license may not be assigned or transferred prior to the completion of construction of the facility and the timely filing of the certification of completion of construction. However, consent to the assignment or transfer of control of a Multipoint Distribution Service conditional license may be given prior to the completion of construction and the timely filing of the certification of completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized Multipoint Distribution Service facilities; or

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

* * * * *

12. 47 CFR 21.901 is amended by removing and reserving paragraph (d)(2), and revising paragraph (f) to read as follows:

§ 21.901 Frequencies.

* * * * *

(f) MDS H-channel applications. Frequencies in the bands 2650–2656 MHz, 2662–2668 MHz, or 2674–2680 MHz must be assigned only in accordance with the following conditions: All applications for MDS H-channel stations must specify either the H1, H2, or H3 channel for which an application is filed; however, the Commission may on its own initiative assign different channels in these frequency bands if it is determined that such action would serve the public interest.

13. 47 CFR 21.902 is amended by revising paragraphs (c) introductory text, (c)(1) and (c)(2) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(c) The following interference studies, as appropriate, must be filed initially with each application proposing a new transmitter site:

(1) An analysis of the potential for harmful interference with any authorized or previously-proposed, cochannel and adjacent-channel, station(s):

(i) If the coordinates of the applicant's proposed transmitter are within 100 miles (160.94 km) of the coordinates of any authorized or previously-proposed, cochannel or adjacent-channel, station(s); or

(ii) If the great circle path between the applicant's proposed transmitter and the protected service area of any authorized or previously-proposed, cochannel or adjacent-channel, station(s) is within 150 miles (241.41 km) or less and 90 percent or more of the path is over water or within 10 miles (16.1 km) of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above (see §§ 21.701(a) 21.901(a) and 74.902 of this chapter);

(2) (i) One map, folded to an 8½ by 11 inch size, identifying the boundaries of the protected service areas of each authorized or previously-proposed, co-channel station with transmitter site coordinates within 100 miles (160.94 km) of the coordinates of the applicant's proposed transmitter site, an the 45 dB desired signal to undesired signal contour line of the applicant's proposed MDS station for cochannel stations; and

(ii) A second map, folded to an 8½ by 11 inch size, identifying the boundaries of the protected service areas of each authorized or previously-proposed, adjacent-channel station with transmitter site coordinates within 100 miles (160.94km) of the coordinates of the applicant's proposed transmitter site, and the 0 dB desired signal to undesired signal contour line of the applicant's proposed MDS station for adjacent-channel stations (see 47 CFR 21.902(d));

* * * * *

14. 47 CFR 21.913 is amended by revising paragraph (g) to read as follows:

§ 21.913 Signal Booster Stations.

* * * * *

(g) An MDS or ITFS licensee may install and commence operation of a signal booster station that has a maximum power level of −9 dBW EIRP and that does not extend service beyond the boundaries of an MDS station's protected service area or beyond an ITFS licensee's registered receive site, subject to the condition that for sixty (60) days after installation, no objection or petition to deny is filed by an authorized co-channel or adjacent channel ITFS or MDS station with a transmitter within 5 miles (8.05 km) of the coordinates of the primary transmitter of the signal booster. An MDS or ITFS licensee seeking to install a signal booster under this Section must, within 48 hours after installation, submit a certification that:

(1) The maximum power level of the signal booster transmitter does not exceed −9 dBW EIRP;

(2) A description of the signal booster technical specifications (including antenna gain and azimuth), the coordinates of the booster and receivers, and the street address of the signal booster;

(3) No registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located within a 1 mile (1.61 km) radius of the coordinates of the booster, or in the alternative, that a consent statement has been obtained from the affected ITFS licensee;

(4) No environmental assessment location as defined at § 1.1307 of this chapter is affected by installation and/or operation of the signal booster;

(5) Each MDS and/or ITFS station licensee with protected service areas or registered receivers within a 5-mile (8.05 km) radius of the coordinates of the booster has been given notice of its installation;

(6) Consent has been obtained from each MDS or ITFS station licensee whose signal is repeated by the signal booster;

(7) The signal booster site is within the protected service area of the MDS station, if the signal of an MDS station is repeated;

(8) The power flux density at the edge of the MDS station's protected service area does not exceed −75.6 dBW/m², if the signal of an MDS station is repeated;

(9) The antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(10) The MDS or ITFS licensee understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, the licensee must terminate operation within two (2) hours of written notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission.

15. 47 CFR 21.915 is added to read as follows:

§ 21.915 One-to-a-market requirement.

Each applicant may file only a single Multipoint Distribution Service application for the same channel or channel group in each area. The stockholders, partners, owners, trustees, beneficiaries, officers, directors, or any other person or entity holding, directly or indirectly, any interest in one applicant or application for an area and channel or channel group, must not have any interest, directly or indirectly, in another applicant or application for that same area and channel or channel group.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

16. The authority citation for part 74 continues to read as follows:

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

17. 47 CFR 74.985 is amended by revising paragraph (g) to read as follows:

§ 74.985 Signal Booster Stations.

* * * * *

(g) An MDS or ITFS licensee may install and commence operation of a signal booster station that has a maximum power level of −9 dBW EIRP and that does not extend service beyond the boundaries of an MDS station's protected service area or beyond an ITFS licensee's registered receive site, subject to the condition that for sixty (60) days after installation, no objection or petition to deny is filed by an authorized co-channel or adjacent channel ITFS or MDS station with a transmitter within 5 miles (8.05 km) of the coordinates of the primary transmitter of the signal booster. An MDS or ITFS licensee seeking to install a signal booster under this rule must, within 48 hours after installation, submit a certification that:

(1) The maximum power level of the signal booster transmitter does not exceed −9 dBW EIRP;

(2) A description of the signal booster technical specifications (including antenna gain and azimuth), the coordinates of the booster and receivers, and the street address of the signal booster;

(3) No registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located within a 1 mile (1.61 km) radius of the coordinates of the booster, or in the alternative, that a consent statement has been obtained from the affected ITFS licensee;

(4) No environmental assessment location as defined at § 1.1307 of this chapter is affected by installation and/or operation of the signal booster;

(5) Each MDS and/or ITFS station licensee with protected service areas or registered receivers within a 5 mile (8.05 km) radius of the coordinates of the booster has been given notice of its installation;

(6) Consent has been obtained from each MDS or ITFS station licensee whose signal is repeated by the signal booster;

(7) The signal booster site is within the protected service area of the MDS station, if the signal of an MDS station is repeated;

(8) The power flux density at the edge of the MDS station's protected service area does not exceed −75.6 dBW/m2, if the signal of an MDS station is repeated;

(9) The antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(10) The MDS or ITFS licensee understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, the licensee must terminate operation within two (2) hours of written notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission.

[FR Doc. 93–4553 Filed 2–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 22

[CC Docket No. 90–6; FCC 93–99]

Cellular Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has amended regulations on Public Mobile Service to improve licensing procedures for cellular radio. The rule changes are necessary to allow unserved area applicants to propose a reasonable range of effective radiated power for small cell design without seeking waivers of the Commission's Rules or filing alternative propagation studies. The changes are also needed to codify the Commission's interpretation that cellular licensees are entitled to protection from "capture" of subscriber traffic by adjacent systems. The Commission's intent in revising these rules is to encourage further development of the cellular service while promoting efficiency in the licensing of cellular service.

DATES: Rules effective March 31, 1993, except for revision of paragraph (a)(3) and addition of paragraph (a)(5) of § 22.903 of the Rules, which are effective March 4, 1993.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman (legal) and B.C. "Jay" Jackson, Jr. (technical), Mobile Services Division, Common Carrier Bureau, (202) 632–6450 and 653–5560, respectively.

SUPPLEMENTARY INFORMATION: The following is a summary of the Commission's Memorandum Opinion and Order on Reconsideration, adopted February 17, 1993, and released February 19, 1993. The full texts of all Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order on Reconsideration

1. The Second Report and Order, 57 FR 13646 (April 17, 1992) (Second Report) adopted rules to determine Cellular Geographic Service Areas (CGSAs) by the use of a mathematical formula and modified the authorizations of existing cellular systems to redefine the boundaries of their CGSAs in accordance with the new formula. This

Order disposes of petitions for reconsideration of the Second Report. It rejects arguments that the Commission exceeded its authority by modifying the authorizations of existing cellular systems pursuant to a rulemaking proceeding, that the Commission erred in allowing carriers to submit alternative CGSA determinations based upon propagation studies or field measurements, and that the Commission should establish formal procedures to assure that carriers on the same frequency block in adjoining markets achieve matching field strengths at their market boundaries.

2. This Order also amends part 22 of the Commission's Rules concerning cellular radio. One rule change allows an unserved area applicant proposing a cell with a maximum effective radiated power (ERP) of 10 watts or less the option to use the CGSA formula with an antenna height above average terrain less than the usual 100 feet, but not less than 10 feet. This rule revision will allow a reasonable range of ERP for small cell design. Another change codifies the Commission's interpretation that cellular licensees are entitled to protection within their CGSAs from unwanted "capture" of subscriber traffic by adjacent cellular systems. The new rule sets forth the application of and limitation on this protection.

Ordering Clauses

Accordingly, it is ordered that the rule changes made herein will become effective thirty (30) days after publication in the **Federal Register**, except for the revision of paragraph (a)(3) and the addition of paragraph (a)(5) in § 22.903 of the Rules, which shall become effective immediately upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 22

Communications common carriers, Domestic public cellular radio telecommunications service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. Section 22.903 is amended by revising paragraphs (a)(3), (d)(2) and (e) and adding new paragraphs (a)(5) and (f) as follows:

§ 22.903 Cellular geographic service area.

* * * * *

(a) * * *

(3) The value used for h in the formula in paragraph (a)(2) of this section must not be less than 25 feet HASL (or HAMSL, as appropriate for the support structure). The value used for *h* in the formula in paragraph (a)(1) of this section must not be less than 100 feet HAAT, except that for unserved area applications proposing a cell with an ERP not exceeding 10 Watts, the value for h used in the formula to determine the service area boundary for that cell may be less than 100 feet HAAT, but not less than 10 feet HAAT.

* * * * *

(5) Whenever use of the formula in paragraph (a)(1) of this section pursuant to the exception contained in paragraph (a)(3) of this section results in a calculated distance that is less than 3.4 miles, the radial distance to the service area boundary is deemed to be 3.4 miles.

* * * * *

(d) * * *

(2) *Contract extensions.* Licensees of the first authorized cellular systems on the same frequency block in adjacent MSAs or RSAs may enter into contracts to allow service area boundary extensions into their CGSA and/or unserved area in their MSA or RSA during the five year fill-in period of the MSA or RSA into which the service area is to extend. Licensees of cellular systems on the same frequency block in adjacent MSAs or RSAs may enter into contracts to allow service area boundary extensions into their CGSA only (not into unserved area) in their MSA or RSA at any time.

* * * * *

(e) *Multiple-licensed cells.* A single cell may be used to serve multiple markets. Nevertheless, a cell located in one market may not be used in determining the CGSA for a different MSA, RSA, or unserved area market unless the cell is licensed for both markets.

(f) *Protection afforded.* Within the CGSA determined in accordance with this section, cellular systems are entitled to protection from co-channel and first-adjacent channel interference and from capture of subscriber traffic by adjacent systems on the same frequency block.

(1) Licensees must cooperate in resolving co-channel and first-adjacent channel interference by changing frequencies used at specific cells or by other technical means.

(2) Protection from capture of subscriber traffic is applied and limited in accordance with the following:

(i) It is presumed that subscriber traffic is captured if a service area boundary of one cellular system extends into the CGSA of another operating cellular system. Therefore, cellular licensees must not begin to operate any facility that would produce a service area boundary extension into the existing CGSA of another operating cellular system on the same frequency block without first obtaining the written consent of the licensee of that system. However, cellular licensees may continue to operate existing facilities that produce a service area boundary extension into a subsequently-authorized portion of the CGSA of another cellular system on the same frequency block until the licensee of that system requests that the service area boundary extension be removed from its CGSA. Such request may be made directly to the licensee of the extending system or to the Commission. In the event such request is made, the licensee of the extending system must reduce the transmitting power or antenna height (or both) at the pertinent cell site as necessary to remove the service area boundary extension from the CGSA of the other system, unless a written consent from the licensee of the other system allowing the service area boundary extension is obtained.

(ii) Cellular licensees are at most entitled to have a CGSA free of service area boundary extensions from other cellular systems on the same frequency block.

[FR Doc. 93–4479 Filed 2–26–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 38
Monday, March 1, 1993

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 707 and 740

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Extension of comment period.

SUMMARY: On November 12, 1992, the NCUA issued proposed revisions to its regulations implementing the Truth in Savings Act (§ 701.35, Part 707, § 740.2). The proposed rule was published in the Federal Register on November 30, 1992 (See 57 FR 56686). The NCUA Board requested that comments on the proposed revisions be received on or before March 1, 1993. Due to requests made, the Board has decided to extend the comment period for thirty-one days, from March 1 to April 1, 1993.

DATES: The comment period is being extended from March 1, 1993 to April 1, 1993.

ADDRESSES: Comments should be mailed to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Meg Suuberg, Staff Attorney, or Martin Conrey, Staff Attorney, at the above address, or telephone (202) 682–9630. For information about the Board's action concerning the Regulatory Flexibility Act only, contact Lindsay Neunlist, Program Analyst, Office of Examination and Insurance, at the above address or telephone (202) 682–9640. For information about Appendix A to proposed Part 707, contact William Ryan, Compliance Officer, Office of Examination and Insurance, at the above address or telephone (202) 682–9640.

Authority: The authority for this action is the general rulemaking authority of the NCUA Board. 12 U.S.C. 1766(a).

By the National Credit Union Administration Board on February 22, 1993.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–4632 Filed 2–26–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASW–40]

Proposed Revision of Control Zone: Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the control zone located at Roswell, New Mexico. The very high frequency omnidirectional range (VOR) standard instrument approach procedure (SIAP) for the VOR–A approach, utilizing the Roswell very high frequency omnidirectional range/tactical air navigation (VORTAC), was amended in 1984. This proposal is necessary because a recent review of the procedure indicated that an adjustment to the control zone was needed to completely contain operations within controlled airspace. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR–A SIAP.

DATES: Comments must be received on or before April 23, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 91–ASW–40, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 :00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5535.

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 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 containing the following statement: "Comments to Airspace Docket No. 92–ASW–40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. 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 revise the control zone located at Roswell, New Mexico. The VOR–A SIAP, utilizing the Roswell VORTAC, was amended in 1984. A recent review of the procedure indicated that an adjustment to the control zone was needed to completely contain operations within controlled airspace. The coordinates for this docket are based on North American Datum 83. Control Zones are published in section 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.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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.

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

* * * * *

ASW TX CZ Roswell, NM [Revised]

Roswell Industrial Air Center, NM
(lat. 33°18'05" N., long. 104°31'50" W.)
Roswell VORTAC
(lat. 33°20'15" N., long. 104°37'17" W.)

That airspace extending upward from the surface to and including 6200 feet MSL within a 5-mile radius of Roswell Industrial Air Center and within 3.7 miles each side of the Roswell VORTAC 290° radial extending from the 5.0-mile radius to 14.8 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on February 16, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–4605 Filed 2–26–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–3]

Proposed Transition Area Establishment, Necedah, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a transition area near Necedah, WI to accomodate a new nondirectional beacon (NDB) runway 36 Standard Instrument Approach Procedure (SIAP) to Necedah Airport, Necedah, WI. 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 April 9, 1993.

ADDRESSES: Send comments on the proposal in triplicate to Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–3, 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. 93–AGL–3." 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, S.W., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Person interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Necedah, WI, to accommodate a new NDB runway 36 SIAP to Necedah Airport, Necedah, WI.

The development of a new SIAP requires that the FAA establish 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 which 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. Transition areas are published in Section 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, 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 71.181 Designation of Transition Areas

* * * * *

AGL WI TA Necedah, WI [New]

Necedah Airport, WI
(lat. 44°02'01" N., long. 90°05'07" W.)
Necedah NDB
(lat. 44°02'02" N., long. 90°04'58" W.)

That airspace extending upward from 700 feet above the surface within a 6.3 miles radius of the Necedah Airport, and within 2.5 miles each side of the 181° bearing from the Necedah NDB extending from the 6.3 mile radius area to 7 miles south of the airport, excluding that portion which overlies the Camp Douglas, WI, Transition Area and Control Zone, during the specific dates and times the control zone is effective.

* * * * *

Issued in Des Plaines, Illinois, on February 9, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–4604 Filed 2–26–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–41]

Proposed Revision of Transition Area: Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the transition area located at Roswell, New Mexico. The very high frequency omnidirectional range (VOR) standard instrument approach procedure (SIAP) for the VOR–A approach, utilizing the Roswell very high frequency omnidirectional range/tactical air navigation (VORTAC), was amended in 1984. This proposal is necessary because a recent review of the procedure indicated that an adjustment to the transition area was necessary to completely contain operations within controlled airspace. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR–A SIAP.

DATES: Comments must be received on or before April 23, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 91–ASW–41, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9:00 a.m. and 3 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5535.

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 aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. 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 revise the transition area located at Roswell, New Mexico. The VOR–A SIAP, utilizing the Roswell VORTAC was amended in 1984. This proposal is necessary because a recent review of the procedure indicated that an adjustment to the transition area was necessary to completely contain operations within controlled airspace.

The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR–A SIAP. The coordinates for this docket are based on North American Datum 83. Transition Areas are published in section 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 that needs frequent and routine amendments 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, 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 71.181 Designation of Transition Areas

* * * * *

ASW TX TA Roswell, NM [Revised]

Roswell Industrial Air Center, NM
(lat. 33°18'05" N., long. 104°31'50" W.)
Roswell VORTAC
(lat. 33°20'15" N., long. 104°37'17" W.)

That airspace extending upward from 700 feet above the surface within a 12.7-mile radius of Roswell Industrial Air Center and within 4 miles each side of the Roswell VORTAC 290° radial extending from the 12.7-mile radius to 23.2 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on February 16, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–4606 Filed 2–26–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–31897; File No. S7–4–93]

RIN 3235–AF73

Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Rule 17a–5 under the Securities Exchange Act of 1934 ("Exchange Act") that would shift to designated examining authorities ("DEAs") the responsibility for extensions of time for the filing of FOCUS reports and audited annual financial reports or for approval of changes of the date as of which the audited annual financial report must be dated.

DATES: The requested written data, views, arguments and/or comments must be received on or before March 31, 1993.

ADDRESSES: Persons wishing to submit written data, views, arguments and/or comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. All written data, views, arguments and/or comments should refer to File No. S7–4–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Julius R. Leiman-Carbia, Senior Counsel, Office of Capital Markets, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., DC 20549; tel.: (202) 272–2824.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 17(a)(1) of the Exchange Act provides that the Commission shall prescribe, by rule, the records to be kept and the reports to be made and disseminated by brokers and dealers.[1] Under that section of the Exchange Act, the Commission has adopted Rule 17a–5, the basic reporting rule for broker-dealers.[2]

Under the present rule, a broker-dealer, registered with the Commission pursuant to section 15 of the Exchange Act,[3] is required to file monthly and quarterly reports concerning its financial and operational status.[4] These

[1] 15 U.S.C. 78q(a)(1).

[2] The Commission originally promulgated Rule 17a–5 in 1942. Securities Exchange Act Release No. 3338 (November 28, 1942), 7 FR 9917 (December 1, 1942). Subsequent to its adoption, Rule 17a–5 was amended several times technically and substantively.

[3] 15 U.S.C. 78o.

[4] Sub-paragraph (a)(2) of Rule 17a–5 requires registered broker-dealers to file reports concerning their financial and operational status by submitting completed parts of Form X–17A–5, 17 CFR 249.617, as follows:

(1) Broker-dealers who clear transactions or carry customer accounts must file:

(a) Part I of Form X–17A–5 ("FOCUS I") within ten business days after the end of each month, and

(b) Part II of Form X–17a–5 ("FOCUS") within 17 business days after the end of the calendar quarter

reports must be filed with the Commission's principal office in Washington, DC and with the regional office of the Commission for the region in which the broker-dealer has its principal place of business.[5]

A broker-dealer is not required to file these reports with the Commission or its regional office if the Commission has approved a plan filed with the Commission by the broker-dealer's DEA, pursuant to paragraph (a)(4) of Rule 17a–5 ("17a–5(a)(4) Plan"). According to the Rule, a 17a–5(a)(4) Plan must set forth procedures enabling the DEA: (a) To maintain records containing information required by the FOCUS reports regarding each broker-dealer; and (b) to transmit to the Commission a copy of the applicable parts of the FOCUS reports. Currently, all self-regulatory organizations that are DEAs have filed and received Commission approval for such Plans. Accordingly, broker-dealers are required to file FOCUS reports with their DEAs; and DEAs are required to provide periodically copies of applicable parts of the reports to the Commission.

Pursuant to the terms of some of the 17a–5(a)(4) Plans, a broker-dealer's DEA is authorized to grant extensions of time for the filing of FOCUS reports. Other Plans have no such provisions. Consequently, the authority to grant or deny FOCUS report extension requests currently lies with either the Commission's regional office of the Division of Market Regulation, by delegated authority,[6] or, in some instances, the requesting broker-dealer's DEA.

Section 17(e)(1)(A) of the Exchange Act[7] requires every registered broker-dealer to file an audited annual financial report. Paragraph (d) of Rule 17a–5 requires every registered broker-dealer to file annually an audited report consisting of annual financial statements audited by an independent public accountant to be filed not later than 60 days after the date of the annual financial statement ("audited annual financial report").[8] Under Rule 17a–5(d)(6), these reports must be filed with the Commission's regional office for the region in which the broker-dealer has its principal office, the Commission's principal office in Washington, DC and the broker-dealer's DEA.[9]

The audited annual financial report must be dated "as of the same fixed or determinable date each year unless a change is approved by the Commission" (" 'as of' date").[10] Pursuant to paragraph (1) of Rule 17a–5, the Division of Market Regulation, by delegated authority, is authorized to grant extensions of time in which to file the audited annual financial report.[11] The authority to grant or deny extension requests of 30 days or less beyond the 60 day filing period provided by Rule 17a–5(d) is delegated to the Commission's regional office.[12] The authority to grant or deny extensions of greater than 30 days rests with the Division of Market Regulation (by delegated authority).[13]

II. Description of the Proposed Amendments and Discussion

A. Changes in the Filing of Periodical Reports

Under the proposed amendments:

(i) The authority to grant or deny extensions of time for the filing of FOCUS reports would be given primarily to a broker-dealer's DEA.

(ii) DEAs would have the authority to approve changes of the "as of" dates, and

(iii) DEAs would have the primary responsibility, on a routine basis, to grant or deny broker-dealers' requests for extensions of time to file audited annual financial reports.

The proposed amendments will shift to DEAs the responsibility for extensions of time for the filing of FOCUS reports and audited annual financial reports or for approval of changes of the "as of" date. The DEAs are most familiar with the current financial and operational condition of the member firms designated to them, and are better prepared to respond to these requests. The proposed amendments, however, do not alter the Division of Market Regulation's delegated authority to grant requests for extensions of time or exemptions from any provision of Rule 17a–5, whenever it deems appropriate.[14]

B. Delegation of Authority

Section 200.30–6(d)(1) gives regional administrators the authority to grant extensions of time to file reports required under Rule 17a–5 and to grant or deny broker-dealers' requests to change the "as of" date. Paragraph (d)(1) of Rule 30–6 should be deleted because the proposed amendments give DEAs the primary responsibility over broker-dealers' requests concerning these matters.

III. Request for Comments

The Commission invites interested persons to submit written data, views, arguments and/or comments on the proposed amendments, and, in particular, the manner in which their implementation would affect broker-dealers' ability to comply with the Commission's regulatory reporting requirements.

IV. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 630, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") concerning the proposed amendments. The analysis notes that the objective of the proposed rule amendments is to shift some of the responsibilities of the Commission to a broker-dealer's DEA.

The proposed amendments do not alter the substantive reporting requirements of broker-dealers. Instead, routine requests for exemptions from the requirement to file monthly, quarterly and annual financial and operational reports will be directed at the broker-dealer's DEA rather than the Commission. Accordingly, the proposed amendments will not change the impact of current regulatory reporting requirements on "small business[es]" or "small organization[s]," as those terms are defined in 17 CFR 240.0–10(c), subject to Rule 17a–5.

A copy of the IRFA may be obtained by contacting Julius R. Leiman-Carbia, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, tel: (202) 272–2824.

V. Statutory Analysis

The amendments are proposed pursuant to the authority conferred on the Commission by section 17(a)(1) of the Exchange Act.

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and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of a calendar quarter;

(2) Broker-dealers who do not clear transactions nor carry customer accounts must file Part IIA of Form X–17A–5 ("FOCUS IIA") within 17 business days after the end of the calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of a calendar quarter;

[5] 17 CFR 240.17a–5(a)(3).

[6] 17 CFR 200.30–6(d)(1)(i) (giving regional administrators the authority to grant extensions of time to file reports required under Rule 17a–5); 17 CFR 200.30–3(a)(5) (granting delegated authority to the Director of the Division of Market Regulation to grant exemptions from, and extension of time within which to file reports required by Rule 17a–5).

[7] 15 U.S.C. 78q(e)(1)(A).

[8] 17 CFR 240.17a–5(d).

[9] 17 CFR 240.17a–5(d)(6).

[10] 17 CFR 240.17a–5(d)(1)(i). Pursuant to 17 CFR 200.30–6(d)(1)(ii) regional administrators have delegated authority to grant or deny broker-dealers' requests to change the "as of" date of the audited annual financial report.

[11] See 17 CFR 240.17a–5(l).

[12] 17 CFR 240.17a–5(l)(1)(i) and 200.30–6(d)(1)(i).

[13] 17 CFR 240.17a–5(l)(3) and 200.30–3(a)(5).

[14] See 17 CFR 240.17a–5(1)(3).

List of Subjects in 17 CFR Parts 200 and 240

Authority delegations (Government agencies); Brokers; Reporting and recordkeeping requirements; Securities.

For the reasons set forth in the preamble, title 17 chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

§ 200.30–6 [Amended]

2. In § 200.30–6, paragraph (d)(1) is removed and paragraphs (d)(2) and (d)(3) are redesignated as paragraphs (d)(1) and (d)(2).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 781, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

4. Section 240.17a–5 is amended by adding paragraph (a)(5) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

(a) * * *

(5) Upon written application by a broker or dealer to its designated examining authority, the designated examining authority may extend the time for filing the information required by this paragraph (a). The designated examining authority of the broker or dealer shall maintain, in the manner prescribed in § 240.17a–1, a record of each extension granted.

* * * * *

5. Section 240.17a–5 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(d) *Annual Filing of Audited Financial Statements.* (1)(i) Every broker or dealer registered pursuant to section 15 of the Act shall file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant. Reports pursuant to this paragraph (d) shall be as of the same fixed or determinable date each year, unless a change is approved in writing by the designated examining authority of the broker or dealer. A copy of such written approval should be sent to the regional office of the Commission for the region in which the broker or dealer has its principal place of business.

* * * * *

6. Section 240.17a–5 is amended by revising paragraph (l)(1) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(*l*) *Extensions and exemptions.* (1) A broker's or dealer's designated examining authority may extend the period under paragraph (d) of this section for filing annual audit reports. The designated examining authority of the broker or dealer shall maintain, in the manner prescribed in § 240.17a–1, a record of each extension granted.

* * * * *

7. Section 240.17a–5 is amended by revising paragraph (m) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(m) *Notification of change of fiscal year.* (1) In the event any broker or dealer finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for such broker or dealer a notice of such change.

(2) Such notice shall contain a detailed explanation of the reasons for the change. Any change in the filing period for the audit report must be approved by the designated examining authority pursuant to paragraph (l) of this section.

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By the Commission.

Dated: February 22, 1993.

Margaret H. McFarland,

Deputy Secretary.

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17 CFR Part 240

[Release Nos. 33–6976; 34–31904; IC–19282; File No. S7–5–93]

RIN 3235–AF85

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Securities and Exchange Commission is publishing notice of its intention to adopt a new rule under the Securities Exchange Act of 1934 that would establish three business days, instead of five business days, as the standard settlement timeframe for broker-dealer transactions. The proposed rule is designed to reduce the risk to clearing corporations, their members, and public investors inherent in settling securities transactions by reducing the total number of unsettled trades at any given time. The rule also will facilitate additional risk reduction procedures by achieving closer conformity between the government securities and derivatives markets and the markets for other securities. The Commission is proposing an effective date of January 1, 1996, in order to allow market participants time to implement the necessary changes to allow three-business-day settlement in an efficient manner. The Commission requests comments on the proposed rule and, in particular, the costs associated with such a rule and whether the proposed implementation timetable should be adopted or modified.

DATES: Comments should be received on or before June 30, 1993.

ADDRESSES: Interested parties should submit three copies of comment letters to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("Commission"), 450 fifth Street, NW., Mail Stop 6–1, Washington, DC 20549. Comments should refer to File No. S7–5–93. The Commission will make all comments available for public inspection and copying at its Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sonia G. Burnett, Attorney, Office of Securities Processing Regulation, Branch of Transfer Agent Regulation, at 202/272–2855, or Richard C. Strasser, Attorney, Office of Securities Processing Regulation, Branch of Clearing Agency Regulation, at 202/272–2415, Division of Market Regulation, Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The market crash of October 1987 highlighted both the strengths and weaknesses in the U.S. clearance and settlement system ("system"). On the one hand, the system survived great stress without a material failure. On the other hand, the stress within the system showed the need for improvements. Since that time, the Commission, other federal regulators and industry organizations have spent considerable time studying clearance and settlement reform.[1] Numerous studies, culminating in the Bachmann Task Force Report, have recommended, among other things, shortening the settlement cycle in order to increase the safety and soundness of the system.[2]

Today the Commission proposes for comment Rule 15c6–1[3] under the Securities Exchange Act of 1934 ("Exchange Act")[4] that, if adopted, would establish three business days ("T+3"), instead of five business days ("T+5"), as the standard settlement timeframe for broker-dealer trades.

The Commission believes that significant risk reduction benefits can be gained from shortening the settlement cycle. The Commission, nevertheless, recognizes that broker-dealers may need to make operational and procedural changes to settle transactions in a shorter timeframe. The Commission therefore proposes a deferred effective date and invites comment on the cost of implementing such a rule and whether the proposed timetable for implementation should be adopted or modified.

I. Background

Although the U.S. clearance and settlement system[5] is one of the safest in the world, recent events have demonstrated that the system can be improved. The Market Breaks of October 1987 and October 1989 and the events surrounding the demise of Drexel Burnham Lambert Group, the holding company parent of Drexel Burnham Lambert, Inc. ("Drexel"), demonstrated that vulnerabilities exist in the clearance and settlement system.

Record volume and volatility during October 1987 proved detrimental to broker-dealers who were unable to resolve processing errors before settlement with their customers on T+5. Moreover, the steep decline in stock prices during that period, as well as the decline on October 16, 1989, left some broker-dealers vulnerable to loss from the positions of customers who were unable or unwilling to meet either margin calls or transaction settlement requirements. This in turn called into question the ability of those broker-dealers to meet their obligations to the clearing corporations. Indeed, turbulent market conditions in 1987 contributed to the demise of three clearing member firms, Metropolitan Securities, H.B. Shaine & Co., and American Investors Group. Clearing firms stand between the clearing corporation, on the one side, and market professionals, introducing firms, and public investors on the other.

Financial difficulties were not limited to clearing firms, however. During and after the week of October 19, 1987, more than 50 introducing firms failed, many as a result of the inability of their customers to meet margin calls and pay settlement obligations.[6] Further, because the markets are interwoven through common members, default at one clearing corporation could have triggered additional failures, resulting in risk to the entire system.

After the October 1987 Market Break, several groups sought to identify causes of the market decline and changes that could be made to shield market participants from the impact of sudden steep declines in the market.[7] All these studies identified clearance and settlement as an area which needed further attention.[8] As noted by Alan Greenspan, Chairman of the Federal Reserve Board, "The importance of strong clearing and settlement systems cannot be overemphasized. This area was identified by the Brady Commission[9] and others after the market break last year as a potential point of vulnerability in the U.S. financial system. The overloading of the * * * clearing systems last October induced breakdowns that dramatically increased uncertainty among investors and likely contributed to additional downward pressures on prices."[10]

At the same time, in March 1988, the Group of Thirty[11] organized a symposium in London to discuss the state of clearance and settlement in the world's principal securities markets. The symposium participants concluded that there was a need for international agreement on a uniform set of practices and standards for the clearance and settlement of securities transactions in order to improve the process. In light of this conclusion, the Group of Thirty organized a Steering Committee to work with a professional and broad-based Working Committee in order to produce a set of operational proposals for practices and standards in the area of clearance and settlement. The Working Committee was composed of clearance

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[1] See *e.g.*, Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report"); Working Group on Financial Markets, Interim Report to the President of the United States (May 1988) (Appendix D) (the Working Group is chaired by the Secretary of the Treasury and its members include the Chairmen of the SEC, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System); Presidential Task Force on Market Mechanisms, Report to the President of the United States (January 1988) (the So-called "Brady Report"); and General Accounting Office, Preliminary Observations on the October 1987 Crash (January 1988).

[2] Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989) ("Group of Thirty Report"); U.S. Working Committee, Group of Thirty Clearance and Settlement Project, Implementing the Group of Thirty Recommendations in the United States (November 1990); and the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets, Report Submitted to the Chairman of the U.S. Securities and Exchange Commission (May 1992) ("Bachmann Task Force Report").

[3] 17 CFR 240.15c6–1.

[4] 15 U.S.C. 78s(b)(1).

[5] The term "clearance" includes the comparison of data regarding the terms of settlement of securities transactions and the allocation of securities settlement responsibilities. After trade comparison, most trades clear through a continuous net settlement system ("CNS") operated by a clearing corporation registered with the Commission under Section 17A of the Exchange Act. Under CNS, the clearing corporation nets each clearing member's purchases and sales to arrive at a daily net receive or deliver obligation for each security and a daily net settlement payment obligation. The term "settlement" includes the delivery of securities in exchange for funds, pursuant to the terms of the original transaction, and the custody of securities. See section 3(a)(23)(A) of the Exchange Act, 15 U.S.C. 78c(a)(23)(A).

[6] See Market Break Report, Chapter 10 at 20–21. Many customers, institutional and otherwise, open their accounts with an introducing broker. Introducing brokers use executing brokers (which are usually members of a clearing agency) to execute and clear customer trades. If the customer fails to meet margin calls made by the executing firm or fails to pay on T+5 the settlement amount for securities it has purchased, the introducing or executing broker must pay that debt. If the amount exceeds the introducing broker's ability to pay and it fails, the clearing member executing firm will be responsible for the customer's debt.

[7] See note 1 supra.

[8] Since 1987, considerable progress has been made toward increasing clearing corporations' capabilities to handle large volumes of trades and manage financial risk. Examples include increases in the number of cross-margining facilities sponsored by The Options Clearing Corporation and commodity clearing organizations, expansion of the depository system to include new financial products such as commercial paper, and development of extensive lines of communication between banking, securities, and commodities organizations.

[9] See Brady Report, note 1 supra.

[10] See Remarks by Alan Greenspan before the Annual Convention of the Securities Industry Association (November 30, 1988).

[11] The Group of Thirty, established in 1978, is an independent, non-partisan, non-profit organization composed of international financial leaders whose focus is on international economic and financial issues.

and settlement professionals from different countries.

In March 1989, the Group of Thirty issued a report by the Steering Committee setting forth nine recommendations ("Group of Thirty recommendations"),[12] including implementation of T+3 settlement, to modernize and improve clearance and settlement systems at a local level and to make them compatible with each other. These recommendations were:

- By 1990, trade comparison between direct market participants should occur by the day following the date of trade execution;
- By 1992, indirect market participants should be members of a trade comparison system which achieves positive affirmation of trade details;
- By 1992, each country should have an effective and fully developed central securities depository;
- By 1992, if appropriate, each country should implement a netting system;
- By 1992, a delivery versus payment system should be employed as the method for settling all securities transactions;
- Countries should adopt a same-day funds payment method for settlement of securities transactions;
- A rolling settlement system should be adopted by all markets as follows: (a) By 1990, final settlement should occur on the fifth day after the date of trade execution, (b) by 1992, final settlement should occur on the third day after the date of execution;
- Securities lending and borrowing should be encouraged as a method of expediting the settlement of securities transactions; and
- By 1992, each country should adopt the standards for securities numbering and messages developed by the International Standards Organization.

Following the release of the Group of Thirty Report, several countries initiated separate efforts to study how their clearance and settlement systems compared with the Group of Thirty recommendations. In the U.S., a Working Group was created for this purpose. The U.S. Working Group concluded that, while the U.S. was in compliance with seven of the Group of Thirty recommendations, continued consideration should be given to the implementation of the two remaining recommendations, T+3 settlement and settlement in same-day funds.[13]

Two subcommittees, the U.S. Steering Committee and a U.S. Working Committee of the Group of Thirty ("the U.S. committees") were formed to evaluate the benefits of shortening the settlement cycle and converting to the use of same-day funds. The U.S. committees urged adoption of the two recommendations and, in order to support a move to T+3 settlement, also recommended that: (1) Book-entry settlement be mandatory for transactions between financial intermediaries and between financial intermediaries and their institutional customers; and (2) all new securities issues should be made eligible for depository services.

In November 1990, the Commission held a Roundtable to discuss the recommendations of the U.S. committees. Roundtable participants generally agreed that the two recommendations should be adopted, but urged that the timetables for implementation be sufficiently flexible so that obstacles to implementation could be fully explored and practical solutions found and implemented. Roundtable participants expressed concern that broker-dealers conducting a predominantly retail business might have difficulty operating in a three-business-day settlement timeframe in the national clearance and settlement system because of the need, among other things, to obtain payment from retail clients for purchase transactions.

Subsequently, Chairman Breeden asked the U.S. Steering Committee to form a task force to evaluate independently whether and what changes to the clearance and settlement system should be pursued, and to determine a timetable for implementation of the changes.[14] An industry task force, headed by John W. Bachmann ("Bachmann Task Force" or "Task Force") took up that challenge.[15]

In May 1992, the Bachmann Task Force presented its findings and recommendations to the Commission. Among other things, the Task Force concluded that "time equals risk"[16] and that the settlement cycle for corporate and municipal securities should be compressed to T+3. The Task Force recommended that this be accomplished by July 1994.[17] On June 22, 1992, the Commission published the Task Force Report in the **Federal Register** for public comment.[18]

The Task Force recommendations generated substantial comment. The Commission received 1,000 comment letters from banks, broker-dealers, investment advisors, trade associations, clearing agencies, exchanges, transfer agents, and individual investors. Although many of these commentators expressed concern about the potential loss of access to physical certificates,[19] in large part they were supportive. Some of the commentators raised concerns about the specifics of implementation and about progress on industry initiatives that would facilitate a move to T+3 settlement. Indeed, the Commission considered these comments in formulating this proposal. Many of the issues noted by the commentators were identified by the Task Force and, as discussed in more detail below, efforts to address them are nearing completion.[20]

II. T+3 Settlement: Need for the Proposed Rule

In the U.S., the settlement cycle varies among markets. Settlement in the futures, options, and government securities markets occurs on the day after trade date ("T+1") using same-day

[12] See Group of Thirty Report, note 2 *supra*.

[13] "Same-day funds" refers to payment in funds that are available on payment date and generally are transfered by electronic means.

[14] Letter from Richard C. Breeden, Chairman, Commission, to Lewis W. Bernard, Chairman, U.S. Steering Committee, Group of Thirty, dated July 11, 1991.

[15] John W. Bachmann is the Managing Principal of Edward D. Jones & Co. of St. Louis, Missouri. In addition to Mr. Bachmann, the members of the Bachmann Task Force included: David M. Kelly, President and Chief Executive Officer, National Securities Clearing Corporation ("NSCC"); Richard G. Ketchum, Executive Vice President and Chief Operating Officer, National Association of Securities Dealers ("NASD"); John F. Lee, President, New York Clearing House; Gerard P. Lynch, Managing Director, Morgan Stanley and Company Inc.; James J. Mitchell, Senior Executive Vice President, Northern Trust Company; Richard J. Stream, Managing Director, Piper Jaffray and Hopwood and Company; and Arthur L. Thomas, Senior Vice President, Merrill Lynch and Co., Inc.

[16] See Bachmann Task Force Report for a discussion of the Task Force risk analysis.

[17] The Task Force made eight other recommendations that would facilitate settling securities transactions on T+3: revising the Automated Clearing House System; requiring an interactive institutional delivery process; settling all transactions among financial intermediaries and their institutional customers in book-entry form only and in same-day funds; depository eligibility for new issues; monitoring flipping (*i.e.*, the sale of stock back to the underwriting syndicate during the new issue stabilization period); expanding cross margining; streamlining the handling of physical certificates; and monitoring all market activity.

[18] See Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812.

[19] Over 800 of the comment letters were from individual investors responding to the recommendation to streamline the handling of physical certificates. The letters indicate a belief that the Task Force recommendation to streamline the handling of physical certificates would result in the elimination of physical certificates and force investors to hold securities in street name. The Task Force did not propose eliminating physical certificates for those retail investors who choose to maintain their record of ownership in that form.

[20] The Commission will consider comments filed in response to publication of the Bachmann Task Force Report, note 2 *supra*, in connection with this proposal.

funds. Settlement of most trades in corporate and municipal securities, on the other hand, takes place on the fifth business day after the trade date ("T+5") with money payments among financial intermediaries made in the next-day funds [21] through the exchange of certified checks between clearing corporations and their participants (thus, financial intermediaries have good funds on "T+6").

Settlement securities transactions on T+5 is largely a function of market custom and industry practice.[22] There is no federal rule that mandates a specific settlement cycle for securities.[23] Self-regulatory organization ("SRO") rules, however, define "regular way" settlement as settlement on T+5.[24]

In today's market environment, the value of securities positions can change suddenly and drastically causing a market participant to default on unsettled positions. Clearing corporations function as, among other things, post-trade processing facilities and guarantors of post-trade settlements.[25] To protect against the credit risk [26] and market risk [27] presented by unsettled positions, clearing corporations obtain contributions from their members to a pool of funds designed to provide ready source of liquidity in case of a member default.[28] Any sizable loss in liquidating the open commitments of a defaulting member, however, would be assessed *pro rata* against all clearing members.[29]

The Bachman Task Force Report argues persuasively that a shorter settlement period will reduce market risk to a clearing corporation, and thus to all members of the clearing corporation and to the market as a whole. The Task Force collected data indicating that moving settlement from T+5 to T+3 reduced the risk to National Securities Clearing Corporation ("NSCC") [30] by 58% in the event of the failure of an average large member during normal market conditions. Based on this quantitative risk assessment, the Task Force concluded that reducing the time between trade execution and settlement would reduce risk in the system and that the U.S. securities markets can be made safer by shortening the settlement cycle to T+3.

In view of this analysis and for the reasons set out below, the Commission believes that T+3 settlement represents an important and feasible near-term goal. First, at any given point in time, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.[31] Second, the proposed rule will reduce the liquidity risk among the derivative and cash markets and reduce financing costs by allowing investors that participate in both markets to obtain the proceeds of securities transactions sooner. Finally, a shorter settlement timeframe could encourage greater efficiency in clearing agency and broker-dealer operations.

III. Description of Proposed Rule 15c6–1

Proposed Rule 15c6–1 would provide that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security,[32] municipal security, commercial paper, bankers' acceptances, or commercial bills) [33] that

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[21] The term "next-day funds" refers to payment by means of certified checks passing between the clearing corporation and its members.

[22] Indeed, prior to 1968, equity transactions in the U.S. were settled on the fourth day after the trade date ("T+4"), without causing undue harm to retail customers. Remarks of Commissioner Mary L. Schapiro before the Securities Industry Association Regional Conference (March 20, 1991).

[23] Regulation T imposes, among other things, initial margin requirements and payment rules on securities transactions. Specifically, Regulation T requires a margin call to be satisfied within seven business days after the margin deficiency was created or increased, and requires a broker or dealer to obtain full cash payment for customer purchases within seven business days of the date of the transaction. Regulation T is issued by the Board of Governors of the Federal Reserve System pursuant to the Exchange Act and its principal purpose is to regulate extensions of credit by and to brokers and dealers. See 15 U.S.C. 78a *et seq.*, Part 220. In addition, Section 22(e) of the Investment Company Act of 1940 provides that no registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after tender of the security to the company, except under specified circumstances.

[24] See e.g., National Association of Securities Dealers, Inc. Uniform Practice Code ¶ 3512, § 12 and New York Stock Exchange Rule 64. If Rule 15c6–1 is adopted, SROs will conform their rules to the timeframe established in Rule 15c6–1.

[25] Upon reporting matched trade information to its members, the clearing corporation becomes the counterparty to every trade and guarantees payment and delivery. See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 ("Full Registration Order").

[26] "Credit risk" is the risk that the credit quality of one party to a transaction will deteriorate to the extent that it is unable to fulfill its obligations on settlement date. See Securities Exchange Act Release No. 30986 (July 31, 1992), 57 FR 35856.

[27] "Market risk" is the risk that the value of securities bought or sold will change between trade execution and settlement so that the purchase or sale will result in a financial loss.

[28] See Securities Exchange Act Release Nos. 16900 (June 17, 1980), 45 FR 4192 (announcing the Division of Market Regulation's standards for the registration of clearing agencies); 20221 (September 23, 1983), 48 FR 45167 ("Full Registration Order"); and 30879 (July 1, 1992), 57 FR 30279 (order approving modifications to the CNS portions of the National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation, and Securities Clearing Corporation of Philadelphia clearing fund formulas).

[29] See, e.g., NSCC Rule 4. See also, Market Break Report, Chapter 10.

[30] NSCC is one of the largest U.S. clearing corporations and is registered as a clearing agency under Section 17A of the Act. NSCC has 350 netting members. As of April 30, 1992, total required deposits to NSCC's clearing fund were $368 million. Because members do not always withdraw excess funds, NSCC had on deposit $502 million.

[31] As noted by Commissioner Mary L. Schapiro, "A shorter settlement time period will reduce the number of outstanding trades, thereby reducing the counterparty risk and market exposure associated with unsettled securities transactions." See Remarks of Mary L. Schapiro to The Group of Thirty U.S. Steering Committee (March 1, 1990); See also Remarks of Mary L. Schapiro before the Securities Industry Association's Annual Operations Conference (May 17, 1990).

[32] The Commission notes that issuers (or guarantors) of mortgage-backed securities include government agencies or government sponsored enterprises ("GSEs") such as the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, as well as private entities. Mortgage-backed securities include pass-through certificates, representing an undivided interest in a pool of mortgages, and collateralized mortgage obligations ("CMOs"), representing an interest in part of the cash flow generated by a pool of mortgages or collection of pass-through certificates.

Mortgage-backed securities issued or guaranteed by U.S. government agencies or GSEs generally fall within the definition of government security in Section 3(a)(42) of the Exchange Act and would be treated as such under proposed Rule 15c6–1. Transactions in mortgage-backed securities issued by others (e.g., CMOs) would fall within the scope of proposed Rule 15c6–1. Accordingly, the Commission invites comment on whether inclusion in a T+3 settlement timeframe would create difficulties for issuers or investors in the mortgage-backed securities market. The Commission also invites commentators to address whether additional safeguards related to clearance and settlement of mortgage-backed securities, particularly mortgage-backed securities that qualify as government securities, would be appropriate or desirable to address concerns identified during the 1989 demise of Drexel. See Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, before the Committee on Banking, Housing, and Urban Affairs, United States Senate, Concerning the Bankruptcy of Drexel Burnham Lambert Group, Inc. (March 2, 1990). (Delivery and payment practices for mortgage-backed securities transactions led to gridlock during the demise of a holding company of a registered broker-dealer.)

[33] As noted above, because exchange-traded options routinely settlement on T+1, transactions in such securities should be essentially unchanged. Transactions in corporate debt and equity, as well as limited partnership interests and securities issued by investment companies, would be covered by the rule. The Commission invites comment on whether the scope of the rule is appropriate and whether any particular characteristics of different types of securities (e.g., mutual fund shares and limited partnership interests) will create difficulties for broker-dealers and investors if included in or excluded from the rule. For example, the Commission notes that mutual funds often permit investors to purchase shares by telephone. In that context, it may be necessary for mutual funds and broker-dealers to implement operational changes to confirm the sale to the investor, to receive the proceeds and settle the transaction, all within T+3.

provides for payment of funds and delivery of securities later than the third business day after the date of the contract. The proposed rule would allow a broker or dealer to agree that settlement will take place in more or less than three business days. The agreement, however, must be express and reached at the time of the transaction.[34]

Most broker-dealers do not specify all of the terms of a trade before execution, but rely on industry custom and SRO rules for those terms. The Commission does not intend to change industry custom to require broker-dealers to specify contract terms. Accordingly, if adopted, Rule 15c6–1 is designed to establish T+3 as a new "default" contract term.[35]

Failure to meet contractual obligations to deliver by T+3 would result in a failure to settle at the clearing corporation. Open trades that fail to settle on settlement date typically are marked-to-the-market on a daily basis and carried forward to net against other open positions. Failure to settle a payment obligation to the clearing corporation generally could result in the suspension of the clearing member and the liquidation of all the clearing member's open positions.

The Commission notes that the proposed rule should not affect the ability of individual investors to obtain a physical certificate. Individual investors who desire to maintain record ownership in certificated form still will be able to do so.

Rule 15c6–1 would not apply to municipal securities. Differences between the corporate and municipal securities markets may justify a different timetable for including municipal securities within a T+3 settlement cycle.[36] Nevertheless, the Commission remains interested in how to achieve the safety and efficiency benefits of T+3 settlement for municipal securities. Accordingly, the Commission seeks public comment on the most appropriate way and a reasonable timeframe for bringing municipal securities within the scope of the rule.

IV. The Proposed Timetable for Commission Action

The Commission recognizes that certain building blocks must be in place prior to compressing the settlement cycle.[37] Many of those building blocks, as discussed in more detail below, currently are being addressed by the SROs. In addition, the Commission recognizes that some brokers and dealers may need to make operational and procedural changes to comply with a three-day settlement period. In view of the need for more work at the SRO level and the Commission's desire to minimize the potential cost of complying with the proposed rule, the Commission is proposing an extended transition period to allow affected parties to implement necessary changes gradually.

Since 1987, the SROs have made significant progress on recommendations critical to achieving T+3 settlement. Specifically, the Depository Trust Company ("DTC") [38] is designing a system to convert from batch to interactive processing for the Institutional Delivery System.[39] In the current batch processing environment, participants receive the reports on T+1 with the goal of receiving affirmation on T+2. To move to T+3 settlement, the affirmation process must be completed on T+1. This can be accomplished through an interactive system whereby information is processed on receipt with reports distributed on request. DTC expects to implement the system on a voluntary basis during the third quarter of 1993.

Additionally, under the auspices of the Legal and Regulatory Subgroup ("Subgroup") of the U.S. Working Committee of the Group of Thirty, the SROs have drafted a uniform rule that would require book-entry settlement among financial intermediaries. The SROs are in the process of adopting the rule and expect to submit rule changes to the Commission for consideration in the first quarter of 1993.

The Subgroup also has considered the need for a uniform SRO rule requiring depository eligibility for all new issues and, in connection with this, requested the Division of Corporation Finance to consider recommending that the Commission promulgate a new disclosure requirement under the 1933 Act for initial public offerings ("IPOs").[40] In brief, the Subgroup has urged that the Commission require disclosure of whether the securities being offered in an IPO are depository-

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[34] Thus, the proposed rule would permit broker-dealers to enter into trades, such as seller's option trades, that typically settle as many as sixty days after execution as specified by the parties to the trade at execution. It is not intended to permit broker-dealers to specify before execution of specific trades that a group of trades will be settled in a timeframe different from Rule 15c6–1.

[35] See note 24 supra and accompanying text.

[36] The Commission recognizes that to date moving municipal securities to a T+3 settlement timeframe has not gained the same consensus as shortening the settlement cycle for publicly-traded corporate securities. The Municipal Securities Rulemaking Board ("MSRB") has noted a number of differences between the corporate and municipal securities markets that may make a move to T+3 settlement problematic. For example, while corporate issues number in the thousands, there are over a million municipal securities "maturities," each of which is a separate security for purposes of trading and clearance and settlement. Another difference involves issuers. Approximately 80,000 entities issue municipal securities. Municipal securities are not subject to provisions of the Securities Act of 1933 ("1933 Act") and are exempted from many provisions of the Exchange Act. The municipal securities industry also has not yet reached parity with the corporate securities industry with regard to the use of automated clearance systems. Automated clearance systems for municipal securities transactions depend on a nine-digit CUSIP number. "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. Although most outstanding municipal securities maturities have assigned CUSIP numbers, there probably are several thousand outstanding maturities that do not. Finally, trade data for municipal securities transactions is not captured on a central electronic trade execution or trade reporting system, making acceleration of the comparison cycle for municipal securities particularly difficult. The initial comparison rate for municipal securities inter-dealer trades, which require submission to NSCC on T+1, is 76% for regular-way trades and only about 45% for non-syndicate, when-issued trades. Letter from Hal Johnson, Deputy General Counsel, MSRB, to Dennis M. Earle, Executive Director, U.S. Working Committee, Group of Thirty Clearance and Settlement Project (March 18, 1991).

[37] In recognition of the importance of broker-dealer settlement practices to the clearance and settlement process, the Securities Acts Amendments of 1975 ("1975 Amendments") provided for federal regulation of the time and method by which broker-dealers settle securities transactions. In adopting the 1975 Amendments, Congress directed the Commission to act in the national interest to achieve safety and efficiency in clearance and settlement. Section 17A of the Exchange Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities). See 15 U.S.C. 78o, 78q–1, and 78w. That directive was revised by the Market Reform Act of 1990 to reflect the interdependence of options, futures, and equity markets that trade products involving securities or stock indexes. As noted above, recent events underscore that safety and efficiency necessitate changes in industry practice and the Commission has an obligation to lead and direct those changes. Nevertheless, the Commission recognizes that changes in industry practice and custom such as earlier settlement timeframes must involve marketplaces, marketplace regulators, and participants in those markets acting cooperatively.

[38] DTC is the largest U.S. securities depository and is registered with the Commission as a clearing agency under Section 17A of the Act. DTC is a New York State limited purpose trust company and member of the Federal Reserve System. DTC has over 500 participants including broker-dealers and banks. In 1992, DTC held on deposit corporate equity and debt securities, municipal securities, and commercial paper valued at over $5.5 trillion.

[39] In the Institutional Delivery System, brokers notify the depository of trades made by an investment manager on behalf of an institutional client. The investment manager and the client's custodian banks are notified of the trade and asked to affirm that the information is correct. Trades affirmed by T+3 settle automatically by book-entry at the depository on T+5.

[40] Letter from Richard B. Smith and Robert J. Woldow, Co-chairmen, Legal and Regulatory Subgroup, U.S. Working Committee for the Group of Thirty, to Mary E.T. Beach, Senior Associate Director, Division of Corporation Finance, dated December 17, 1992.

eligible and if not, why not. The Subgroup also has suggested that the registration statement include, as an exhibit, a letter from a securities depository registered with the Commission as a clearing agency confirming that the securities to be offered are, or will be (by the time of the public sale or following completion of an underwritten distribution), eligible for deposit with that clearing agency.

Finally, NSCC and DTC, in consultation with Commission staff, have designed a same-day funds system which has been presented to their participants for comment. DTC has assembled a task force under the auspices of the U.S. Working Committee to examine issues that were identified in the comment process, such as how and when dividends and interest will be paid in a same-day funds system (*e.g.*, paid in same-day funds on the date of receipt or in next-day funds on payable date). The Commission recognizes the importance of these initiatives in achieving a shorter settlement cycle and expects to work diligently with the SROs to complete these objectives over the next three years.

The Commission realizes that the proposed rule could entail costs for investors, broker-dealers, banks and other market participants. Assuming the goal of earlier settlement is appropriate, however, the proposed schedule for implementation will allow broker-dealers a three-year period to make the necessary transitional changes. The Commission believes the substantial lead time will allow market participants to make the necessary changes in the most efficient way.

The Commission believes the benefits to be gained from implementing the proposed rule are important to the broker-dealer community and for the protection of investors. The Commission believes, therefore, that the cost impact for broker-dealers resulting from the shorter settlement timeframe will be significantly offset by the benefits to the national clearance and settlement system.

V. Solicitation of Comments

The Commission believes that adoption of this rule would reduce substantially many of the risks that exist within the current clearance and settlement system. Risk to the clearance and settlement system will be reduced because there will be fewer unsettled trades in the system at any given point in time.

The Commission invites commentators to address the merits of the proposed rule. Specifically, the Commission invites comment on the specific costs and benefits of the proposed rule. Interested persons may comment on broker-dealer costs to develop and employ procedures to comply with the proposed rule. Interested persons may also comment on any risk reduction benefits and costs savings that may result from the proposed rule.

Interested persons are invited to comment on the desirability of applying the shorter settlement cycle to limited partnership interests, mutual funds, or municipal securities. The Commission invites comment on whether the scope of the rule is appropriate and whether any particular characteristics of securities affected by the rule will create difficulties for broker-dealers and investors if included in or excluded from the rule. In addition, interested persons are invited to comment on whether the proposed implementation date of January 1, 1996 is sufficient for broker-dealers to make the necessary operational and procedural changes in an effective manner, or whether an implementation date of January 1, 1995 or July 5, 1995 would be equally sufficient.

The Commission also solicits comment on the desirability of adopting a disclosure requirement under the 1933 Act concerning depository eligibility of IPOs. Specifically, commentators should address whether such information would be material to investors in initial public offerings.

In addition to the specific requests for comment set forth above, the Commission requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed Rule 15c6–1. The IRFA notes the potential costs of operational and procedural changes that may be necessary to comply with the proposed rule. In addition, the IRFA notes the importance of the risk reduction that will result from a shorter settlement cycle. The Commission believes that the benefits of proposed Rule 15c6–1 would outweigh the costs incurred by broker-dealers in complying with the rule.

A copy of the IRFA may be obtained by contacting Richard C. Strasser, Attorney, Branch of Clearing Agency Regulation, Office of Securities Processing Regulation, Division of Market Regulation, Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Registration and regulation of brokers and dealers.

Text of the Proposed Amendment

In accordance with the foregoing, part 240 of chapter II of title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. By adding § 240.15c6–1 to read as follows:

§ 240.15c6–1 Settlement cycle.

A broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

By the Commission.

Dated: February 23, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4577 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 211 and 345

RIN 3220–AA91

Railroad Employers Reports and Responsibilities; Creditable Railroad Compensation; Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its

regulations to modify the method of reporting compensation under the Railroad Retirement Act (RRA) in order to conform such reporting to the reporting required for employment tax treatment of such compensation. These amendments are proposed in order to ease the reporting requirements for employers covered under the RRA.

DATES: Comments should be submitted on or before March 31, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. (312) 751–4920, (FTS 386–4920).

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. (312) 751–4513, (FTS 386–4513), TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Section 209.6 of the Board's regulations (20 CFR 209.6) requires employers to file annual reports of compensation paid to their employees. In preparing these reports the Board has required employers to report required compensation with respect to the year in which it was earned even through paid in a later year, the so-called "earned basis." Thus, for example, compensation attributable to services performed in December but paid in the following January is required to be reported in the report covering the calendar year in which the services were performed, not the year in which the compensation was paid. The only exception made to this rule is found at 20 CFR 211.11 which permits retroactive wage increases to be reported in the year paid subject to an election by the employee to have them reported, by way of an adjustment, in the year in which they were earned.

Prior to 1985 this earned basis of reporting was in accord with the employment tax treatment of compensation. Thus, for purposes of the Railroad Retirement Tax Act (RRTA), compensation earned in December but paid in January was deemed paid in December. 26 CFR 31.3231(e)–1(d)(3). However, for calendar years after 1984 the RRTA requires that compensation be reported on the return covering the year in which it was paid regardless of when it was earned, the so-called "paid basis." See generally §§ 221, 222, 223, 225 and 227 of Public Law 98–76 (97 Stat. 411 (1983)).

This difference in reporting requirements between the RRA and RRTA has caused considerable confusion among employers and employees covered under those statutes. Furthermore, over an employee's career whether compensation is credited on an earned or paid basis has virtually no effect on the amount of an annuity which may become payable under the RRA.

Consequently, the Board proposes to add a new § 209.15 to its regulations which would permit employers to file their reports required under § 209.6 to reflect compensation on a paid basis, subject to the proviso that an employee, within 4 years after the report, may elect to have the compensation reported by way of adjustment under § 209.7 in the year in which it was earned. Thus, the Board is proposing to extend the treatment accorded retroactive wage increases to all payments of compensation except pay for time lost, which is accorded special treatment as set forth in § 209.7(c) of the Board's regulations. In this regard it should be noted that reporting on a paid basis is not mandatory. Thus, where an employer files a report on an earned basis, an employee may *not* require that employer to make an adjustment to a paid basis. In addition, it should be noted that the proposed § 209.15 does not change the definition of a reportable month of service as defined in § 210.3 of Title 20. (Proposed § 209.15 also contains cross references to sections dealing with separation payments, vacation and miscellaneous pay, which contains special reporting requirements relating to these types of payments.)

In addition, the Board proposes to make certain amendments to part 211 of its regulations to conform to the change in reporting in proposed § 209.15. For example, § 211.4 (vacation pay) is proposed to be revised since vacation pay will be reported in accordance with proposed § 209.15. Similar revisions are proposed to be made to § 211.8 (displacement allowance), § 211.9 (dismissal allowance), and § 211.10 (separation allowance).

Section 211.11 (retroactive wage increase) is proposed to be removed since it will no longer be necessary when proposed § 209.15 becomes effective. This section is proposed to be replaced with a new section which explains the operation of section 1(h)(8) of the RRA (45 U.S.C. 231.l8(h)(8)). This section provides that any payment made to an employee by an employer which is subject to railroad retirement taxes shall be considered compensation for purposes of tier I component of the RRA annuity (the component based on the Social Security Act benefit formula), notwithstanding the fact that such payment may be excluded from compensation by another provision of the RRA. This section is important particularly with respect to sick pay, which is excluded from compensation by section 1(h)(6)(v) of the RRA, but is subject to employment taxes under the Railroad Retirement Tax Act (RRTA), and to certain post-employment payments, such as severance pay. Because such payments are subject to employment taxes, section 1(h)(8) requires their inclusion in the definition of compensation for purposes of the computation of the tier I Component. Such payments will be reported in accordance with revised § 209.13.

Sections 211.13 and 211.14 are proposed to be redesignated as §§ 211.14 and 211.15 and a new § 211.13 is proposed to be added which provides that payments made in the year after an employee's death to the employee's survivors or estate are not compensation. These payments have not been subject to employment taxes and therefore should not be considered compensation.

Conforming amendments are proposed for § 211.2 (Definition of compensation). Redesignated section 211.14 (Maximum creditable compensation) is proposed to be amended to provide for the annual publication of the maximum creditable compensation under the RRA. Finally, § 345.4 is proposed to be amended to make it clear that the reporting requirements required under the RRA are also applicable to the Railroad Unemployment Insurance Act (RUIA).

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. There are no new information collections imposed by these amendments.

For the reasons set out in the preamble, 20 CFR parts 209, 211 and 345 of the Board's regulations are proposed to be amended as follows:

List of Subjects in Parts 209, 211 and 345

Railroad employees, Railroad retirement, Railroad Unemployment Insurance, Railroads.

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

1. The authority citation for part 209 continues to read as follows

Authority: 45 U.S.C. 231f.

2. Section 209.13 is revised to read as follows:

§ 209.13 Miscellaneous pay reports.

(a) Employers, insurance carriers or other parties paying miscellaneous pay, as defined in § 211.11 of this chapter, shall furnish the Board an annual report of such pay before the last day of February of the calendar year following

the year in which the payment was made.

(b) Miscellaneous pay reports are to be filed in accordance with instructions issued by the Director of Research and Employment Accounts and are to be mailed directly to the Director. The reports may be made on magnetic tape or the form described in § 200.2 of this chapter.

3. Section 209.15 is added to read as follows:

§ 209.15 Compensation reportable when paid.

(a) *General.* In preparing a report required under this part, an employer may report compensation in the report required for the year in which the compensation was paid even though such compensation was earned by the employee in a previous year. If compensation is reported with respect to the year in which it was paid, it shall be credited by the Board to the employee in such year unless within the four year period provided in § 211.15 of this chapter the employee requests that such compensation be credited to the year in which it was earned. If the employee makes such a request, and the Director of Research and Employment Accounts determines that the compensation should be credited to the year in which it was earned, the reporting employer must file an adjustment report as required by § 209.7 of this part which reports such compensation in the year in which it was earned. The employee may revoke his or her request anytime prior to the filing of the adjustment report. Upon the Board's receipt of the adjustment report, the request becomes irrevocable.

(b) *Pay for time lost.* Compensation which is pay for time lost, as provided in § 211.3 of this chapter, shall be reported with respect to the period in which the time and compensation were lost. For example, if an employee is off work because of an on-the-job injury for a period of months in a given year and in a later year receives a payment from his or her employer to compensate for wages lost during the period of absence, the employer must, by way of adjustment provided for in § 209.7 of this part, report the compensation with respect to the year in which the time and compensation were lost.

(c) *Separation allowance or severance pay.* A separation allowance or severance payment shall be reported in accordance with § 209.14 of this part.

(d) *Miscellaneous pay.* Miscellaneous pay shall be reported in the year in which it was paid in accordance with instructions provided for in § 209.13 of this part.

(e) *Vacation pay.* Vacation pay may be reported in accordance with this section except that any payments made in the year following the year in which the employee resigns or is discharged shall be reported by way of adjustment under § 209.7 of this part as paid in the year of resignation or discharge.

PART 211—CREDITABLE RAILROAD COMPENSATION

4. The authority for part 211 continues to read as follows:

Authority: 45 U.S.C. 231f.

5. Section 211.2 is amended by revising (b)(9) and adding (b)(13) to read as follows:

§ 211.2 Definition of compensation.

* * * * *

(b) * * *

(9) Miscellaneous pay as provided for § 211.11 of this part:

* * * * *

(13) Payments made by an employer with respect to a deceased employee except as provided for in § 211.13 of this part.

* * * * *

6. Section 211.4 is revised to read as follows:

§ 211.4 Vacation pay.

Payments made to an employee with respect to vacation or holidays shall be considered creditable compensation whether or not the employee takes the vacation or holiday.

7. Section 211.8 is revised to read as follows:

§ 211.8 Displacement allowance.

An allowance paid to an employee because he has been displaced to a lower paying position is creditable compensation.

§ 211.9 [Amended]

8. Section 211.9 is amended by removing the last sentence.

9. Section 211.10 is revised to read as follows:

§ 211.10 Separation allowance or severance pay.

Separation or severance payments are creditable compensation except that no part of such payment shall be considered creditable compensation to any period after the employee has severed his or her employer-employee relationship except as provided for in § 211.11 of this part.

10. Section 211.11 is revised to read as follows:

§ 211.11 Miscellaneous pay.

Any payment made to an employee by an employer which is excluded from compensation under the Railroad Retirement Act, but which is subject to taxes under the Railroad Retirement Tax Act, shall be considered compensation for purposes of this part but only for the limited purpose of computing the portion of the annuity computed under sections 3(a), 4(a), or 4(f) of the Railroad Retirement Act (commonly called the tier I component).

11. Sections 211.13 and 211.14 are redesignated §§ 211.14 and 211.15 and a new 211.13 is added as follows:

§ 211.13 Payments made after death.

Payments made by an employer with respect to a deceased employee but paid in the year after the employee's death to the employee's survivors or estate are not creditable compensation.

12. Newly redesignated § 211.14, is revised to read as follows:

§ 211.14 Maximum creditable compensation.

Maximum creditable compensation for calendar years after 1984 is the maximum annual taxable wage base defined in section 3231(e)(2)(b) of the Internal Revenue Code of 1986. In November of each calendar year the Director of Research and Employment Accounts shall notify each employer of the amount of maximum creditable compensation applicable to the following calendar year.

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

13. The authority citation for part 345 is revised to read as follows:

Authority: 45 U.S.C. 362(1).

14. Section 345.4 is revised to read as follows:

§ 345.4 Employers' reports of compensation of employees.

The provisions of part 209 of this chapter shall be applicable to the reporting of compensation under the Railroad Unemployment Insurance Act to the same extent and in the same manner as they are applicable to the reporting of compensation under the Railroad Retirement Act.

Dated: February 19, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–4383 Filed 2–26–93; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 93–6]

RIN 2125–AD08

Erosion and Sediment Control on Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: Section 1057 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 requires the Secretary to develop erosion control guidelines for States to follow when carrying out Federal-aid construction projects. Pursuant to this authority, the existing regulation, issued in 1974, would be updated and modified by the FHWA to reflect current state-of-the-art practices and management techniques. To fulfill the requirements of section 1057, the FHWA proposes to adopt, as guidelines, the American Association of State Highway and Transportation Officials (AASHTO) publication "Erosion and Sediment Control in Highway Construction," Volume III, 1992. The updated regulation would include a statement recommending that each State highway agency (SHA) apply these guidelines, or their own more stringent guidelines, to develop specific standards and practices for the control of erosion.

DATES: Comments must be received on or before June 28, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 93–6, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. A copy of the AASHTO publication and all comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robin L. Schroeder, Construction and Maintenance Division, Materials Branch, HNG–23, 202–366–1577; or Mr. Lee Burstyn, Office of the Chief Counsel, HCC–31, 202–366–1366; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Congressional Mandate

Section 1057 of the ISTEA (Pub. L. 102–240, 105 Stat. 1914, 2002) provides that the Secretary develop erosion control guidelines for States to follow when carrying out highway construction projects. Section 1057 specifically provides that these guidelines may not preempt any other State requirements for erosion control if State requirements are more stringent. In addition, the guidelines must be developed to conform with section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1339) and coastal nonpoint source pollution control guidelines under section 6217(g) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388–314). These guidelines are to be followed for any project funded, in whole or in part, under Title 23, United States Code, Highways.

Current Federal-Aid Guidance

Currently 23 CFR part 650, subpart B, Erosion and Sediment Control on Highway Construction Projects (23 U.S.C. 109 (a), (g) and (h)), contains material on this subject. This subpart, which was last updated in 1974, states that it is the policy of the FHWA to minimize erosion and sediment damage to highways and adjacent properties and to abate pollution of surface and ground water resources resulting from Federal-aid highway projects.

Existing Guidance

There is a wide variety of publications, pamphlets, and specifications available on the subject of erosion control. The AASHTO has addressed this issue in a number of documents including its "Model Drainage Manual," 1991, "Construction Manual," 1984, and its "Highway Drainage Guidelines," 1992. These documents are available for purchase from the American Association of State Highway and Transportation Officials, suite 225, 444 North Capital St., NW., Washington, DC 20001. They may be inspected at the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D.

Section 1057 of the ISTEA requires that the FHWA develop erosion control guidelines. After conducting a review of the available literature on the subject, it was determined that a practical, efficient, and cost effective approach would be to adopt existing, state-of-the-art guidelines, if such guidelines would satisfy the requirements of this section.

The FHWA then determined that the AASHTO publication "Erosion and Sediment Control in Highway Construction," Volume III, 1992, would adequately fulfill the requirements of section 1057. This publication is part of the AASHTO's "Highway Drainage Guidelines," and was recently revised and approved by the AASHTO. The original Volume III was last revised in 1973, and is cited in 23 CFR 625.5(b)(6). The updated version contains a comprehensive view of the development, implementation, and maintenance of erosion and sediment control plans and appurtenances. It also identifies temporary and permanent erosion and sediment control practices and details specific design parameters. Examples of the design and use of some typical erosion control devices are also included.

As mentioned earlier, section 1057 requires that any guidelines that are developed must conform with section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1339) and the coastal nonpoint source pollution control guidelines under section 6217(g) of the Omnibus Budget Reconciliation Act of 1990. The updated AASHTO guidelines include design and implementation details that will contribute to the development and implementation of best management practices (BMPs) in highway construction. These BMPs will aid in the control of nonpoint source pollution, which is the intent of the above two laws.

Additional Guidance

Since highway construction traverses a wide range of locations, each having its own particular problems and corresponding solutions in the area of erosion and sediment control, the FHWA is recommending that each SHA develop detailed guidelines to address its own erosion and sediment control problems. This will allow each SHA to put greater emphasis on problems and solutions that have been historically identified within individual States. This will also allow SHAs the latitude to develop and apply guidelines which are more stringent than the AASHTO guide.

Request for Comments

The FHWA requests comments and suggestions concerning the proposed changes to 23 CFR part 650, subpart B. Comments on the applicability of the 1992 AASHTO guidelines to be used on Federal-aid construction projects and the recommendation that SHAs develop their own specific guidelines are of particular interest. Comments to the docket should be submitted by the deadline indicated above.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulations) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA, at 23 CFR part 650, Subpart B, as well as other Federal agencies, currently have regulations regarding erosion and sediment control. Adopting the ASSHTO guidelines would merely update and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking would be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposal on small entities. The FHWA concluded that it and other Federal agencies currently have regulations dealing with erosion and sediment control, and adopting the 1992 AASHTO guidelines would merely reinforce existing policy. Therefore, the FHWA hereby certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rulemaking would provide guidance to SHAs when implementing or developing erosion and sediment control guidelines. This would aid in the control and prevention of nonpoint source pollutants. It would not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Regulation Identification Number

A regulation identification 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Grant programs-transportation, Highways and roads, Soil conservation.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 650, subpart B as set forth below.

Issued on: February 22, 1993.

E. Dean Carlson,

Executive Director.

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. The authority for part 650 is revised to read as follows:

Authority: 23 U.S.C. 109 (a) and (h), 144, 151, 315, and 319; 23 CFR 1.32; 49 CFR 1.48(b), E.O. 11988—Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); § 161 of Pub. L. 97–424, 96 Stat. 2097, 3135; § 4(b) of Pub. L. 97–134, 95 Stat. 1699; 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*; and § 1057 of Pub. L. 102–240, 105 Stat. 2002.

Subpart B—Erosion and Sediment Control on Highway Construction Projects

2. Part 650 is amended by revising §§ 650.201, 650.203, 650.205 and 650.209 and by adding § 650.211 to read as follows:

§ 650.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the control of erosion, abatement of water pollution, and prevention of damage by sediment deposition from all projects funded under title 23, United States Code.

§ 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that all highways funded in whole or in part under title 23, United States Code, shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources. Guidance for the development of standards used to minimize erosion and sediment damage is referenced in § 650.211 of this part.

§ 650.205 Definitions.

Erosion control measures and practices are actions that are taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed.

Permanent erosion and sediment control measures and practices are installations and design features of a construction project which remain in place and in service after completion of the project.

Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

Sediment control measures and practices are actions taken to control the deposition of sediments resulting from surface runoff.

Temporary erosion and sediment control measures and practices are actions taken on an interim bases during construction to minimize the disturbance, transportation, and unwanted deposition of sediment.

* * * * *

§ 650.209 Construction.

(a) Permanent erosion and sediment control measures and practices shall be established and implemented at the earliest practicable time consistent with good construction and management practices.

(b) Implementation of temporary erosion and sediment control measures and practices shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout construction.

(c) Erosion and sediment control measures and practices shall be monitored and revision made when needed to insure that they are fulfilling their intended function during the construction of the project.

(d) Federal-aid funds shall not participate in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or

failure to implement sufficient control measures.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stockpiled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

§ 650.211 Guidelines.

(a) The FHWA adopts the AASHTO Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992,[1] as guidelines to be followed on all construction projects funded under title 23, United States Code. These guidelines are not intended to preempt any requirements made by or under State law if such requirements are more stringent.

(b) Each SHA should apply the guidelines referenced in paragraph (a) of this section or apply its own guidelines, if these guidelines are more stringent, to develop standards and practices for the control of erosion and sediment on Federal-aid construction projects. These specific standards and practices may reference available resources, such as the procedures presented in the AASHTO "Model Drainage Manual," 1991.[2]

[FR Doc. 93–4526 Filed 2–26–93; 8:45 am]
BILLING CODE 4910–22–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–4591–4]

Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines; Technical Amendments to the Test Procedures for Methanol-Fueled Motor Vehicles and Motor Vehicle Engines and Petroleum-Fueled Motor Vehicles; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal includes revisions to test procedures previously promulgated for methanol-fueled vehicles. These revisions make minor corrections to the procedures, provide additional options, and clarify the Agency's regulatory intent. This proposal is the result of a cooperative interaction between Agency staff and the affected automobile and engine manufacturers. Overall, the changes are expected to allow manufacturers more flexibility in complying with the applicable regulations, without sacrificing accuracy of test results. Among the most significant changes are revisions to the testing requirements for flexible fuel vehicles (FFVs), the allowance of electronic mass flow controllers for methanol and formaldehyde sample systems, the allowance of lower temperatures for some heated components, establishment of wider tolerances for SHED and CVS verifications, and specification of the fuel to be used with all flame ionization detectors. It should be noted that the revision related to flame ionization detectors affects all light-duty vehicles, including gasoline-fueled vehicles.

DATES: Written comments on this action will be accepted until April 30, 1993. Further information on the submission of comments can be found under "Public Participation". If requested, the Agency will hold a public hearing on March 31, 1993.

ADDRESSES: Comments should be sent to: EPA Air Docket LE–131, Attention Docket No. A–92–02, located at the Air Docket Section, U.S. Environmental Protection Agency, room M–1500, 401 M Street SW., Washington, DC, 20460. The public hearing, if held, will be at the National Vehicle and Fuels Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Material relevant to this rulemaking is contained in the EPA Air Docket, and may be inspected between 8 am and 3 pm. Monday through Friday. Information may also be obtained from the U.S. Environmental Protection Agency, Office of Mobile Sources, Regulation Development and Support Division, Engine and Vehicle Regulation Branch, 2565 Plymouth Road, Ann Arbor, MI, 48105.

FOR FURTHER INFORMATION CONTACT: Charles Moulis, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 741–7826.

SUPPLEMENTARY INFORMATION: This proposal covers many areas related to the testing of methanol-fueled vehicles. The most significant aspects of the proposal are described below. The reader is advised, however, to read the draft regulatory language, which is available docket number A–92–02, for complete details.

A. Proposed Revisions

1. Test Fuels

Manufacturers of methanol-fueled flexible fuel vehicles (FFVs) are required to comply with the methanol-fueled vehicle standards when using any fuel mixture within the vehicle's design range. (FFVs are vehicles that are designed to operate using a methanol fuel, gasoline and all mixtures of the two).

In order to ensure that such vehicles meet the standards over the full range of fuel mixtures, the existing regulations (40 CFR 86.113) require that manufacturers submit test data for worst case fuel mixtures. However, since the time of final promulgation of this requirement, it has become apparent that implementation of such an approach can be problematic. Identification of the worst case exhaust fuel mixture is difficult since there is more than one exhaust pollutant. The mixture that would produce the highest organic emissions would probably be different from the mixture that would produce the highest NO_x or CO emissions. The worst case evaporative fuel would probably also be different. Therefore, while the Agency will still require that FFVs comply with the standards when operating on any fuel mixture within the design range, the means by which this compliance is demonstrated is being changed. Rather than attempting to identify a single worst case fuel, it is proposed that manufacturers demonstrate compliance by submitting test data for three fuel mixtures during certification. These three mixtures are: The methanol fuel expected to be found in use, gasoline, and the highest volatility mixture. The use of straight methanol fuel (e.g., M85) and straight gasoline would demonstrate compliance at the two extremes of operation. The high volatility mixture would ensure proper evaporative emissions controls. This mixture will be approximately M10 (the mixture will contain between nine and thirteen percent methanol). While the Agency is proposing to accept testing on the above fuels as an adequate demonstration for certification, it should be emphasized that the Agency will retain the right to perform its confirmatory testing using any mixtures within the design range

[1] This document is available for inspection from the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D. It may be purchased from the American Association of State Highway and Transportation Officials offices at suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

[2] This document is available for inspection from the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D. It may be purchased from the American Association of State Highway and Transportation Officials offices at suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

and will require compliance with the standards over the full range as well.

For mileage accumulation of FFVs, the existing regulations also require the use of the worst case fuel mixtures. For reasons similar to those discussed above, the Agency no longer believes that this is appropriate. Therefore, EPA is proposing to allow manufacturers to alternate between the methanol fuel (e.g., M85) and gasoline, at mileage intervals not to exceed 5000 miles. There would also be an additional requirement that the total volume of the methanol fuel used for mileage accumulation be at least 25 percent, but not more than 75 percent of the total fuel volume used. The Agency believes that these requirements will be sufficient to demonstrate the durability of FFVs in use, where the vehicles may be operated on only methanol, only gasoline, or alternately on both fuels. EPA is not proposing which test fuel mixtures should be used for the emissions tests performed to determine deteriorations factors, but the Agency is currently recommending that deterioration factors be determined for both the alcohol fuel and the gasoline fuel.

The regulations currently require that the methanol test fuels be representative of in-use fuels. However, the methanol fuel market is not yet large enough to allow determination of a representative fuel. Until such time as a representative fuel can be determined, EPA will use, and require manufacturers to use a combination of chemical grade methanol and certification gasoline in proportions that reflect the composition of the intended in-use fuel (as recommended by the manufacturer and approved by EPA). For most current vehicles this will be 85 percent (by volume) methanol and 15 percent gasoline.

2. Methanol and Formaldehyde Sampling and Analysis

The test procedures for methanol-fueled vehicles require separate sampling systems for methanol and formaldehyde. The samples are collected by bubbling the sample gas through two impingers, or, in the case of formaldehyde, through a cartridge impregnated with dinitrophenylhydrazine (DNPH). Then the impinger fluid or cartridge is analyzed for methanol or formaldehyde using chromatographic methods. Today's action proposes revisions in several areas related to methanol and formaldehyde sampling and analysis. The most significant of these relates to the required sampling flow rates. The regulations currently include minimum requirements for flow rates through impingers and cartridges. They were included to ensure that sufficient amounts of methanol and formaldehyde are collected to allow for accurate detection by the chromatographic instruments. Because there can be significant variations from system to system, however, it is difficult to establish a single minimum flow rate that is appropriate for all systems. To correct this, the Agency is proposing to eliminate these minimum flow rates, and to instead establish minimum concentrations for the primary impingers and cartridges. More specifically, systems (and procedures) will be required to be designed such that testing of a vehicle or engine that emitted the maximum allowable level of methanol, or emitted formaldehyde at a level that was ten percent of the maximum emission level of methanol would result in analyte concentrations that were 25 times higher than the levels of detection for the instruments used. Systems that do not meet this requirement due to high limits of detection would be allowed, provided that the resultant methanol concentration is greater than 25 mg/l, and the resultant formaldehyde concentration is greater than 2.5 mg/l. For any vehicles or engines that have an applicable formaldehyde standard, the analyte concentrations used for design would be those that would result from the maximum emission level allowed by that standard.

The Agency is also proposing to add an additional design requirement that the amount of methanol collected in the secondary impinger not be more than ten percent of the total amount collected. This requirement would effectively prohibit flow rates that are too large and result in significant carryover into the secondary impinger. More important, this should also prevent flow rates that would result in the loss of methanol in the effluent of the second collector. It is expected that by setting the limit at ten percent, there will not be significant amounts of methanol in the sample gas after the secondary impinger.

Another set of revisions deals with the method of flow measurement. In several parts of the current regulations, dry gas meters are specifically required for sampling and calibration systems. This is because dry gas meters were considered to be the most appropriate type of flow meter for these applications at the time the test procedures for methanol-fueled vehicles were originally developed. More recently, it has become apparent that these specifications are no longer necessary. Therefore, the Agency is proposing to allow other types of flow meters to be used, provided that they meet an accuracy specification of ±2 percent.

For the design requirements, EPA requests comments both on the numerical limits proposed, and on whether these limits are more appropriate than direct limits on the flow itself. EPA also request comments on the proposed accuracy specification for flow meters.

3. Proportional Sampling

Currently there are two methods allowed by the regulations for obtaining proportional samples when testing light-duty vehicles: The Positive Displacement Pump-Constant Volume Sampler (PDP–CVS) method and the Critical Flow Venturi-Constant Volume Sampler (CFV–CVS) method. However, today, a third option is being proposed for methanol-fueled vehicles. This method will be based on the current CFV–CVS system, but will allow proportional sampling of methanol and formaldehyde to be maintained by electronically monitoring the CVS flow rate and electronically controlling the sample flows. Similar approaches have been used for some years in heavy-duty diesel testing and in light-duty research testing. When using this approach, the ratio of sample flow to CVS flow would be required to remain within ±5 percent of the set-point ratio. The Agency is recommending that these systems also include separate flow meters to measure total sample volumes. It should be emphasized that even though this option is only being specified for methanol and formaldehyde sampling systems, the Agency would consider allowing similar approaches for other samples as equivalent procedures. In addition to comments related to appropriateness of this approach for methanol-fueled vehicles, EPA specifically requests comments related to extending this option to all vehicles. Moreover, EPA request comments on whether the other methods, especially the CFV–CVS method, can be used for methanol-fueled vehicles when impingers are involved.

4. Prevention of Condensation

Exhaust from methanol-fueled vehicles generally has much higher water vapor content than conventional vehicles, which can lead to water condensation under certain testing conditions, when the gas comes into contact with surfaces at temperatures below its dew point. Such condensation can be a very serious problem since both methanol and formaldehyde are soluble in water. Thus, condensation can create

very significant problems with respect to testing accuracy. However, if the gas comes into contact with very hot surfaces, the methanol can undergo decomposition reactions. For these reasons, in the previous rulemaking, EPA required that sample lines and transfer systems be heated to 235±15 °F (as measured at the surface in contact with the raw and diluted exhaust gases). Some manufacturers, however, have indicated a concern that this temperature requirement may be too high for their systems. The Agency is therefore proposing to change its regulatory focus from specifying the temperature requirement, to allowing manufacturers to determine the most appropriate temperatures for their own individual systems. There will still be requirements to heat many of the components to a temperature between the maximum dew point of the diluted exhaust mixture and the previously established maximum upper temperature of 250 °F; however, this allows for a very wide range of temperatures. This revision is not intended to imply that the Agency no longer believes that the appropriate temperature range for most systems is 220–250 °F, but rather it is intended only to allow the manufacturers more flexibility. Comments are requested on whether it will be necessary to measure dew point continuously for each test. There is concern that such a requirement would place a significant burden upon the manufacturer, since dew point analyzers can be somewhat difficult to maintain. However, it is apparent that some information will need to be provided by the manufacturer to demonstrate that its system will prevent condensation from occurring. It may be that dew point data will be needed from testing under some worst case conditions (e.g., with a large engine during a period of high ambient humidity). The Agency's goal is to establish a method that will ensure that condensation does not occur, while not creating an unreasonable testing burden.

It has also been suggested that heavy-duty engine manufacturers should be allowed to use ducts up to 32 feet in length to transfer the exhaust from the engine to the dilution tunnel. Testing by Southwest Research Institute (SwRI) showed no significant difference between the emission results from test systems using ducts 13 and 32 feet in length. Therefore, the Agency proposes to allow transfer ducts up to 32 feet in length (as is currently allowed for petroleum-fueled engines). However, since the SwRI testing did not provide data for systems in which the duct temperature exceeded 315 °C, this allowance will require that the maximum duct temperature not exceed 315 °C. EPA requests comments on whether higher temperatures should be allowed, and whether average duct temperatures should be considered instead of maximum duct temperatures.

Additional flexibility is also being provided with respect to dilution air; it is being proposed that heating and dehumidifying the dilution air be allowed with some restrictions. Allowing such pretreatment of the dilution air may help to eliminate some of the condensation problems associated with methanol fueled vehicles, and may allow the use of lower system temperatures as discussed above. The proposed restrictions limit the maximum temperature and effect how the dilution air flow rate is calculated.

5. CVS and SHED Recovery Tests

The regulations promulgated in 1989 required that, in addition to tests previously required for propane, tests must also be done to ensure that there are no losses of methanol in the CVS or SHED. The tests are performed by injecting a known quantity of methanol or propane into the CVS or SHED, collecting a sample and comparing the amount calculated from the measured value to the amount injected. The regulations require, for methanol, that the measured value be within two percent of injected value. However, actual testing experience by both EPA and industry has shown that consistently obtaining two percent accuracy can be problematic given the current state of development of methanol test procedures. Therefore, EPA is proposing to establish wider limits for methanol recoveries during the calendar years 1992–1995 (±6 percent). For SHED testing, these wider limits would apply to both agreement between the amount injected and the initial measured amounts (recovery tests) and between the initial and final (after four hours) measured amounts (retention tests). EPA requests comments regarding whether it is sufficient to widen the tolerances through 1995, or if a longer period is appropriate.

There are two reasons why the measured results could deviate from the calculated amounts. First, errors in the measurement procedures can combine to create different values, even though all of the methanol was recovered. This type of error would result in measured values that in some cases were too low, while in others that were too high. The second reason for deviations could be that the amount of methanol in the system is actually changing. The Agency has some limited data that suggests that small, but significant, losses of methanol can occur during the SHED retention test. If, in fact, losses are occurring, then the data will be biased to give lower measured emissions values. Thus if these wider tolerances are used for retention tests, due to losses of methanol, it would be appropriate to apply a correction factor to the evaporative emissions testing data. The Agency is proposing to require the use of a correction factor that would be derived from the four-hour retention test. This would be a means of accounting for such losses without increasing the testing burden. For example, if testing results in a four-hour methanol retention of only 94 percent (a 6 percent loss), the estimated loss during one hour would be 1.5 percent. All methanol measurements would then be multiplied by 1/0.985 (1.015) to correct for the loss that may have occurred. The Agency requests comments on these limits, the correction factors, and on whether a permanent relaxation of the specifications may be needed.

6. Fuels for Flame Ionization Detectors

Flame ionization detectors measure hydrocarbons and other organics by ionizing the carbon atoms with a supplemental fuel source. At one time, the primary fuel was a mixture of hydrogen in nitrogen (H_2/N_2), but now the more commonly used fuel is a mixture of hydrogen in helium (H_2/He), which is thought to give a more accurate response. In the current regulations, it is somewhat unclear what type of fuel is to be used with the heated flame ionization detectors (heated FID or HFID) required for methanol-fueled vehicle testing. Current evaporative emissions testing and heavy-duty exhaust testing requires the use of H_2/He, while the fuel for light-duty exhaust testing is unspecified. Since the light-duty fuel is unspecified, many testing facilities use a mixture of hydrogen in nitrogen. To eliminate this confusion, the Agency is proposing to clearly require that H_2/He fuel be used for all FIDs when testing methanol-fueled vehicles. Moreover, to provide consistent testing of both alternatively-fueled and conventionally-fueled vehicles, the Agency is proposing to require the use of H_2/He fuel for all heated and unheated FIDs. EPA requests comments on the effect of FID fuel on calibration and measurement, whether H_2/He is the best fuel for use in methanol testing, and on whether it is appropriate to establish it as the only fuel for petroleum-fueled vehicle testing

as well. The Agency also requests comments on whether revisions are needed to the FID calibration procedure as outlined in the CFR.

7. Background Measurements

The test procedures call for measurement of background concentrations of various gases, including methanol and formaldehyde, to be subtracted from the concentrations measured in the diluted exhaust. Currently, only a single sample is required for formaldehyde, while separate phase-by-phase samples are required for methanol. With today's revisions, however, EPA proposes to also require only a single sample be collected to determine the methanol concentration in the dilution air. It should also be noted that, given that methanol levels in the dilution air will generally be very low, a single impinger is sufficient to measure the methanol concentration in the sample. Comments are requested on whether it is appropriate to extend this allowance, and require only that a single background methanol sample be collected.

8. Determination of Fuel Composition

The regulations currently do not specify a procedure to determine the carbon:hydrogen:oxygen ratio for methanol fuels and fuel mixtures, other than to state that the ratio is to be measured. However, if the methanol fuel and/or fuel mixtures are made from fuels for which the ratio is known (such as chemical grade methanol and Indolene), then the ratio for the resultant mixture can be calculated and no measurement is necessary. EPA, therefore, is proposing to revise the CFR to allow for calculation of the ratio for methanol fuels and fuel mixtures. Comments are requested on whether it is appropriate to calculate the ratio, what test methods should be used when the ratio is measured, and whether a single measurement procedure should be specified in the regulations.

9. NO_x Humidity Correction Factor

The humidity of the air in a test area is known to have an effect on emissions of NO_x, and EPA has established a correction factor for NOx test results. It has become apparent that the correction factor established for heavy-duty methanol-fueled engines is erroneous. EPA is, therefore proposing to correct this by applying the correction factor currently specified for gasoline-fueled engines to Otto-cycle methanol-fueled engines, and the one currently specified for petroleum-fueled diesel engines to methanol-fueled diesel engines, as was originally intended. EPA specifically requests comments and test data on this effect for methanol-fueled vehicles and engines.

10. Heated Flame Ionization Detectors

The regulations require that heated FIDs (HFIDs) be used when testing methanol-fueled vehicles. The reason for this requirement was that HFIDs provide a stable response for methanol more quickly than unheated FIDs. Some manufacturers have suggested, however, that in many cases the HFID is not necessary and that an unheated FID is adequate. Some data are available, which indicate that the difference between the heated and unheated FIDs is not significant (see Docket A–92–02). Therefore, EPA proposes to allow unheated FIDs to be used in place of heated FIDs for methanol-fueled vehicle testing. The Agency requests comments and data related to the limitations and relative accuracies of the two approaches.

11. Gaseous Standards for Methanol and Formaldehyde

Gaseous standards of many gases are specified in the regulations and are routinely used in calibration procedures; however, such standards were not allowed for methanol and formaldehyde. This is because the stability of methanol and formaldehyde in air had not yet been fully demonstrated. Recent testing, however, has shown that methanol can be reasonably stable over several months (see Docket A–92–02). The Agency specifically requests comments related to the stability of gaseous standards of methanol, and whether standards in air are necessary or if standards in some other carrier gas would be adequate. EPA proposes to allow the use of gaseous methanol standards for response factor calculation and SHED and CVS recovery tests, with the requirement that the concentration of methanol in the standard gas shall not vary by more than two percent over its useful lifetime (i.e., from the time it is prepared until it is no longer used for testing).

12. Direct Measurement of Non-Oxygenated Hydrocarbons

Currently, evaporative non-oxygenated hydrocarbon emissions from methanol-fueled vehicles are measured by separately measuring total organic emissions and methanol emissions: the non-oxygenated hydrocarbon emissions are the difference between these two measurements. It has been suggested, however, that non-oxygenated hydrocarbons can be measured directly by installing water-filled impingers upstream of an FID calibrated on propane. The impingers would be expected to remove the methanol from the gas as it is bubbled through the water, but not the non-oxygenated hydrocarbons. Theoretically, this approach would be appropriate since non-oxygenated hydrocarbons generally have very low solubilities in water, while methanol is extremely soluble in water. EPA requests comments and data on the extent to which such a simplified approach is acceptable. The Agency proposes to revise the regulations to allow this option, with design requirements which limit the amount of non-oxygenated hydrocarbons collected in the impinger to less than two percent of the total amount of non-oxygenated hydrocarbons in the sample, and the amount of methanol which is not collected by the impinger to less than two percent of the total amount of methanol in the sample. This design requirement would be consistent with the recovery and retention checks currently required by the CFR for both the SHED and CVS.

13. FID Measurement of Methanol Emissions From M100 Vehicles

Methanol emissions from M100 vehicles are currently measured with an impinger system. The combined emissions of methanol and non-oxygenated HC is measured by a FID and the non-oxygenated HC emissions are determined by subtracting the methanol (after correcting for FID response) from the total. However, given that the non-oxygenated HC emissions will generally be small, there is a significant potential for errors. Because the amount of non-oxygenated HC emissions from M100 vehicles and engines is generally small, it is appropriate to measure the total emissions with an FID calibrated on methanol, and not use an impinger system. Such an approach has been allowed as an optional approach for all 1990–1994 methanol-fueled vehicle and engines, and has many potential benefits. Given that there would not be a potential for very large errors using this approach for only M100 vehicles, and that any errors which would result from the approach would lead to an over-measurement of emissions, the Agency proposes to allow this approach for M100 vehicles. EPA specifically requests comments on the speciation of organic emissions from M100 vehicles, and the possible errors involved in this approach.

14. Collection of Methanol Samples

As noted above, methanol samples are currently collected using impingers. EPA is proposing, however, two alternatives which would provide greater flexibility. The first is the allowance to measure methanol concentrations from SHED testing by direct GC analysis of the bag samples. Under this approach, a small amount of the gaseous bag sample would be injected into a GC to determine the methanol concentration. Due to the potential for loss of methanol in the bag, it will be necessary to perform the GC analysis within one hour. The second alternative is the allowance of the use of cartridges, which are designed to collect methanol, for both exhaust and evaporative testing. This approach would be similar to the current allowance to use cartridges to collect formaldehyde samples from exhaust testing. EPA requests comments on these alternatives in general, and specifically, comments related to whether the bag sample allowance should be extended to exhaust samples.

B. Submission of Data

Given the extent to which the revisions being proposed deal with engineering issues, EPA specifically requests test data related to these issues be included in comments to the extent possible. This is especially true for items 10–14 above, which are being proposed based upon relatively limited data. It should be emphasized that the Agency would be more comfortable finalizing these five revisions if more extensive data were available. EPA would also welcome data related to other methanol testing issues not addressed here, especially the issues described below.

1. FTIR Instrumentation

Fourier Transform Infra-Red (FTIR) analysis is widely used in many analytic chemistry applications, and has the potential to be used for measuring exhaust emissions, including methanol and formaldehyde. However, at this time, the technology has not been fully demonstrated for exhaust measurements. The Agency supports the eventual use of FTIR instrumentation to measure methanol and formaldehyde emissions, and requests comments and related data on the development and applicability of this technology.

2. Methanol Interference With NO_x Analyzers

Testing of methanol-fueled vehicles has indicated that methanol emissions can create interference with the measurement of oxides of nitrogen (NO_x) emissions. EPA has done some investigation of its own (see "Investigation of Analyzer Problems in the Measurement of NO_x from Methanol Vehicles," EPA/60/S3–88/040), but requests comments from others involved in the testing of methanol-fueled vehicles. Specifically, the Agency is interested in the effect that instrument model and type has on interference and methods used to prevent or minimize these problems.

Public Participation

EPA welcomes comments on any aspect of this proposed rulemaking. Commenters are especially encouraged to provide suggestions for modification of any aspects of the proposal that they find objectionable, and to submit comments in response to concerns that EPA highlighted above. All comments should be directed to the Air Docket LE–131, Attention Docket No. A–92–02, located at the Air Docket Section, U.S. Environmental Protection Agency, room M–1500, 401 M Streef SW., Washington, DC 20460.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base the final rule in part on a submission labeled as confidential business information, then a nonconfidential version of the document which summarizes the key data or information should be provided to EPA to be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because the amendments make only minor and technical changes. Also, this regulation will not result in increased costs for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783.21) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M Street, SW., (PM–223Y); Washington, DC, 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to have a negligible effect on the existing clearance which averages 15,900 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of the information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street, SW., (PM–223Y); Washington, DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*, the Administrator of EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities and, if so, to perform a regulatory flexibility analysis. The technical amendments contained in this rulemaking will not increase the burden or cost of compliance for any segment of the automotive industry. Therefore, pursuant to 5 U.S.C. 605(b), the Assistant Administrator for Air and Radiation hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 20, 1993.

William K. Reilly,

Administrator.

[FR Doc. 93–4629 Filed 2–26–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Designation of Critical Habitat for Six Endangered Forest Species from Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period on proposed designation of critical habitat.

SUMMARY: The U.S. Fish and Wildlife Service (Service) reopens the comment period for the proposed designation of critical habitat for six endangered forest species from Guam. The proposed rule was published on June 14, 1991 (56 FR 27485). The Service believes the comment period should be reopened at this time based on the availability of a revised Environmental Assessment pertaining to the establishment of an overlay refuge on U.S. Navy and U.S. Air Force lands on Guam. Additionally, in October 1992, the Inspector General of the Department of the Interior received a statement from a citizen of Guam who claims to have compelling, new information relating to the economic analysis done for the proposed rule, as well as other aspects of the proposed rule.

DATES: Comments on the proposed designation of critical habitat for six endangered forest species from Guam must be submitted by March 31, 1993.

ADDRESSES: Information, comments, or questions on the designation of critical habitat on Guam should be submitted to the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307. P.O. Box 50167, Honolulu, Hawaii 96850. Materials pertaining to the proposed designation of critical habitat will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above Honolulu address (telephone 808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1991 (56 FR 27485), the Service proposed to designate critical habitat for six endangered forest species from Guam: The little Mariana fruit bat (*Pteropus tokudae*), Mariana fruit bat (*Pteropus mariannus*), Guam broadbill (*Myiagra freycineti*), Mariana crow (*Corvus kubaryi*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*). The six species for which critical habitat has been proposed are found in the Mariana Islands in the western Pacific in the Territory of Guam. Two species, the Mariana fruit bat and the Mariana crow, are also found on the island of Rota in the Commonwealth of the Northern Mariana Islands. All were listed as endangered on August 27, 1984, due to one or more of the following activities: Poaching, predation by the introduced brown tree snake, and habitat loss. The proposed rule to designate critical habitat includes a total of 16,883 acres in northern Guam and 7,889 acres in southern Guam. The land is primarily under Federal ownership, with a smaller percentage owned by the Government of Guam and private landowners.

On July 12, 1991 (56 FR 31902), the Service announced the scheduling of a public hearing on the subject proposal. The public hearing was held in Agana, Guam, on July 31, 1991. The public was asked to submit written comments and materials by August 13, 1991. Subsequent to that date, the Guam Uranao Resort corporation requested the opportunity to submit additional information on the economic impacts of the proposed designation of critical habitat for consideration by the Service. The comment period was, therefore, reopened for two weeks on October 15, 1991, to accommodate this request (56 FR 51668). Since that date, the Service has prepared two versions of an Environmental Assessment for the establishment of an overlay refuge on Guam. On May 19, 1992, the National Wildlife Federation requested that the comment period be reopened, so that additional information on the proposed designation of critical habitat could be submitted for consideration. On June 12, 1992, the comment period was reopened through July 15, 1992, both to accommodate the National Wildlife Federation request and to coordinate with the first open public comment period for the proposed Guam National Wildlife Refuge. A second draft of the Environmental Assessment for the proposed Guam National Wildlife Refuge is now available for public review. The revised Environmental Assessment for designation of the overlay refuge on U.S. Navy and U.S. Air Force lands may contain additional information that should be reviewed and considered in the process of arriving at a final decision for critical habitat on Guam. In addition, Mr. Antonio Artero Sablan of Guam, in a letter dated December 17, 1992, to Mr. James Richards of the Department of the Interior, claims to have "solid evidence" to show that parts of the proposed rule are flawed. The Service would like this information as a part of the documentation considered in a final decision on the proposed rule for critical habitat on Guam.

Additional information and comments may be submitted to the Service office in the **ADDRESSES** section until march 31, 1993.

Author

This notice was prepared by Mr. Robert Smith, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (telephone 808/541–2749).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. 99–625, 100 Stat. 3500, unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated February 16, 1993.

Richard N. Smith,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–4674 Filed 2–26–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Rio Grande Silvery Minnow as Endangered, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Rio Grande silvery minnow (*Hybognathus amarus*) as an endangered species with critical habitat under authority of the Endangered Species Act of 1973, as amended (Act). This species of fish occurs only in the Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir, New Mexico. Threats to the species include loss of stream habitat due to dewatering, channelization and regulation of river flow to provide water for irrigation; diminished water quality caused by municipal, industrial, and agricultural discharge; and competition or predation by nonnative introduced fish species. Currently, the species occupies approximately five percent of its known historic range.

DATES: Comments from all interested parties must be received by April 30, 1993. Public hearing request must be received by April 15, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald L. Burton (see **ADDRESSES**) at (505) 883–7877.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. Physically, it is a stout silvery minnow with moderately small eyes and a small slightly oblique mouth (Pflieger 1975). Adults may reach 90 mm (3½ in) in total length (Sublette *et al.* 1990). The dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail (Pflieger 1975). Life color is silver with emerald reflections. The belly is silvery white, fins are plain, and barbels are absent (Sublette *et al.* 1990; Pflieger 1975).

This species was historically one of the most abundant and widespread fishes in the Rio Grande basin, occurring from Espanola, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, New Mexico, downstream to its confluence with the Rio Grande (Pflieger 1980). Collection data indicate the species presently occupies about five percent of its historic range. It has been completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir. Currently, it is found only in a 274 km (170 mi) reach of the Middle Rio Grande River, New Mexico, from Cochiti Dam, Sandoval County, to the headwaters of Elephant Butte Reservoir, Socorro County (Bestgen and Platania 1991). Throughout much of its historic range, decline of *H. amarus* may be attributed to modification of stream discharge patterns and channel desiccation by impoundments, water diversion for agriculture, and stream channelization (Cook *et al.* 1992; Bestgen and Platania 1991).

The Rio Grande silvery minnow no longer exists in the Pecos River where it was replaced by its congener, the introduced plains minnow (*H. placitus*) (Hatch *et al.* 1985; Bestgen *et al.* 1989; Cook *et al.* 1992). It is believed the plains minnow was introduced into the Pecos drainage during 1968, probably the result of the release of "bait minnows" which were collected from the Arkansas River drainage. The displacement that ensued was complete in less than one decade (Cowley 1979). The plains minnow may be more tolerant of modified habitats and therefore able to replace *H. amarus* in the modified reaches of the Pecos River where they were introduced. It is also believed the two species hybridized. Habitat alteration and resulting flow modification could have also contributed to extirpation of the species in the Pecos River.

Decline of the species in the Middle Rio Grande probably began in 1916 with the completion of Elephant Butte Dam. Construction of the dam signaled the beginning of an era of modification of the main stream Rio Grande and the construction of five major main stream dams within the minnow's habitat (Shupe and Williams 1988). These dams allowed the flow of the river to be manipulated and diverted for the benefit of agriculture. Often this manipulation resulted in the desiccation of reaches of river and elimination of all fish. Concurrent with construction of the main stream dams was an increase in the abundance of nonnative and exotic fish species as these species were stocked into the reservoirs created by the dams (Sublette *et al.* 1990). Once established, these species often completely replaced the native fish fauna (Propst *et al.* 1987). Development of agriculture and the growth of cities within the historic range of *H. amarus* resulted in a decrease in the quality of water in the river which may have also adversely affected the range and distribution of the species.

Most land bordering the river where the species currently exists is owned by the Middle Rio Grande Conservancy District (District) which is a quasi-public agency of the State of New Mexico. Other landowners include six Pueblos, the U.S. Bureau of Reclamation, the Service, the U.S. Bureau of Land Management, New Mexico State Parks, New Mexico Department of Game and Fish, New Mexico State Lands Department, and the U.S. Army Corps of Engineers (Corps).

Water flow in the Middle Rio Grande is controlled by the Rio Grande Compact Commission (Commission). Established in 1929 for the purpose of permanently and equitably apportioning the flows of the Rio Grande, the Commission is composed of a Federal chairperson, appointed by the United States President, and three voting members—a representative designated by the Texas governor and the state engineers of New Mexico and Colorado. The Commission meets annually to review compliance with the compact over the preceding year, to hear reports from Federal water management agencies, and to consider water management decisions that have interstate implications. Other water managers and decision-makers who also determine timing and amount of flow in the river include the International Boundary and Water Commission, which ensures delivery of water to Mexico under international treaties; the Bureau of Reclamation, which has played an important role in water development in the Middle Rio Grande and has been actively involved in the major water supply networks of the basin; and the Corps, which is responsible for controlling any dredging or filling activities within navigable waterways and associated wetlands under the "404 permit" program. The Corps also has constructed and operates Abiquiu, Cochiti, Galisteo, and Jemez dams to control flood waters and sediment in the Rio Grande.

On February 19, 1991, approximately 80 pre-proposal notification letters were mailed to various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. The purpose of the letter was to inform recipients of the Service's intent to add *H. amarus* to the Federal list of Endangered and Threatened Wildlife and Plants and solicit their comments. The Service was particularly

interested in obtaining additional status information or information concerning threats to the continued survival of *H. amarus*. On May 22, 1991, a second informational letter was sent to the New Mexico Congressional delegation. Comments were received from New Mexico Department of Game and Fish; City of Albuquerque; Texas Parks and Wildlife Department; and the New Mexico Interstate Stream Commission. None who commented offered additional information concerning the status of the species or information concerning additional threats. Most commented that the range of the species had been severely reduced and that Federal listing should be considered. The response from the New Mexico Interstate Stream Commission included a historical review of water development in the Middle Rio Grande Valley.

On March 20, 1992, the Service held a meeting in Albuquerque, New Mexico, to explore with various interested governmental and private entities existing or potential flexibility in water delivery schedules that might avoid de-watering of the Rio Grande and the habitat of *H. amarus*. The Service also requested information which would add to the knowledge of the current distribution of the species. No new information concerning distribution, abundance, or threats to the species was provided.

Summary of Factors Affecting the Species

Section 4(a)(1) 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 list of Endangered and Threatened Wildlife and Plants. 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 Rio Grande silvery minnow (*Hybognathus amarus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Since completion of Elephant Butte Dam in 1916, four additional main stream dams have been constructed on the mainstem Rio Grande, and two dams have been constructed on one of its major tributaries, the Rio Chama (Shupe and Williams 1988). Construction and operation of these dams have modified the natural flow of the river. During low-flow years, these dams have the capacity to completely divert all the flow from the natural river channel into irrigation ditches. These reservoirs also store spring runoff and summer inflows, which would normally cause flooding, and release this water back into the river channel over a prolonged period of time. This release is often made during the winter months when low flows would normally occur. The natural flow of the river has been replaced by flows which depart significantly from natural conditions. Although the mechanisms of how the decline of the species occurred are not well documented or understood, water flow manipulation may be one of the primary reasons *H. amarus* has been extirpated from 95 percent of its historic range.

From Elephant Butte Dam downstream approximately 322 km (200 mi) to its confluence with the Rio Conchos, the Rio Grande is fully controlled by reservoir releases and irrigation return flows. Meanders, oxbows, and other components of historic riverine habitat have been eliminated. Manipulated releases now pass water as efficiently as possible for agricultural irrigation and downstream deliveries.

Growth of agriculture and cities in the Rio Grande Valley during the last century may have adversely affected the quality of the river's water. During low-flow periods, a large percentage of the river's flow consists of municipal and agricultural discharge. As a result, less water is available to dilute pollutants. This degradation of water quality may affect *H. amarus* survival. Poor water quality in the Rio Grande near Albuquerque, especially during low flows, may be a problem as low numbers of *H. amarus* and an overall reduced fish community is found there (Bestgen and Platania 1991).

Two native main stream Rio Grande fish species, the phantom shiner (*Notropis orca*) and the bluntnose shiner (*Notropis simus*) have already become extinct. The Rio Grande silvery minnow may also be threatened with extinction through the last remnant of its occupied range due to significant and continuing habitat modification and destruction.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known at this time. Due to the present reduced population of *H. amarus* in New Mexico, it is anticipated that New Mexico Department of Game and Fish will issue fewer and more restrictive permits to collect the species for scientific purposes.

C. Disease or Predation

When fish are forced into confined habitats due to low flow they are more susceptible to both disease and predation. Predation takes place when nonnative species including northern pike (*Esox lucius*), walleye (*Stizostedion vitreum*), white crappie (*Pomoxis annularis*), white bass (*Morone chrysops*), black and brown bullheads (*Ameiurus melas, A. nebulosus*), smallmouth bass (*Micropterus dolomieu*) and largemouth bass (*Micropterus salmoides*) are forced, during low flow or no flow, into limited habitat with *H. amarus* and other native species. Native predatory fish species including the Rio Grande club (*Gila pandora*) and bluegill (*Lepomis macrochirus*), may also prey upon subadult *H. amarus* under these circumstances. Avian and mammalian predation probably increases when *H. amarus* becomes confined in small clear water pools.

Confining fish to pools causes stress which can often result in outbreaks of parasitic disease. Most notable is the protozoan *Ichthyophthirius multifilis* (ich) which can be stress-induced. External copepod parasites such as lernaea are more common among fish in confined conditions. No studies have been conducted on the impact of disease and parasites upon *H. amarus;* therefore, the significance of these threats upon existing populations of the species is not known.

Another threat to the continued existence of *H. amarus* is the introduction and spread of exotic and nonnative game fish species into its habitat. These species have been introduced primarily by State and Federal fish and wildlife management agencies in efforts to develop sport fisheries in reservoirs created by the main stream dams. They have not remained confined to the reservoirs and have become established in the river both upstream from the impoundments and downstream of the dams. Once established, these species complete with *H. amarus* for space and food, or may prey upon them. This situation is exacerbated during periods of low flow when fish in the river are crowded into limited available habitat. Under these circumstances, the more predatory nonnative and exotic species prey upon native fishes including *H. amarus*.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of New Mexico lists *H. amarus* as an endangered species, Group 2 (New Mexico State Game Comm., 1985), which are those species

"* * * whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This listing provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. The protection afforded to the species by the State does not provide protection to the habitat upon which the species depends.

New Mexico water law does not include provisions for acquisition of instream water rights for protection of fish and wildlife and their habitats. This has been a major factor affecting the survival of species dependent upon the presence of instream flow.

State Game and Fish regulations in New Mexico allow the use of live minnows, including those brought into the State from other drainages, for sport fishing. This practice has encouraged the spread of bait fish species, one of which, the plains minnow, is known to have completely replaced *H. amarus* in the Pecos River.

E. Other Natural or Man-made Factors Affecting its Continued Existence

The only existing population of *H. amarus* continues to be threatened by annual dewatering of a large percentage of its habitat. This dewatering is primarily the result of diversion of river flow for agriculture within the Middle Rio Grande Valley. During a year when an average, or above average, amount of water is available, the impacts of the diversions are not severe. During a below average water-year, the river channel may be dry from Isleta Diversion Dam downstream approximately 179 km (111 mi) to the headwaters of Elephant Butte Reservoir for two months or more. When two below average flow years occur consecutively, a short lived species such as *H. amarus* can be severely affected, if not completely eliminated from the dry reaches of river.

During the 94 years for which flow records have been maintained for the Middle Rio Grande, it is not unusual for the 246 km (153 mi) reach of the Rio Grande from the Angostura Diversion Dam downstream to the reservoir to experience periods of zero flow. Even before construction of main stream dams the Middle Rio Grande frequently experienced periods of zero flow. During such periods, it is suspected *H. amarus* survived in areas where irrigation return flows re-entered the river, in the pools formed by water leaking through the gates of the diversion dams, and in the irrigation ditches and drains. Some *H. amarus* probably survived in the reaches of stream above the diversions where their offspring could repopulate downstream reaches when conditions permitted.

Construction of main stream dams and impoundments stocked with nonnative fish, improved water delivery systems extending reaches of no flow in the river bed, and greater load of contaminants have exacerbated conditions. These conditions have decreased *H. amarus* populations to critically low levels.

In 1979, Cowley discovered the introduction of plains minnow (*H. placitus*) into the Pecos River drainage, New Mexico, from collections made as early as 1968, and also recognized the disappearance of native *H. amarus*. The last known collections of *H. amarus* from the Pecos River took place in 1968 near Roswell, New Mexico. These same collections verified the first specimens of *H. placitus* from the river. It is suspected, because of the widespread use of *H. placitus* as a commercial bait species, that its introduction into the Pecos River was the result of release of bait fish by anglers.

In 1958, in an effort to meet Rio Grande Compact water delivery requirements, the Bureau of Reclamation constructed a 96 km (60 mi) long conveyance channel from San Acacia to Elephant Butte Reservoir. The purpose of the conveyance channel is to divert all flow less than 57 m^3/s (2,000 ft^3/s) in order to prevent loss of the Rio Grand flow to seepage and evaporation from the aggraded riverbed. The conveyance channel has seldom been operated to its full capacity. If however, the channel were to be operated at full capacity, the natural stream bed downstream of San Acacia would have been dry more frequently and for longer periods of time. Both the Corps of Engineers and the Bureau of Reclamation are drafting plans to rehabilitate and protect the channel in order to bring it into full operation. Such actions will increase the likelihood of more frequent and longer periods of no flow in the river stretches essential to *H. amarus* survival.

In determining to propose this rule, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. The Service conducted a review of the status of the species and took into account efforts by the state and other agencies to protect the species. Based on this evaluation, the preferred action is to list the Rio Grande silvery minnow (*Hybognathus amarus*) as endangered. A decision to take no action would constitute failure to properly classify this species pursuant to the Endangered Species Act and would exclude it from protection of the Act. This action is appropriate because of the significantly reduced range and declining abundance of the species, and because of the remaining threats to this fish and its habitat. Without Federal protection, *H. amarus* can be expected to become extinct in the foreseeable future.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and;

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for Rio Grande silvery minnow to include the main stream of the Rio Grande from the bridge crossing of State Highway 22 immediately south of Cochiti Dam, Sandoval County, New Mexico, downstream to the Atchison Topeka and Santa Fe Railroad crossing of the river near San Marcial, Socorro County, New Mexico. A more precise description of the proposed critical habitat is included in the "Proposed Regulations Promulgation" section.

The area proposed as critical habitat for *H. amarus* is the only area where reproduction is known to occur and all life stages of the species have been collected in the recent past. As such, the proposed area is the only known area remaining within the species historic range that contains physical characteristics required for the species to spawn successfully, rear young and recruit adults to the wild population. Constituent elements of critical habitat required to sustain *H. amarus* in the wild include:

—Stream morphology that supplies sufficient flowing water to provide food and cover needed to sustain all life stages of this fish,

—Water quality to prevent water stagnation (elevated temperatures,

decreased oxygen, carbon dioxide build-up, etc.), and

—Water quantity to prevent formation of isolated pools that restrict fish movement, foster increased predation by birds and aquatic predators, and congregate disease causing pathogens.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) that may adversely modify such habitat or may be affected by such designation. Activities which may adversely affect the proposed critical habitat include any activity that would lessen the amount of the minimum flow or would significantly alter the natural flow regime. Such activities include but are not limited to, excessive groundwater pumping, impoundment, water diversions, and the operation of irrigation and return flow ditches. Irrigation uses greatly affect the volume of the river. Releases and diversions vary greatly and frequently result in little or no flow downstream from major diversion facilities.

Any activity that would extensively alter the channel morphology of the Rio Grande could adversely impact the proposed critical habitat. Such activities include but are not limited to, channelization, impoundment, deprivation of substrate source, and riparian destruction.

Any activity that would significantly alter the water chemistry in the Rio Grande could adversely impact the proposed critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release.

The introduction, advertent or otherwise, of nonnative or exotic predatory and competitive fish species, could adversely affect *H. amarus* populations and could reduce or eliminate them within the critical habitat.

Activities that may be affected by the designation include construction, maintenance, and operation of diversion structures, use of the conveyance channel and other canals, and levee and dike construction and maintenance.

Section 4(a)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all relevant information obtained before making a decision on whether to issue a final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the 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 Endangered Species Act provides for possible land acquisition and cooperation with States, and authorizes recovery plans 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 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 proposed or 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.

Federal actions which are expected to occur that may affect the survival of *H. amarus* include the operation and maintenance of dams and other structures which regulate the flow of water in the Rio Grande.

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, 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 any listed species in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issue to carry out otherwise prohibited activities involving endangered wildlife 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. This species is not in trade, and such permit requests are not expected.

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;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on this species 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 Albuquerque Field Office (See **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. 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 New Mexico Ecological Services Field Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Gerald L. Burton (see **ADDRESSES** above).

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; 16 U.S.C. 4201–4245; 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						
• • •	•	•	•	•	•		
Fishes.							
• • •	•	•	•	•	•		
Minnow, Rio Grande silvery	*Hybognathus amarus*	U.S.A. (NM, TX), Mexico.	Entire	E		17.95(e)	NA
• • •	•	•	•	•	•		

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the Rio Grande silvery minnow, in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

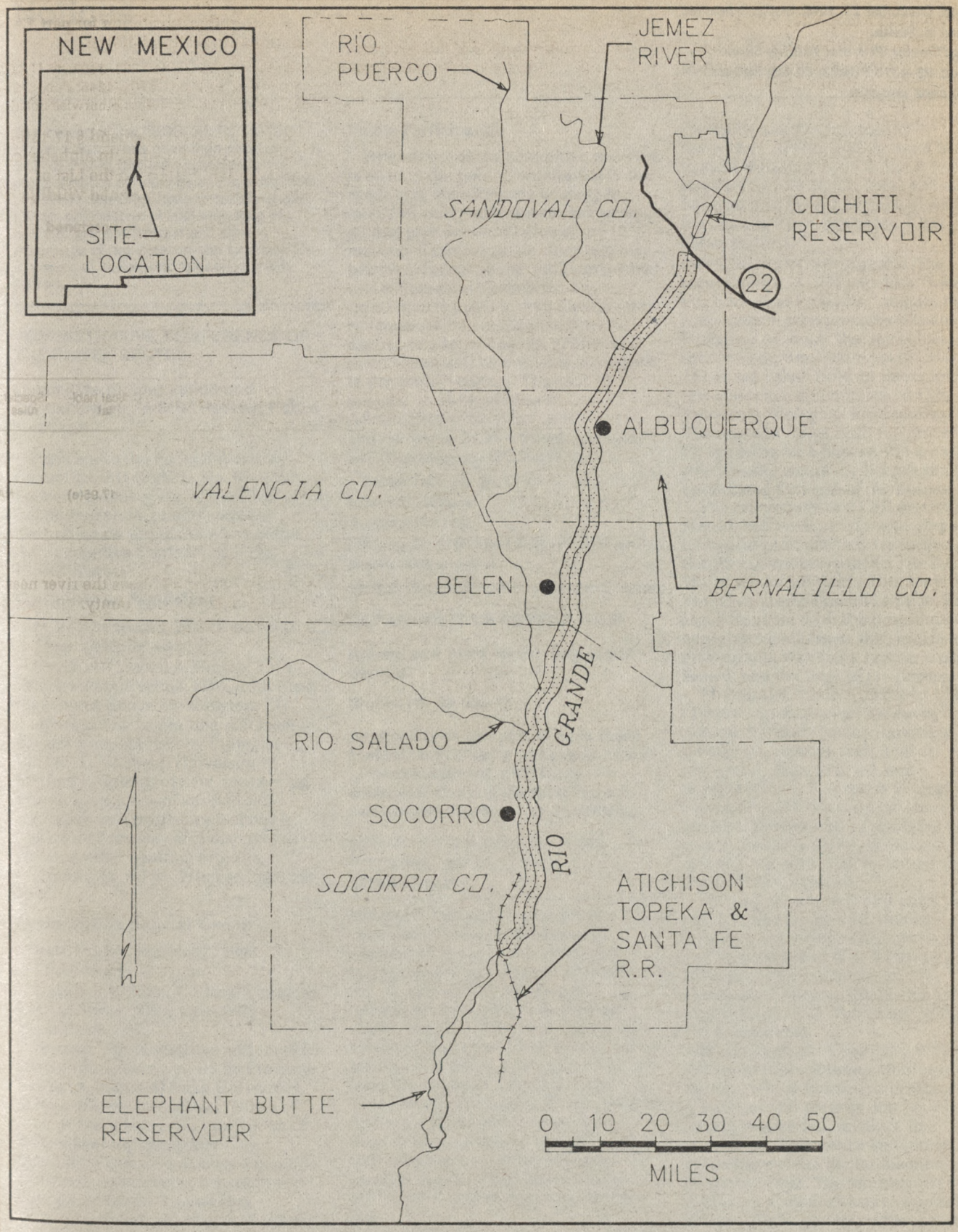
(e) * * *

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Rio Grande Silvery Minnow
(Hybognathus amarus)

New Mexico: Socorro, Valencia, Bernalillo, and Sandoval Counties. Rio Grande from the downstream side of State Highway 22 bridge crossing of the Rio Grande, immediately downstream of Cochiti Dam, extending south downstream approximately 262 km (163 mi) to where the Atchison Topeka and Santa Fe Railroad crosses the river near San Marcial, Socorro County.

BILLING CODE 4310–55–M



BILLING CODE 4310-55-C

Dated: December 23, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–4673 Filed 2–26–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 38
Monday, March 1, 1993

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation and Committee on Judicial Review; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Regulation and the Committee on Judicial Review of the Administrative Conference of the United States.

Committee on Regulation

Date: Wednesday, March 10, 1993.

Time: 12 Noon—3 p.m.

Location: Crowell & Moring, 1001 Pennsylvania Avenue, NW., 10th Floor Conference Room, Washington, DC.

Agenda: The committee will meet to discuss a new project by Professor Douglas C. Michael, University of Kentucky, College of Law, concerning federal agency use of audited self-regulation as a regulatory technique. The committee may also discuss the status of other pending projects.

Contact: David M. Pritzker, 202–254–7020.

Committee on Judicial Review

Date: Friday, March 12, 1993.

Time: 10 a.m.–12 p.m.

Location: Wilmer, Cutler & Pickering, 2445 M Street, NW., room 8E2, Washington, DC.

Agenda: The committee will meet for further discussion a study by Professor Lawrence Baxter of Duke University School of Law, on judicial review of prompt corrective action decisions of federal banking regulators. The Committee may also discuss a pending recommendation being considered by the Committee on Rulemaking pertaining to judicial review of agency rules.

Contact: Mary Candace Fowler, 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairman may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available on request to the contact person. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Dated: February 24, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–4708 Filed 2–26–93; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–008–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and established licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of December 1992. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of December 1992. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 23rd day of February 1993

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–4652 Filed 2–26–93; 8:45 am]

BILLING CODE 3410–34–M

Food and Nutrition Service

Welfare Simplification and Coordination Advisory Committee Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Advisory Committee on Welfare Simplification and Coordination.

DATES AND TIMES: March 11, 12, 13, 1993 at 8:30 a.m.

ADDRESSES: Holiday Inn, 700 King Street, Wilmington, Delaware, 19801.

PURPOSE OF MEETING: Section 1778 of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII of Pub. L. No. 101–624) requires the Secretary of Agriculture to appoint, after consultation with federal, state, and local officials as well as recipient representatives, an Advisory Committee on Welfare Simplification and Coordination (Committee). The purpose of the Committee is to examine the different policies implemented in the Food Stamp Program, cash and medical assistance programs under the Social Security Act, and housing assistance programs. The Committee must consider the major reasons for differing program policies, the degree to which such differences hinder receipt of multiple program benefits, and recommend common or simplified policies to reduce difficulty in gaining access to more than one type of assistance. It must also identify policies that restrict the ability of program administrators to provide efficient, timely, and appropriate benefits to those eligible for more than one type of assistance.

The Committee is to prepare and submit a final report to specified congressional committees no later than July 1, 1993. This is the last of four meetings of the Committee. The first three were held in Arlington, Virginia, Seattle, Washington, and Charlotte, North Carolina.

The primary purpose of this Committee meeting is the review and discussion of welfare conformity issues and to observe Delaware's one-stop services.

Meetings of the Committee are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the Committee before or after the meeting.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 718, Alexandria, Virginia 22302, (703) 305–2762.

Dated: February 17, 1993.

Andrew P. Hornsby, Jr.,

Acting Administrator.

[FR Doc. 93–4669 Filed 2–26–93; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Tie Hack Dam and Reservoir Project, Bighorn National Forest, Johnson County, WY; Intent to Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service gives notice that it will prepare an environmental impact statement, as required under the National Environmental Policy Act (NEPA), to consider the issuance of a Special Use Permit to the City of Buffalo, Wyoming. The City proposes to construct a roller-compacted concrete dam and reservoir on the South Fork of Clear Creek, below the confluence of Sourdough Creek, approximately 15 miles west of Buffalo, Wyoming, on National Forest System Lands administered by the Bighorn National Forest. Associated with the construction of the proposed dam and reservoir will be a 250 kilowatt hydropower plant which will be located off the National Forest, on lands owned by the City of Buffalo. The proposed dam and reservoir would inundate 63 surface acres of National Forest System Lands, and store 2,435 acre-feet of water. The decision to be made is whether or not the Bighorn National Forest will issue the requested Special Use Permit, and, if so, the conditions under which it would be issued. A permit issued by the Army Corps of Engineers under section 404 of the Clean Water Act would also be required for impacts to waters of the United States under the jurisdiction of the Army Corps of Engineers. The Forest Service invites written comments on the scope of the analysis from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. Agencies and the public may also participate in the environmental impact statement process through a series of public scoping meetings scheduled by the Forest Service and the City of Buffalo.

DATES: Written comments concerning the scope and implementation of this proposal should be received within 45 days of the date of publication of this notice in the **Federal Register**. Public scoping meetings are scheduled for 7:30 p.m., March 2, 1993, at the Buffalo City Hall, 46 North Main, Buffalo, Wyoming, and for 7 p.m., March 3, 1993, at the Gillette City Hall, 201 East 5th Street, Gillette, Wyoming. An agency scoping meeting is scheduled for 1:30 p.m., March 2, 1993, at the Buffalo City Hall, Buffalo, Wyoming.

ADDRESSES: Written comments should be sent to: Mr. Paul Beels, Project Coordinator, USDA Forest Service, Buffalo Ranger District, Bighorn National Forest, 300 Spruce Street, Buffalo, Wyoming 82834.

FOR FURTHER INFORMATION: Specific questions about the proposed action, and the environmental impact statement should be directed to: Mr. Paul Beels, Project Coordinator, Buffalo Ranger District, Bighorn National Forest, Phone (307) 684–7981.

SUPPLEMENTARY INFORMATION: An environmental impact statement has been deemed the appropriate level of NEPA analysis for the proposed Tie Hack Dam and Reservoir project due to the determination that this proposal has the potential to significantly affect the quality of the human environment. The EIS will be prepared by an independent consultant, BIO/WEST, Inc., through a third party relationship with the Bighorn National Forest and the City of Buffalo. Although not being prepared by the Forest Service, the EIS will be a Forest Service document, with the Forest Service acting as the lead agency. As such, the EIS will be subject to all appropriate Forest Service regulations and guidelines. The EIS will tier to the Final EIS for the Bighorn National Forest Land and Resource Management Plan (September 1985). Current management emphasis within the project area is wood fiber production and utilization (Management Area 7E), and habitat needs for wildlife (Management Area 4B).

The purpose of the proposed action is to provide municipal water to meet existing and future needs of the City of Buffalo. The need for the proposed action is demonstrated by the existing

repeated late season reduced streamflows in Clear Creek resulting in municipal water shortages. Clear Creek is the primary water supply for the City of Buffalo.

Preliminary issues identified as a result of internal review of the proposed Tie Hack Dam and Reservoir project include:

- The relocation of the existing Forest Service Tie Hack Campground.
- The relocation of the Johnson County Youth Camp.
- Inundation of wetlands at the proposed reservoir site.
- Instream flows and channel maintenance in Clear Creek.
- The effect of increased public use of the immediate and surrounding area.
- Compliance with existing visual quality objectives within the project area, as established in the Forest Plan.
- Loss of riparian habitat and the subsequent effect on fish and wildlife.
- The potential for sedimentation in the reservoir.
- The potential effect of the project on the water temperature of Clear Creek.
- The potential effect on cultural resources.

The preparation of the EIS will include an analysis of significant issues identified through internal review, agency consultation, and public scoping. The environmental analysis will consider a range of alternatives developed from the key issues. One of these alternatives will be the "No Action" alternative, required under NEPA, under which no Special Use Permit would be issued by the Forest Service for the construction of the Tie Hack Dam and Reservoir project. Other alternatives tentatively identified to be included in the EIS are the purchase of additional water rights, pumping from Lake DeSmet, development of groundwater resources, alternative reservoir sites, and water conservation methods.

The process followed in the preparation of the Draft EIS will include:

- Identification of potential issues.
- Identification of issues to be analyzed in depth.
- Elimination of insignificant issues, or those which have been covered by a relevant previous environmental analysis.
- Identification of reasonable alternatives to the proposed action.
- Identification of the potential direct, indirect, and cumulative environmental effects of each of the alternatives under consideration.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. This is scheduled for the spring of 1994.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338(E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final environmental impact statement is expected to be released in the spring of 1995. The Forest Supervisor for the Bighorn National Forest is the responsible official for the EIS. The Forest Supervisor will make a decision regarding this proposal for a Special Use Permit, through consideration of the comments, responses, and environmental consequences discussed in the Final EIS, in addition to applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: February 23, 1993.

Larry D. Keown,

Forest Supervisor.

[FR Doc. 93–4607 Filed 2–26–93; 8:45 am]

BILLING CODE 3410–11–M

Fox Ecosystem Restoration Project; Day and Dunning Salvage Timber Sales and Other Projects, Malheur National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On March 29, 1991 the Forest Service, USDA, gave notice in the **Federal Register** that it was preparing an environmental impact statement (EIS) for a Forest Service proposal to implement the Day and Dunning Salvage Timber Sales and other resource management projects (56 FR 13104).

This proposal has been revised. The specific projects now include: (1) Salvage of timber; (2) development of associated road systems; (3) projects related to riparian and fisheries enhancement as mitigation measures to reduce the effects of salvage removal and road construction to anadromous fisheries habitat; (4) prescribed fire for thinning, fuel reduction, and forage enhancement; (5) plans to monitor the effects of implementing the proposed action.

DATES: Written input concerning this revised proposal must be filed by March 17, 1993.

ADDRESSES: Submit written input to District Ranger, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845.

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to John Shoberg, District Ranger or Ed Casey, Interdisciplinary Team Leader, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845, Phone (503) 575–2110.

SUPPLEMENTARY INFORMATION: This revised project will analyze a range of ecosystem restoration projects not just two salvage timber sales. A revised EIS titled: "Fox Ecosystem Restoration Project: Day & Dunning Salvage Timber Sales and Other Projects" more accurately reflects this revised analysis process.

The proposed Day Salvage Timber Sale would harvest approximately 8,469 thousand board feet (MBF) from approximately 1322 acres. Approximately seven miles of new road construction would be required to access the timber. Proposed harvest

methods and estimated harvest volumes include: (1) Salvage harvest, 921 acres, 7,116 MBF; (2) Sanitation harvest, 64 acres, 178 MBF; (3) Clear Cut With Reserve harvest, 58 acres, 502 MBF; (4) Salvage Patch Cut harvest, 84 acres, 301 MBF; (5) Commercial Thinning harvest, 117 acres, 372 MBF; (6) Precommercial Thinning, 17 Acres; (7) Improvement Thinning with Reforestation, 12 acres. Fuels reduction, site preparation, and reforestation plans are included in harvest unit plans. Skyline and tractor yarding systems would be used to harvest the timber. The Day Salvage Timber Sale is scheduled for sell in Fiscal Year 1994. Stands proposed for harvest are located within Sections 11, 12–16, 21–23; Township 11 South; Range 30 East; and within Sections 7, 8, 17–20; Township 11 South; Range 31 East (Williamette Meridian).

The proposed Dunning Salvage Timber Sale would harvest approximately 5,185 MBF from approximately 869 acres. To access the timber, seven miles of new road construction would be required. Proposed harvest methods and estimated harvest volumes include: (1) Salvage harvest, 577 acres, 4,174 MBF; (2) Commercial Thinning harvest, 33 acres, 85 MBF; (3) Sanitation harvest, 150 acres, 894 MBF; (4) Salvage Patch harvest, 109 acres 489 MBF. Fuel reduction, site preparation, and reforestation plans are included in harvest unit plans. Skyline and tractor yarding systems would be used to harvest the timber. The Dunning Salvage Timber Sale is scheduled for sale in Fiscal Year 1994. Stands proposed for harvest are located within Sections 35, 36; Township 10 South; Range 30 East; and Sections 1, 2, 11, 12; Township 11 South; Range 30 East: and Section 6; Township 11 South; Range 31 East; (Willamette Meridian).

The mitigation measures associated with the revised proposed salvage timber sales include the following:

—Stream bank and riparian area restoration, 21 miles; fisheries habitat, 9 miles; and 12 acres of upland watershed improvement projects. These projects will be implemented in the Fox and Dunning Creek drainages.
—Establish old growth replacement habitat, preparation and implementation of an access management plan.
—Prescribed fire will be used on 932 acres for fuels reduction and thinning and on 545 acres for range and wildlife forage enhancement.
—Monitoring plans will be prepared to measure effects to riparian areas, fisheries habitat, wildlife habitat, vegetation after prescribed fire, response to salvage harvest, and visual quality.

The revised timeline now shows the draft EIS to be available for public review and comment in June 1993. The final EIS is scheduled to be completed by September 1993.

Dated: February 18, 1993.

Ralph H. Perkins,

Timber Staff Officer.

[FR Doc. 93–4598 Filed 2–26–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, including Real Estate (BE–13); and Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture with a Foreign Person (BE–14).

Agency Form Numbers: BE–13 and BE–14.

OMB Approval Number: 0608–0035.

Type of Request: Revision of a currently approved collection.

Burden: 1,913 hours.

Number of Respondents: 1,275.

Avg Hours Per Response: 1.5 hours.

Needs and Uses: The survey is required in order to obtain comprehensive initial data concerning new foreign direct investment in the United States. The data are needed to measure the amount of new foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

Affected Public: Businesses or other for-profit institutions.

Frequency: One-time report when a transaction occurs.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093, room 3228, New Executive Office Building, Washington, DC 20503.

Agency: National Institute of Standards and Technology (NIST).

Title Energy-Related Invention Evaluation Request.

Agency Form Number: NIST–1019.

OMB Approval Number: 0693–0002.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 200 hours.

Number of Respondents: 2,000.

Av Hours Per Response: 6 minutes.

Needs and Uses: NIST needs the information to evaluate inventions and communicate with the inventor. The information is used solely for evaluating the inventions submitted and in communicating with the inventor or their representative. Respondents are independent inventors and small companies with technological innovation.

Affected Public: Individuals, businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation. Voluntary.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application to Shuck Surf Clams-Ocean Quahogs at Sea.

Agency Form Number: None.

OMB Approval Number: 0648–0240.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2 hours.

Number of Respondents: 2 (12 responses per year).

Avg Hours Per Response: 5 minutes.

Needs and Uses: The fishery management plan for surf clams and ocean quahogs requires vessel owners to obtain approval for shucking at sea operations. Information is used to facilitate observer placement. Observers certify the amount of unshucked shellfish harvested which is used for quota management.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395–3084, room 3019, New Executive Office Building, Washington, DC 20530.

Agency: Patent and Trademark Office (PTO).

Title: Rules for Patent Maintenance Fees.

Agency Form Number: PTO–1536.

OMB Approval Number: 0651–0016.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8,714 hours.
Number of Respondents: 104,569.
Avg Hours Per Response: .08 hours.
Needs and Uses: The patent number and serial number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments. Such payments are required to maintain a patent in effect.
Affected Public: Individuals, businesses or other for-profit institutions, federal agencies or employees.
Frequency: Every four years.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be directed to the respective OMB Desk Officer listed above.

Dated: February 23, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–4596 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–CW–M

Changes in Organization and Functions During Calendar Year 1992

AGENCY: Office of the Secretary, Department of Commerce

SUMMARY: Following is a summary of Department of Commerce officials and units affected by major changes in authority, title, function, or structure during the past calendar year. Specific information on each action can be obtained by requesting a copy of the applicable Department Organization Order (DOO), also listed below.

Department Officials

Mission and Organization of the Department of Commerce:

DOO 1–1, Amendment 28, 10–14–92

Under Secretary for International Trade:

DOO 10–3, Amendment 1, 6–12–92

Assistant Secretary for Administration:

DOO 10–5, Amendment 6, 4–6–92

Office of the General Counsel:

DOO 10–6, Amendment 5, 2–25–92

Assistant Secretary For Communications and Information:

DOO 10–10, Revision, 9–28–92

Under Secretary for Technology:

DOO 10–17, Revision, 7–14–92

Assistant Secretary for Technology Policy:

DOO 10–18, Amendment 1, 7–14–92

Executive Secretariat:

DOO 15–1, Amendment 2, 10–14–92

Office of Public Affairs:

DOO 15–3, Amendment 3, 10–14–92

Office of Business Liaison:

DOO 15–13, Amendment 4, 10–14–92

Office of White House Liaison:

DOO 15–18, New, 10–14–92

Counsellor and Chief of Staff:

DOO 15–20, Revision, 10–14–92

Office of Policy Planning and Coordination:

DOO 15–22, Amendment 1, 1–14–92

Office of Budget:

DOO 20–3, Revision, 6–26–92

Director For Human Resources Management:

DOO 20–8, Revision, 4–2–92

Office of Administrative Operations:

DOO 20–9, Amendment 1, 5–26–92
DOO 20–9, Amendment 2, 8–14–92
DOO 20–9, Amendment 3, 9–18–92

Office of Inspector General:

DOO 23–1, Amendment 3, 9–21–92

Minority Business Development Agency:

DOO 25–4B, Amendment 2, 5–4–92

National Oceanic and Atmospheric Administration:

DOO 25–5, Amendment 6, 5–29–92

National Telecommunications and Information Administration:

DOO 25–7, Revision, 9–28–92:

National Institute of Standards and Technology:

DOO 30–2A, Amendment 2, 7–14–92
DOO 30–2B, Amendment 1, 7–14–92

Patent and Trademark Office:

DOO 30–3, Revision, 5–12–92

National Technical Information Service:

DOO 30–7B, Revision, 9–18–92

Bureau of the Census:

DOO 35–2B, Revision, 3–2–92
DOO 35–2B, Amendment 1, 12–23–92

International Trade Administration:

DOO 40–1, Amendment 5, 6–12–92

FOR FURTHER INFORMATION CONTACT: Sherry M. Cage, Office of Management and Organization, Department of Commerce, Room 5317, Washington, DC 20230, Telephone (202) 482–5481.

Stephen C. Browning,

Director, Office of Management and Organization

[FR Doc. 93–4563 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DK–F

Foreign-Trade Zones Board

[Order No. 630]

Resolution and Order Approving the Application of the Pinellas County Industry Council for a Foreign-Trade Zone in Pinellas County, FL

Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Pinellas County Industry Council, a Florida public corporation, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on March 30, 1992, requesting a grant of authority for a general-purpose foreign-trade zone in Pinellas County, Florida, within the St. Petersburg Customs port of entry, the Board, finding that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority Establishment of a Foreign-Trade Zone Pinellas County, Florida (St. Petersburg Customs Port of Entry)

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Pinellas County Industry Council (the Grantee), a Florida public corporation, has made application (filed 3/30/92, FTZ Docket 7–92, 57 FR 11934, 4/8/92) to the Board, requesting the establishment of a foreign-trade zone at sites in Pinellas County, Florida, within the St. Petersburg Customs port of entry;

Whereas, Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, The Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 193, at the sites described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 17th day of February 1993.

Foreign-Trade Zones Board.

Ronald H. Brown

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–4555 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–P

Foreign-Trade Zones Board Docket 6–93

Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Application for Subzone, Wisconsin Dairies Cooperative, Infant Formula/Dairy Products Manufacturing Plant, Preston, MN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Foreign Trade Zone Commission, grantee of FTZ 119, requesting special-purpose subzone status for export activity at the infant formula/dairy products manufacturing plant of Wisconsin Dairies Cooperative (WDC), located in Preston, Minnesota. 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 February 17, 1993.

The WDC plant (181,176 sq. ft./4 acres/9 employees) is located at 220 St. Paul Street, Preston (Fillmore County), Minnesota, approximately 120 miles southeast of the Minneapolis-St. Paul Customs port of entry. The facility is used to produce milk-based infant formula and other dairy food products for export and the domestic market. Activity under zone procedures would involve blending foreign, ex-quota non-fat milk powder with domestically-sourced demineralized whey and whey protein. All products would be exported. Zone procedures would exempt the company from quota requirements and Customs duty payments on the foreign milk products (HTSUS 0402.10) used in the export activity. The application indicates that subzone status would help improve WDC's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 30, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period May 17, 1993.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 108 Federal Building, 110 S. Fourth Street, Minneapolis, MN 55401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230

Dated: February 19, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–4557 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 629]

Resolution and Order Approving the Application of the City of Meridian, ID, for a Foreign-Trade Zone in Meridian, ID, (Boise Customs Port of Entry)

Proceedings of the Foreign-Trade Zones Board, Washington, DC; Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Meridian, Idaho, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on March 12, 1992, requesting a grant of authority for a general-purpose foreign-trade zone in Meridian, Idaho, within the Boise Customs port of entry, the Board, finding that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority; Establishment of a Foreign-Trade Zone Meridian, ID; (Boise Customs Port of Entry)

Whereas, by an Act of Congress approved June 18, 1934, and Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the City of Meridian, Idaho (the Grantee), has made application (filed 3/12/92, FTZ Docket 6–92, 57 FR 10334, 3/25/92) to the Board, requesting the establishment of a foreign-trade zone in Meridian, Idaho, within the Boise Customs port of entry;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 192, at the site described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28.

Signed at Washington, DC, this 17th day of February 1993.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 93–4556 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A-201-808]

Affirmative Preliminary Determination of Critical Circumstances; Corrosion-Resistant Carbon Steel Products From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: N. Gerard Zapiain or Robin Gray, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3793.

Preliminary Determination

On January 26, 1993, petitioners alleged that critical circumstances exist with respect to imports of corrosion-resistant carbon steel products from Mexico. The Department of Commerce (the Department) published its preliminary determinations of sales at less than fair value in this investigation on January 26, 1993.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind or merchandise which is the subject of the investigation, or,

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding requisite (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding requisite (A)(ii) above, we normally consider margins of 25 percent or more in the case of purchase price and 15 percent or more in the case of exporter sales price, comparisons sufficient to impute knowledge of dumping. Since the preliminary dumping margins for all exporters of corrosion-resistant carbon steel products from Mexico are in excess of 25 percent, we can impute knowledge under section 733(e)(1)(A)(ii) of the Act.

With regard to requisite (B), we generally consider, pursuant to 19 CFR 353.16(f), the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. Because we did not receive adequate questionnaire responses, we are assuming as BIA that imports were massive over a relatively short period of time. Accordingly, we preliminarily find that critical circumstances do exist in this investigation.

We will announce the final determinations of critical circumstances along with the final antidumping determinations in this investigation on June 21, 1993.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are instructing the Customs Service to suspend liquidation of all entries of corrosion-resistant carbon steel products from Mexico that are entered, or withdrawn from warehouse, on or after October 26, 1992, which is 90 days prior to January 26, 1993, the date of publication of the preliminary determination.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

Comments regarding this preliminary critical circumstances determination, if any, should be included in the case briefs, which are currently due on April 23, 1993. This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.16(b).

Dated: February 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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[A-533-805]

Notice of Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

Final Determination

The Department of Commerce ("the Department") determines that sulfur dyes, including sulfur vat dyes, from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances do not exist. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our affirmative preliminary determination on October 19, 1992 (57 FR 48502, October 26, 1992), the following events have occurred.

On October 29, 1992, petitioner, Sandoz Chemical Corporation, submitted comments regarding the cost of production ("COP") response submitted by Atul Products Limited, respondent in this investigation. On October 30, 1992, we issued a COP deficiency letter to Atul.

On October 30, 1992, respondent requested that we postpone the final determination until February 1, 1993. On November 20, 1992, we postponed the final determination until February 1, 1993. The postponement notice was published in the **Federal Register** on December 7, 1992 (57 FR 57730).

On November 9, 1992, respondent submitted its COP deficiency response. On November 9, 1992, respondent also resubmitted its U.S. sales listing because upon review of the preliminary determination margin calculations Atul discovered that it had omitted a shipment to the United States. On December 2, 1992, respondent resubmitted clearer copies of its computer printouts. On December 10, 1992, respondent submitted diskettes containing the November 9, 1992, U.S. sales listing.

From November 16 through November 20, 1992, the Department conducted verification in Valsad, India of the questionnaire responses submitted by respondent. On December 21 and 22, 1992, the Department conducted verification in Switzerland of the questionnaire response submitted by Hain, Limited ("Hain"), a European reseller of dyes.

On December 3, 1992, we received a letter from Hickson and Dadajee,

Limited objecting to the rate assigned to it in the preliminary determination.

On December 23, 1992, respondent again requested that the Department postpone the final determination until February 19, 1993. On January 19, 1993, we postponed the final determination until February 19, 1993. The postponement notice was published in the Federal Register on January 27, 1993 (58 FR 6212).

On January 25, 1993, petitioner and respondent submitted case briefs. On January 27, 1993, petitioner and respondent submitted rebuttal briefs. A public hearing was held on January 28, 1993. On February 1, 1993, at the request of the Department, respondent submitted a supplemental case brief regarding the reseller's response. On February 4, 1993, petitioner submitted its rebuttal brief to respondent's supplemental case brief.

Period of Investigation

The period of investigation ("POI") is November 1, 1991, through April 31, 1992.

Scope of Investigation

The merchandise subject to this investigation is sulfur dyes, including sulfur vat dyes. Sulfur dyes are synthetic, organic, coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro or amino groups, or by reaction of sulfur and/or alkaline sulfide with aromatic hydrocarbons. For purposes of this investigation, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 46, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms. The sulfur dyes subject to this investigation are classifiable under subheadings 3204.15.10, 3204.15.20, 3204.15.30, 3204.15.35, 3204.15.40, 3204.15.50, 3204.19.30, 3204.19.40 and 3204.19.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Such or Similar Comparisons

We have determined for purposes of the final determination that the products covered by this investigation comprise a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Category (*i.e.*, conventional or vat); (2) color; (3) color index number; (4) type; (5) form; and (6) strength. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Transshipment

At the time of the preliminary determination, we had not received sufficient data to analyze possible transshipments of subject merchandise from Atul, through Europe, to the United States. Since the preliminary determination, we have received further information and have conducted vertification of the European reseller, Hain. Based on information submitted to the Department and information obtained at verification, we determine that some of the subject merchandise produced by Atul is being transshipped through Europe to the United States. *See* February 19, 1993 Acting Deputy Assistant Secretary memorandum decision. We have calculated a separate rate for these shipments. *See* "Foreign Market Value" and "United States Price" sections of this notice. *See* also *Comment 2.*

Fair Value Comparisons

To determine whether sales of sulfur dyes, including sulfur vat dyes, from India to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Atul's Sales

For sales by Atul directly from India to the United States, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed c.i.f. prices to unrelated customers. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance.

In accordance with section 772(d)(1)(C) of the Act, we added to the USP the amount of the Central Excise Tax and Sales tax that would have been collected if the merchandise had not been exported.

Finally, in accordance with section 772(d)(1)(B) of the Act, we made an addition to USP for an import duty which was rebated or not collected by reason of exportation.

Transshipped Sales

For Hain, a European reseller of Atul's merchandise, we also based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold by the reseller to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was otherwise indicated.

We calculated purchase price based on Hain's packed c.i.f. prices to unrelated customers and made the same type of adjustments as we did for Atul. We made deductions, where appropriate, for foreign brokerage and handling, ocean freight, and marine insurance.

Foreign Market Value

Atul's Sales

In order to determine whether there were sufficient sales of sulfur dyes, including sulfur vat dyes, in the home market to serve as a viable basis for calculating FMV for Atul, we compared the volume of home market sales of sulfur dyes, including sulfur vat dyes, to the volume of third country sales of the same products, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determine that Atul had a viable home market with respect to sales of sulfur dyes, including sulfur vat dyes, during the POI.

Petitioner alleged that Atul was selling in the home market at prices below the COP. Based on petitioner's allegation, we initiated a COP investigation, and requested data on the production costs of Atul. Atul's cost data were not submitted in time to be considered for the preliminary determination. However, Atul's submitted cost data were examined at verification and have been analyzed for purposes of our final determination.

To calculate COP, except as noted below, we relied on information reported by respondent. We calculated COP based on the sum of respondent's cost of materials, fabrication, general expenses, and packing. We recalculated respondent's reported labor costs based on information noted at verification. *See Comment 5.*

We compared Atul's prices for home market sales of comparison merchandise to the COPs of those sales. We found that 100 percent of these sales were at

prices above the COP. Accordingly, we used those sales for FMV. *See Comment 4.*

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade.

We calculated FMV based on packed ex-factory prices charged to unrelated customers in the home market. We deducted discounts where appropriate. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses. We recalculated home market and U.S. credit expenses using as the credit period the time between the date of shipment and date of payment and the interest rate in effect during the POI, as reported in Atul's response. We calculated home market credit expense on gross price less discounts. We recalculated home market credit expense, using the average credit period, on those sales for which payment had not been received as of the filing of the August 18 deficiency response. We did not deduct the cash discount from these sales because the calculated average credit days for these sales exceeded the credit terms allowing a cash discount. We deducted the advertising expense from the home market sales price.

We did not deduct the claimed warehousing expense from Atul's home market gross unit price as a direct selling expense. We normally treat pre-sale warehousing expense for merchandise which has been placed in general inventory for sale to any party as an indirect selling expense. Atul has not adequately shown that this warehousing expense is directly related to the sales subject to investigation.

We made an upward adjustment to the tax-exclusive home market prices for the taxes we computed for the USP. Further, we made an adjustment for physical differences in the merchandise, where appropriate, in accordance with 19 CFR 353.57.

Finally, in accordance with 19 CFR 353.56(b)(1), we deducted commissions from the home market prices and added U.S. indirect selling expenses to home market prices capped by the amount of home market commissions.

Transshipped Sales

For sales of merchandise from India through Europe to the United States, Hain had no sales in India, and no sales to third countries to use as the basis for FMV under section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(2) of the Act, we used constructed value (CV) as the basis for EMV.

Because Atul, not Hain, produced the subject merchandise, we relied on the cost information reported by Atul. *See Comment 2.*

We calculated CV based on the sum of Atul's cost of materials, fabrication, general expenses, profit, and packing. We recalculated respondent's reported labor costs based on information noted at verification. *See Comment 5.* Atul's actual general expenses and profits were less than the statutory minima of 10 percent and eight percent, respectively. Therefore, in accordance with section 773(e)(1)(B) of the Act, we have used the statutory minima.

Best Information Available

As noted in the preliminary determination, Hickson and Dadajee informed the U.S. consulate in Bombay that they did not desire to participate in this investigation. Therefore, in accordance with section 776(c) of the Act, we used the best information available (BIA) when calculating the rate for Hickson and Dadajee.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation, but higher rates based on more adverse assumptions for those respondents who did not cooperate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Aspheric Ophthalmoscopy Lenses from Japan,* 57 FR 6703, 6704 (February 27, 1992). According to the Department's two-tiered BIA methodology outlined in the *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom,* 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of 1) the margin alleged in the petition, or 2) the highest calculated rate of any respondent in the investigation. The dumping margin calculated for Atul was lower than the Department's recalculated petition rate of 17.55 percent which was used for purposes of initiation. Therefore, as BIA, the dumping margin assigned to Hickson and Dadajee is 17.55 percent.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Critical Circumstances

Petitioner alleged that "critical circumstances" existed with respect to imports of sulfur dyes, including sulfur vat dyes, from India. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind or merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criteria (A)(i), above, we normally look for the existence of outstanding dumping orders on sulfur dyes, including sulfur vat dyes, from India, to establish a history of dumping. However, none have been found in this case.

Regarding criterion (A)(ii) above, we normally consider margins of 25 percent or more in the case of purchase price comparisons, and 15 percent or more in the case of exporter sales price comparisons, sufficient to impute knowledge of dumping under this section. Because the dumping margins for Atul, Hain, and Hickson and Dadajee are each less than 25 percent, we cannot impute knowledge under section 735(a)(3)(A)(ii) of the Act for these companies. Because we cannot impute knowledge of dumping, we need not examine whether there have been massive imports over a relatively short period. Therefore, in accordance with section 735(a)(3) of the Act, we determine that, for Atul, Hain, and Hickson and Dadajee, there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise from India.

With respect to firms covered by the "All Other" rate, because the dumping margin is insufficient to impute knowledge of dumping, we do not need to determine whether imports of sulfur dyes, including sulfur vat dyes, have been massive over a relatively short period. Accordingly, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist for those firms.

Interested Party Comments

Comment 1

Petitioner asserts that, in accordance with the Court of International Trade's ("CIT") decision in *Daewoo Electronics Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989) ("*Daewoo*"), the Department must determine the amount of indirect taxes that were actually passed on by Atul in its home market sales (measure tax incidence).

Petitioner also argues that the Department's adjustment to FMV to account for central excise duties and sales taxes was incorrect. The Department improperly added the amount that it calculated would have been collected on U.S. sales, rather than the taxes actually paid in the home market. This amounted to an improper circumstance-of-sale ("COS") adjustment. Petitioner maintains that there is no basis for such a COS adjustment, as the home market invoice price includes taxes. Thus, the gross price should include only the taxes actually paid on home market sales. This FMV is appropriately compared with a USP, properly increased by the indirect taxes foregone upon exportation. Alternatively, petitioner suggests that the Department not make any adjustment to USP or FMV for indirect taxes.

Petitioner notes that Atul claimed that certain excise taxes were increased and an adjustment to USP should be made based upon the increased tax rate. Petitioner contends that any increase in the tax rate by the Indian Government not collected from home market customers cannot be considered for the determination of the USP adjustment.

Respondent agrees with the Department's treatment of indirect taxes in this case. Even though the taxes may be an addition to the home market price, they are included in the price charged by Atul and, thus, the customers bear the taxes. Respondent argues that the statute requires an adjustment to USP and states that all tax rates incurred by Atul are those which it reported to the Department in its questionnaire responses.

DOC Position

We do not agree that the statutory language, limiting the amount of adjustment to the amount of tax "added to or included in the price" of subject merchandise sold in the Indian home market, requires the Department to measure the home market tax incidence. The CIT's decision in Daewoo currently is being appealed to the Court of Appeals for the Federal Circuit. Based on the records reviewed, we are satisfied that the tax was added to the price on the home market sales.

We also disagree with petitioners that there is no basis for a COS adjustment to FMV for differences in indirect taxes. We do a COS adjustment in order to neutralize the effect of the *ad valorem* tax rate, relying on the Department's broad statutory authority to make adjustments for such differences in the COS. As stated in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 57 FR 28,360, 28,419 (1992), "because all home market sales were reported net of VAT, we added the same [indirect tax] amount to FMV as calculated for U.S. price. This methodology leads to the same result as if we had calculated the actual home market tax and then performed a COS adjustment to FMV to eliminate the difference between the tax in each market."

Regarding the increase in the tax rate, the actual rates applicable to POI sales were examined at verification and are reflected in the calculations.

Comment 2

The statute sets up a dichotomy between transshipped sales and intermediate country sales to the United States. In the latter case, the intermediate country is treated as the country of export for FMV purposes. Petitioner maintains that Atul's sales to European customers, which ultimately sell the merchandise to the United States, are merely transshipments. According to petitioner, these third country sales cannot be considered "intermediate country sales" pursuant to section 773(f) of the Act and, therefore, FMV must be based on Atul's home market sales prices and USP on Atul's export sales prices to the reseller in the third country. Petitioner argues that only under specifically defined conditions may such third country sales be considered intermediate country sales and the sales do not meet those conditions.

Petitioner argues that section 773(f)(2) of the Act requires that the manufacturer or producer be unaware of the country to which the reseller intends to export the merchandise from the home market. The term "country" is defined in section 771(3) of the Act as a "foreign country"—not the United States. Petitioner claims that Atul is aware of the exportation to the intermediate country, and the alleged reseller, Hain, does not export the merchandise to a foreign country. Thus, the second criterion of the statute is not met.

Furthermore, petitioner argues that the resold merchandise does not meet the fourth criterion, *i.e.*, of section 773(f)(4) of the Act, that the merchandise "enter the commerce of [the intermediate] country." Petitioner contends that the term "enters the commerce" requires that the merchandise under consideration be sold or offered for sale for consumption in the intermediate country. Petitioner claims that no evidence has been presented which would support a finding that the merchandise has entered the commerce of an intermediate country, in fact, the merchandise exported from India arrives in a free trade zone and is "transshipped" to the United States.

Petitioner also alleges that Atul's sales to the European transshipper were below the COP. Furthermore, petitioner submits that a transshipper's price to the United States cannot form the basis of USP where the transshipper does not meet the criteria of an intermediate country "reseller" under section 773(f) of the Act.

Petitioner suggests that even if the Department determines that Hain is a reseller, USP must be based on Atul's price for export since Atul was aware of the ultimate destination of the merchandise. Petitioner argues that because (1) Atul has knowingly attempted to conceal the country of origin of its exports through the use of neutral packing, (2) the importer was aware of the identity of the producer, and (3) the merchandise is exported to a duty-free bonded warehouse for shipment out of the third country to the United States, the Department should impute knowledge of the ultimate destination of merchandise to Atul. In addition, petitioner suggests that in view of Atul's failure to disclose the third of these facts, the Department should resort to BIA regarding the third country transshipments.

Respondent states that it did not know at the time of sale the ultimate destination of merchandise sold to the European resellers. Its third country sales are not "mere transshipments," but *bona fide* third country sales, and should not be considered in the fair value determination. Respondent states

that while it sold sulfur black concentrate through a reseller to Hain, it has repeatedly certified that it did not know, or have any reason to know, the ultimate disposition of the merchandise. Respondent asserts that nothing at the India or Hain verification contradicted this.

Respondent claims that it had never even heard of the U.S. importer, C.H. Patrick, until this investigation and, similarly, C.H. Patrick stated it only learned of the Indian source of its merchandise because it had to respond to inquiries from the International Trade Commission (ITC). Respondent states that (1) petitioner has acknowledged a worldwide market for unreduced sulfur dye concentrate, (2) Atul's concentrate could be used globally without being reduced by solubilizers, and (3) the third party reseller in the intermediate country distributes dyestuffs worldwide. Accordingly, there is no reason why Atul would have known the ultimate destination of its third country sales of concentrate, and the requirement of section 773(f)(2) of the Act is met.

Respondent argues that, if its third country sales of concentrate are included in the Department's analysis, the FMV must be based on sales in the intermediate country. Pursuant to section 773(f)(1) of the Act, respondent submits that the verification report recognizes that the consignee, Hain, is, for all intents and purposes, buying from the producer, not an intermediary reseller who essentially functions, and is characterized in the verification report, as a selling agent.

Respondent states that the criterion of section 773(f)(4) is also satisfied. Its European sales enter the commerce of the third country and, even though such sales enter a free trade zone, there remains a "contingency of diversion" out of the zone into that country.

Respondent concludes that it is Hain, not the respondent, which is responsible for the sale of the sulfur black concentrate to the United States and which sets the price to the U.S. customer. Thus, respondent states that it would be entirely appropriate for Hain to be considered a reseller for purposes of section 773(f) of the Act.

Respondent submits that even if Atul's sales form the basis of FMV, Hain's sales should form the basis for USP as Atul did not know the ultimate destination of the goods sold to the transshipper.

DOC Position

We agree with petitioner that these sales do not qualify for consideration under section 773(f) of the Act. As discussed above, the European reseller, Hain, who purchases from a reseller in a country other than India, does not purchase the merchandise from the manufacturer and hence, fails to meet the requirement of section 773(f)(1) of the Act.

Also, the merchandise does not enter the commerce of the intermediate country and hence fails to meet the requirements of section 773(f)(4) of the Act.

Verification showed that all of Atul's exports of the subject merchandise to Hain, the European reseller, were transshipped through Belgium to the United States. We did not find that any of the merchandise sold to Hain entered the commerce of Belgium. The fact that Hain imports the merchandise into a duty-free zone in Belgium, from which there remains a "contingency of diversion" into Belgium, is not sufficient evidence that this merchandise entered the commerce of Belgium. In a recent case, *Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon from Kazakhstan* 58 FR 79 (January 4, 1993), we relied partially on the fact that merchandise entered a bonded warehouse as evidence that the merchandise did not enter the commerce of a third country. We agree with petitioner that storage in a duty-free bonded warehouse in Belgium is *prima facie* evidence that the merchandise did not enter the commerce of an intermediate country.

Although these sales do not qualify as sales from an intermediate country pursuant to section 773(f) of the Act, they nevertheless are subject to this investigation because they involve the subject merchandise produced in India and, ultimately, imported into the United States. We must determine whether these sales were made at less than fair value (LTFV). To do so, we have treated the European reseller the same way we would treat a reseller in the home market. The fact that the reseller is located in another country does not fundamentally change the nature of the transactions for purposes of LTFV comparisons.

We used the European reseller's prices to the United States as USP, as we would for a reseller located in India, in accordance with section 772(b) of the Act. The European reseller had no sales in India, nor sales to third countries as defined in section 773(a)(1)(B) of the Act, to use as the basis for FMV under section 773(a)(1) of the Act. Accordingly, we used CV as the basis for FMV in accordance with section 773(a)(2) of the Act.

As CV, we used the cost of manufacture reported by Atul because Atul, not Hain, produced the subject merchandise. We also added the general expenses and profit of Atul as directed by section 773(e)(1)(B) of the Act. However, because these were both less than the statutory minima of 10 and eight percent, respectively, we used the statutory minima.

Comment 3

If the Department determines that the USP for the transshipped merchandise should be based upon Hain's price to its U.S. customer, petitioner asserts that the sales information submitted by Hain cannot be used as a basis for USP because Hain failed to serve the responses upon petitioner as required by the regulations. Petitioner states that this has resulted in it being effectively prevented from participating in the intermediate country investigation. Petitioner states that the transshipper should be treated like any other respondent, *i.e.*, if the transshipper fails to provide information in accordance with the regulations and fails to serve the information on petitioner in accordance with the regulations, the sales information must be treated as a non-response for the purposes of determining USP and FMV. Petitioner claims that the information can only be used to determine Atul's relationship with the transshipper.

Petitioner also argues that the Department should resort to BIA for the sales from Atul through Hain because the company failed verification. Petitioner asserts that the Hain verification report cites various discrepancies and Hain's inability to reconcile submitted data with the company's finance statements. Petitioner notes a discrepancy in the verfication report with respect to movement charges on which petitioner cannot comment as it was not served with the Department's deficiency letter. Finally, with respect to indirect selling expenses, petitioner states that Hain was unable to provide source documents that could be tied to the audited 1991 financial statement.

Respondent submits that any alleged verification or service deficiencies on the part of the European reseller should have no impact on the margin analysis for respondent because the European reseller is an unrelated customer of respondent. Therefore, Atul's sales to the transshipper should have no impact on the calculation of Atul's margin.

DOC Position

We disagree with petitioner. The submissions by Hain have been served

on petitioner and petitioner was provided an opportunity to submit case and rebuttal comments on the submissions. The discrepancies noted in the Hain verification report are minor and we have followed our normal practice of correcting these. Morever, we agree with respondents that any deficiencies found in the European reseller verification should not affect Atul's margin because we have determined that there is no relationship between the firms.

Comment 4

Petitioner submits that its COP allegation was made within the 45 days prior to the preliminary determination and, therefore, there is no basis for the Department rejecting the allegation.

Respondent claims, however, that the COP investigation should not have been initiated because petitioners allegation was untimely. Respondent states that its responses prior to August 3, 1992, the deadline for filing a COP allegation based on the original date for the preliminary determination, contained all the data necessary for petitioner to formulate the same COP allegation made on August 20, 1992. Respondent alleges that as part of an attempt to salvage its tardy allegations, petitioner filed a request for a 30 day postponement of the preliminary determination simultaneously with its COP allegation. In fact, the COP allegations were used by petitioner as a partial justification for postponement, even though the time for the COP allegations would have lapsed but for the postponement. Respondent submits that such circular reasoning cannot be applied in this case when petitioner possessed all of the COP information it would later use and elected not to file an earlier request for the extension for COP allegations specifically provided in the regulations.

Finally, respondent states that the verification mandates a finding that the subject merchandise was sold in the home market at prices above COP. Respondent submits that when the price realized by Atul, inclusive of the returnable packing charge and the finance charge billed by Atul (which is a separate, additional invoice line item over and above the price), is compared with the COP as calculated pursuant to the Department's methodology under 19 CFR 353.51(c), the only conclusion which may be drawn is that there are no sales below cost. Respondent also states that the record is devoid of any evidence in support of finding that sales below cost (1) have been made over any extended period and in substantial quantities; and (2) are not at prices which permit recovery of all costs within a reasonable period in the normal course of trade.

Respondent also requests that the Department allow it to file comments on the results of any COP investigation. Not doing so would mean that Atul's first and only recourse to make its position known on the COP results would be in a judicial forum.

DOC Position

Regarding the timeliness of petitioner's COP allegation, we disagree with respondent. In the *Notice of Postponement of Preliminary Antidumping Duty Determination: Sulfur Dyes, Including Sulfur Vat Dyes, from India* (57 FR 41125, September 9, 1992), we indicated that petitioner made a timely request for a thirty day postponement of the Department's preliminary determination and we postponed the preliminary determination accordingly. Because the preliminary determination was postponed, petitioner's allegation was timely in accordance with 19 CFR 353.31(c)(1)(i).

The respondent's comment with respect to whether the record contains sufficient evidence to support a finding of below cost sales is moot. We found all home market sales above the COP.

Regarding returnable packing, we disagree with respondent. During verification there was a discussion concerning this issue and Atul claimed that the drums used in packing these products were said to be returnable. However, review of the inventory records and Atul's customer-specific receivable accounts revealed no evidence to indicate that any packing drums were returned during fiscal year 1991. Moreover, there is no evidence on the record that any revenue from returnable packing exists, or affects the prices of the merchandise sold in India.

Finally, regarding pre-final determination disclosure, it is our normal practice to disclose the results of the COP investigation simultaneously with the final determination. Petitioner in this case, as in many cases, needed to wait until respondents questionnaire responses were filed before making a COP allegation. Thus, we were unable to complete our COP investigation prior to the preliminary determination in this case. The sequence of events almost always allows insufficient time for parties to comment prior to the final determination, something that cannot be avoided given the statutory deadlines and requirements. Therefore, we were unable to solicit comments from respondent on the COP results prior to the final determination.

Comment 5

Petitioner claims that Atul has understated the direct labor portion of its COP. Also, petitioner states that total fiscal 1991 salary and welfare expenses were understated due to Atul's failure to properly include the costs actually incurred as the result of a labor settlement agreement. Petitioner submits that these costs, although paid in Atul's 1992 fiscal year, constitute part of its actual 1991 labor costs. Petitioner also states that in addition to increasing Atul's 1991 salary and welfare expense, the Department must also increase Atul's salary and welfare expenses of all internally supplied inputs used to produce the covered products.

Respondent disagrees with any retroactive application to 1991 production of payroll expense incurred pursuant to a labor settlement reached after fiscal year 1992. Respondent claims that although the labor settlement was retroactive to 1991, the additional salary and welfare benefits were actually paid and recorded in the 1992 fiscal year.

DOC Position

We agree with petitioner. The COP verification revealed that total payroll expense was greater in one exhibit than the salary and welfare expenses reported in another exhibit. Discussions revealed that the difference was due to an anticipated labor settlement in fiscal year 1991. Atul officials had thought that the settlement would increase their actual salary and welfare costs in fiscal 1991, however, since the settlement was not reached until after fiscal year 1991, Atul included only the salary and welfare costs actually incurred in fiscal year 1991 in their 1991 audited financial statements and questionnaire response. We found that the agreement was retroactive to January 1, 1991, and, subsequently, Atul disclosed all payments made under the agreement that were relevant to its 1991 fiscal year. Thus, Atul did actually incur additional salary and welfare benefits relevant to 1991 fiscal year production although they were paid in fiscal year 1992. Accordingly, we have increased the salary and welfare expenses reported for the subject merchandise and the salary and welfare expense of all internally supplied inputs used to produce the subject merchandise.

Comment 6

Petitioner states that Atul's cost for the single most expensive purchased input is substantially below Indian market price and may reflect related-party transactions between Atul and two

of its suppliers. Petitioner suggests that if the Department finds that Atul is sourcing this primary raw material input from a related party at prices below market, then pursuant to section 773(e)(2) of the Act, the Department should disregard such prices and value this input using BIA.

Respondent argues that petitioner's claims that Atul's costs for the input are below Indian market price, or reflect related party transactions are unfounded speculation.

DOC Position

We agree with respondent. There is no information on the record, nor was any uncovered at verificaton, showing that Atul was sourcing the raw material from a related party at below-market prices. Accordingly, we have not disregarded the price for this input.

Comment 7

Petitioner submits that the revised COP for the home market comparison product is significantly higher than Atul's reported home market sales price. Petitioner suggests that Atul's profit is indicative of sales below COP. Petitioner alleges that FMV must be based upon constructed value, calculated in accordance with petitioner's suggested adjustments.

DOC Position

We disagree with petitioner. *See* the *Foreign Market Value* section.

Comment 8

Petitioner states that Atul has no basis for requesting the Department to disregard the "air shipment" sale. Petitioner states that, as Atul itself admits, the sale to the United States was in the ordinary course of trade and transportation arrangements were changed because of a delay in an earlier shipment by Atul to its U.S. customer. Petitioner alleges that the delay in the previous shipment to its U.S. customer was occasioned by and within the complete control of Atul. Thus, petitioner argues that should Atul's U.S. customer be dissatisfied with the product for any particular reason, Atul could rebate or refund part of the purchase price. Petitioner asserts that, in such a situation, the Department would not ignore the rebate in calculating USP.

Respondent states that the Department should exclude the "air shipment" sale because that sale is not representative of Atul's selling practices in the U.S. market and would result in an unfair comparison. Moreover, the air shipment was the only U.S. sale for which a dumping margin was found. Respondent states that due to the exigencies surrounding this shipment, it was obliged to take the extraordinary step of breaking up a pre-existing order for a full container load and to immediately ship the designated quantity to its U.S. customer by air. Atul claims that all of its other U.S. sales during the POI were by ocean carrier, which is the usual method of shipment for this class of merchandise. Respondent notes that air freight costs for this shipment were ten times that of the average, or even the highest, ocean freight charge reported. The foreign brokerage charge was 90 times the average, and 80 times the highest, foreign brokerage charge incurred on Atul's other U.S. sales.

Respondent claims that the Department has the discretion to exclude U.S. sales from the comparison with FMV where such sales are unrepresentative of the seller's U.S. sales behavior and would result in an unfair comparison. Respondent notes that 19 CFR 353.42(b)(1) gives the Department discretion not to examine every sales transaction of a respondent during the POI.

Respondent states that if the Department does not exclude the air shipment, it should substitute the average ocean freight and foreign brokerage charges incurred on Atul's other U.S. sales for the air freight and foreign brokerage charges incurred on the air shipment. Alternatively, respondent suggests that the highest ocean freight and brokerage charges be applied to the air shipment.

DOC Position

We agree with petitioner and have included the air shipment in the fair value comparison. We disagree with the respondent that we should substitute average charges from other transactions in preference to the actual expense incurred for this sale.

Comment 9

Respondent argues that the Department improperly treated Atul's U.S. sales that were made above fair value as merely being at fair value and that the negative margins for Atul's sales should be included in the Department's calculation of the weighted-average dumping margin. Respondent asserts that all U.S. sales involved were the same merchandise and were sold at the same price. Respondent claims that the margin on the loan less than fair value sale can be directly traced to a non-price factor, the aberrationally high freight charges.

DOC Position

We disagree with respondent. For purposes of making LTFV determinations under the Act, we do not consider negative margins in our calculations. Thus, in accordance with 19 CFR 353.2(f)(2), we have calculated the weighted-average dumping margin by "* * * dividing the aggregated dumping margins by the aggregated United States prices."

Comment 10

Respondent states that the Department erred by offsetting the deduction for home market commissions with U.S. indirect selling expenses. Respondent claims that the offset is improper as it completely eliminates a direct selling expense in the form of home market commissions through an adjustment to FMV for indirect U.S. selling expenses. Respondent states that such as offset to FMV for indirect selling expenses may properly be applied only in situations where U.S. price is based on exporter's sales price. Respondent claims that it is well-settled that COS adjustments are limited to direct selling expenses, *e.g.*, commissions. Respondent submits that the Department's "special rule" goes on to provide for adjustments for other selling expenses (*i.e.*, indirect selling expenses) where an adjustment is made for commissions in one market only, up to the amount of the commissions or "other" selling expenses, whichever is less. 19 CFR 353.56(b)(1). However, respondent claims that application of the special rule is improper in this investigation involving purchase price comparisons. First, respondent states that the Department's action completely eliminates the deduction of a direct selling expense which is required pursuant to section 773(a)(4)(B) of the Act. Second, respondent alleges that the Department's offset is accomplished by means which run afoul of the statute; neither the antidumping statute nor judicial decisions authorize adjustment to FMV for indirect selling expenses in a purchase price-to-FMV margin comparison. Rather, respondent assets, the antidumping statute expressly limits those cases where an adjustment may be made for indirect selling expenses to ESP situations.

DOC Position

We disagree with respondent and have deducted commissions from the home market prices and added U.S. indirect selling expenses to the home market price capped by the amount of home market commissions in accordance with section 19 CFR

353.56(b)(1). We disagree with respondent that the statute and regulations limit the application of the "special rule" to exporter's sales price comparisons. On the contrary, section 773(a)(4) of the Act in general, and 19 CFR 353.56(b)(1) specifically, give the Department authority to make these adjustments.

Comment 11

Respondent states that because the reported international freight charges were overstated (*i.e.*, calcuated on the basis of net, rather than gross, weight), the Department should recalculate USP to take into account the correct charges.

Respondent submits that, with the exception of the air shipment, the Department should apply the verified foreign brokerage amount for all of Atul's U.S. sales as the amounts reported exceeded the actual charges.

DOC Position

We agree with respondent and have used the actual freight and foreign brokerage charges noted in the verification report.

Comment 12

Respondent claims that the Department verified two separate ways to arrive at per unit U.S. inventory carrying costs, both of which confirmed that the amount reported was significantly overstated. Respondent submits that the method reviewed as part of the COP verification is more accurate as it is the actual year-end figure taken directly from Atul's year-end audited financial statements. Respondent states that the Department should adopt the method reviewed in the context of the COP verification.

DOC Position

We disagree with respondent. While the exhibit from the cost verification report noted by respondent does contain a figure for inventory carrying cost, this figure was not specifically examined during the cost verification. As such, we have used the figure verified during the course of the sales verification.

Comment 13

Although respondent reported a uniform cash discount taken against total invoice value for all home market sales, the Department verified that the rate varied according to the date of payment by Atul's customer. Respondent claims that the Department should apply the verified rates in the final determination.

DOC Position

We agree with respondent and have used the discount applicable to each sale in accordance with payment terms.

Comment 14

Respondent asserts that the Department's preliminary determination computer program failed to note that the state sales tax varied from 4.0 to 4.8 percent. Accordingly, respondent suggests that in the final determination, the Department should modify the computer program so that the 4.8 percent sales tax rate is applied in connection with all home market sales within Gujarat state.

DOC Position

We have adjusted the program to account for the actual tax rate applicable to sales according to the customer's location.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sulfur dyes, including sulfur vat dyes, from India, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or posting of a bond equal to the amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/ exporter	Weighted-average margin (percent)	Critical circumstances
Atul Products Limited	2.75	No.
Hickson and Dadajee, Limited.	17.55	No.
Hain from Atul Products Limited.	5.49	No.
All Others	8.59	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: February 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4561 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–427–603]

Brass Sheet and Strip From France; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on brass sheet and strip from France. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Beth Chalecki, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1009 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published a countervailing duty order on brass sheet and strip from France (52 FR 6996). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2 (i)(3, (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4685 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–029]

Certain Castor Oil Products From Brazil; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain castor oil products from Brazil. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Beth Chalecki, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1976, the Department of Commerce ("the Department") published a countervailing duty order on certain castor oil products from Brazil (41 FR 8634). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4683 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–508–601]

Oil Country Tubular Goods From Israel; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on oil country tubular goods from Israel. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Lorenza Olivas, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1775 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published a countervailing duty order on oil country tubular goods from Israel (52 FR 6999). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4686 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–507–501]

In-Shell Pistachios From Iran Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on in-shell pistachios from Iran. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department of Commerce ("the Department") published a countervailing duty order on in-shell pistachios from Iran (51 FR 8344). The Department has not received a request to conduct an administrative review of this countervailing duty order for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 22, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4558 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–603]

Standard Carnations From Canada; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on standard carnations from Canada. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1987, the Department of Commerce ("the Department") published a countervailing duty order on standard carnations from Canada (52 FR 7645). The Department has not received a request to conduct an administrative review of this countervailing duty order for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 22, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4559 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–337–601]

Standard Carnations From Chile; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on standard carnations from Chile. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Cameron Cardozo, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1987, the Department of Commerce ("the Department") published a countervailing duty order on standard carnations from Chile (52 FR 3313). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of

Commerce will conclude that an order is not longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5) and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4684 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–489–502]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain welded carbon steel pipe and tube products from Turkey. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1993.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Lorenza Olivas, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1775 or 482–2687.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department of Commerce ("the Department") published a countervailing duty order on certain welded carbon steel pipe and tube products from Turkey (51 FR 7984). The Department has not received a request to conduct an administrative review of this countervailing duty order for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1993, interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance w th 19 CFR 355.25(d)(4)(i).

Dated: February 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4687 Filed 2–26–93; 8:45 a n]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: El Paso MBDC Project I.D. No. 06–10–93006–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $184,260 in Federal funds. An audit fee of $4,607 has been added to the Federal amount. The total funding breakdown is as follows: $188,867 Federal and $33,329 non-Federal for a total of $222,196. The period of performance will be from July 1, 1993 to June 30, 1994. The MBDC will operate in the El Paso, Texas MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application

must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget period. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR Part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. All applicants are subject to a name check review.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

Closing Date: The closing date for applications is April 2, 1993. Applications must be postmarked on or before April 2, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS APPLICATION: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on March 12, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: February 23, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–4656 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Atlantic Sea Scallop Fishery; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold public hearings to receive comments on Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The amendment proposes to change the primary management strategy from a meat-count management system to an effort control program.

DATES: Written comments should be submitted on or before April 26, 1993, to the address below. See **SUPPLEMENTARY INFORMATION** for dates, times and locations of the hearings.

ADDRESSES: Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope "Request for Sea Scallop Amendment 4 public hearing document."

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617)–231–0422.

SUPPLEMENTARY INFORMATION: Amendment 4 has been under development for over 4 years in order to address a number of problems with meat-count controls and to develop a better means of reaching the FMP's yield per recruit and other biological objectives. Although recruitment to both the Georges Bank and Mid-Atlantic stocks has been moderate to excellent in recent years, fishing mortality has been high and the recruiting age classes have been fished down soon after entry into the fishery. Fishing at the current rate is expected to eventually drive the stocks to low levels, since it is unlikely that exceptional recruitment will continue. The Council is considering several alternative proposals for inclusion in Amendment 4.

Proposed Management Measures and Preferred Alternative

A. Moratorium

A permit moratorium would cap the number of vessels that fish for scallops. Access would be restricted to those vessels with Federal scallop permits and scallop landings in excess of 400 pounds (181.4 kg) of scallop meats on any trip recorded in either the 1988 or 1989 NMFS weighout database or in the state weighout databases. Other criteria would apply to new vessels, rerigged vessels and boats that are replaced or upgraded. There would be restrictions on permit transfer and ownership, a requirement to report intent to participate in the fishery on either a full or part-time basis and a process to appeal denial of a permit.

B. Fishing Effort Reductions

Total days at sea fished by vessels in the Atlantic sea scallop fishery would be reduced equally each year for 5 years with a 1-year pause in years 3 and 6. If fishermen significantly improve their fishing power as days-at-sea reductions are imposed, the reduction schedule may be adjusted and replaced by a more restrictive schedule. Alternately, there may be smaller reductions in days at sea in a given year if other restrictions such as limits on crew size and gear modifications further reduce fishing power. The amendment would establish a procedure for the review and subsequent adjustment of the fishing effort reduction schedule.

C. Vessel Categories and Specific Allocation

Qualifying scallop vessels (using any gear) would be separated into two groups consisting of full and part-time vessels. The part-time fleet would be further divided. Part-time scallopers who fish less than 38 days per year would be characterized as occasional participants and would be assigned an average of 18 days at sea annually in year 1. The remaining group, the part-time scallopers who fish between 38 and 150 days, would receive an average of 92 days at sea in year 1. There would be a cap of 205 days at sea for full-time fleet during the first year, followed by a reduction in those days (11–14 percent) for years 2, 4, 5 and 7. Similar reductions would be imposed on the occasional and part-time fleets. The assignment of vessels to each group would be based on historical performance of the vessel during the period 1985 through 1990.

D. Other Measures

To address the absence of age-at-entry controls in the new amendment, a 3¼-inch (83-mm) ring size requirement in the scallop dredge is proposed for the first 2 years of the program with an increase to 3½-inches (89 mm) in year 3. Other gear restrictions would apply to both dredges and trawls. Additional measures under consideration include a maximum crew size of nine, including the captain; a prohibition on the use of shucking and sorting machines for shuckers; continuation of the 12-hour offloading windows and the 3½-inch (89 mm) shell height standard; and annual permit and mandatory reporting requirements for vessels, operators, and first purchasers.

Alternatives Under Consideration

The public hearing document and draft supplemental environmental impact statement (SEIS) will also include alternatives to the number of days allocated to different vessel categories: (1) A limit on the days at sea based on historical days at sea for 22 groups of vessels instead of three groups, thereby allowing the days-at-sea limits to reflect more accurately actual fishing patterns; (2) an adjustable trip limit with a fixed number of layover days; and (3) a fixed trip limit with an adjustable number of layover days.

The hearings are scheduled as follows:

1. March 4, 1993, 7 p.m.—Grand Hotel, Oceanfront & Philadelphia Ave., Cape May, NJ;

2. March 5, 1993, 7 p.m.—Holiday Inn, 1813 W. Mercury Blvd., Hampton, VA;

3. March 6, 1993, 1 p.m.—District Superior Court Room, W. 2nd St., Washington, NC;

4. March 8, 1993, 7 p.m.—Tara Hyannis, West End Circle, Hyannis, MA;

5. March 10, 1993, 7 p.m.—Holiday Inn, U.S. Rt. 1 & Bar Harbor Rd., Ellsworth, ME;

6. March 12, 1993, 1 p.m.—Seaport Inn, 110 Middle St., Fairhaven, MA.

Dated: February 24, 1993.

David S. Crestin,

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

[FR Doc. 93–4622 Filed 2–24–93; 11:53 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Modification of scientific research permit no. 679 (P77#34).

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), Scientific Research Permit No. 679 (P77#34) issued to NMFS, Southwest Fisheries Science Center, P.O. Box 271, LaJolla, CA 92038, on August 4, 1989 is modified to extend the effective date through December 31, 1994.

This modification became effective upon signature.

Documents pertaining to this Modification and Permit are available for review in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, (301–713–2289); and

Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802 (310–980–4016).

Dated: February 19, 1993.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–4595 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of public display permit No. 814.

SUMMARY: On Tuesday, October 27, 1992, notice was published in the **Federal Register** (57 FR 208) that an application (P526) had been filed by the Cornish Seal Sanctuary, Gweek, Cornwall TR12 6UG, England, United Kingdom. A public display permit was requested to obtain one California sea lion (*Zalophus californianus*). On Friday, November 6, 1992, a correction to that notice was published in the **Federal Register** (57 FR 216) to provide notification that the permit was being requested to obtain two California sea lions (*Zalophus californianus*).

Notice is hereby given that on February 19, 1993, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, SSMC1, Silver Spring, Maryland 20910, (301) 713–2289; and Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 Tel: (508) 281–9200.

Dated: February 19, 1993.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–4597 Filed 2–26–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board of the C–141 Service Lifetime Extension Program will meet on 17–19 Mar 1993 from 8:00 AM to 5 PM at ANSER Corporation, Arlington, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to C–141. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–4619 Filed 2–26–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

NOTICE: Hydrogen Technical Advisory Panel (HTAP).

DATES AND TIMES: Tuesday, March 23, 1993, 12:30 p.m.–5:30 p.m. Wednesday, March 24, 1993, 9 a.m.–3:30 p.m.

PLACE: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW, Washington, DC 20008, Telephone: (202) 328–2000.

CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–1506.

PURPOSE: The Hydrogen Technical Advisory Panel will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Pub. L. 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Tuesday, March 23, 1993

12:30 p.m. Introductions, All
1:15 p.m. Opening Remarks/Agenda, Chm. J. Birk, EPRI
1:30 p.m. DOE Report, R. Eaton
2:15 p.m. Old Business, H_2, CO_2, biomass, liquid fuels, etc. other, F. Lynch
2:45 p.m. Break
3:13 p.m. Hydrogen Vision Statement, Chm. J. Birk
3:35 p.m. Refine and Endorse Hydrogen Vision, All
4:15 p.m. Public Comments
5:30 p.m. Adjourn

Wednesday, March 24, 1993

9:00 a.m. DOE Fuel Cells for Transportation Program
9:30 a.m. Discussion of Fuel Cell Program
10:15 a.m. Break
10:45 a.m. Combustion of Fossil Fuels with Hydrogen
11:15 a.m. Discussion of Above
12:00 p.m. Lunch, All
1:00 p.m. Hydrogen R&D Program, W. Hoagland
1:30 p.m. Hydrogen R&D Plans, W. Hoagland
2:00 p.m. Hydrogen R&D Needs Roundtable
3:15 p.m. Action Items; Next Meeting
3:30 p.m. Adjourn

PUBLIC PARTICIPATION: The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement (10 minutes or less) pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 pm (E.D.T.) Tuesday, March 16, 1993, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 pm (E.D.T.) Tuesday, March 16, 1993, to assure it is considered by Task Force members during the meeting.

MINUTES: A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 am and 4 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: February 24, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–4659 Filed 2–26–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–04–NG]

Crestar Energy Marketing Corp.; Ordering Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Crestar Energy Marketing Corp. blanket authorization to import and export up to a total of 50 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

Issued in Washington, DC, February 16, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–4658 Filed 2–26–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Notice of Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Health and Environmental Research Advisory Committee (HERAC)

DATE AND TIME: March 18, 1993—9 a.m.–5 p.m.

PLACE: Conference Room A–410, U.S. Department of Energy, Germantown, Maryland 20585.

CONTACT: Murray Schulman, Office of Health and Environmental Research (ER–70), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, Telephone: 301/903–3338.

PURPOSE OF THE COMMITTEE: To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy (DOE), on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

TENTATIVE AGENDA: Briefings and discussions of:

- New Business
- HER Current Program Activities
- Proposed New Charges for HERAC
- Public Comment (10 minute rule)

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Murray Schulman at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 24, 1993.

Marcia M. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–4660 Filed 2–26–93; 8:45 am]

BILLING CODE 6450–01–M

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: High Energy Physics Advisory Panel (HEPAP).

DATE AND TIME: Wednesday, April 7, 1993, 12:30 p.m.–6 p.m.; Thursday, April 8, 1993, 9 a.m.–4 p.m.

PLACE: U.S. Department of Energy, 1000 Independence Avenue, SW., room 1E–245, Washington, DC.

NOTE: Entry to the building will be permitted with picture I.D. (For example, Driver's License, Passport, or Company I.D.). Cameras and recording devices are not permitted in the building. Department of Energy (DOE) property passes are required for computers.

CONTACT: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 903–4829.

PURPOSE OF PANEL: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

TENTATIVE AGENDA:

Wednesday, April 7, 1993 and Thursday, April 8, 1993

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs and Budgets
—Discussion of Department of Energy (DOE) High Energy Physics Programs and Budgets
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities and Budgets
—Discussion of Planning for Operations of High Energy Physics Accelerator Laboratories in FY 1994
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

PUBLIC PARTICIPATION: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

MINUTES: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 24, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–4657 Filed 2–26–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–777–001, et al.]

Carolina Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 22, 1993

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Co.

[Docket No. ER92–777–001]

Take notice that on November 23, 1992, Carolina Power & Light Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Co.

[Docket No. ER93–32–000]

Take notice that on October 20, 1992, Public Service Electric and Gas Company (PSE&G) tendered for filing an Initial Rate Schedule to provide transmission service to American REF–Fuel Company of Essex County (REF–FUEL) for delivery of the power output of REF–FUEL's independent power facility located in Newark, New Jersey to the Jersey Central Power & Light Company, as well to provide for operation and maintenance of the interconnection facility. In response to discussions with Commission Staff, PSE&G on December 21, 1992 submitted the First Supplemental Agreement and additional descriptive and explanatory information concerning the

interconnection facilities which will be used to provide service to REF–FUEL.

In response to further Commission Staff inquiry, PSE&G on February 17, 1993 submitted a schedule depicting the breakdown of the cost of the interconnection facility which will be used in connection with the services set forth in the First Supplemental Agreement.

PSE&G proposes an effective date of the Initial Rate Schedule as of March 15, 1993, and therefore, requests waiver of the Commission's notice requirements.

Copies of the filing, as amended, have been served on REF–FUEL, the New Jersey Board of Regulatory Commissioners and the New Jersey Public Advocate.

Comment date: March 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

Wisconsin Electric Power Co.

[Docket No. ER93–283–001]

Take notice that on February 8, 1993, Wisconsin Electric Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 8, 1993, in accordance with Standard paragraph E at the end of this notice.

4. Louisville Gas and Electric Co.

[Docket No. ER92–533–000]

Take notice that on February 12, 1992, Louisville Gas and Electric Company (LG&E) tendered for filing the following revised rate schedules: (1) Generation Sales Service (Rate Schedule GSS), (2) Firm Transmission Service (Rate Schedule T), and (3) Coordination Transmission Service (Rate Schedule CT).

In the filing, the above-mentioned rate schedules were amended to comply with the Commission's Order dated January 14, 1993, in Docket No. ER92–533–000.

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: March 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Power and Light Co.

[Docket No. ER93–138–000]

Take notice that on February 16, 1993, Wisconsin Power and Light Company tendered for filing additional information in response to questions from Commission Staff in the above-referenced docket.

Comment date: March 8, 1993, in accordance with Standard Paragraph E end of this notice.

6. New England Power Co.

[Docket No. ER93–379–000]

Take notice that on February 17, 1993, New England Power Company (NEP) tendered for filing three service agreements for additional service to UNITIL Power Corporation under NEP's FERC Electric Tariff, Original Volume No. 3. According to NEP, the agreements contemplate the transmission of power which UNITIL plans to purchase from NEP.

Comment date: March 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Co.

[Docket No. ER93–297–000]

Take notice that on February 16, 1993, Northeast Utilities Service Company (NUSCO), submitted supplemental information in regard to a Capacity, Transmission and Energy Service Agreement between CL&P and Green Mountain Power Corporation (GMP) and a Bulk Power Service Agreement between CL&P and Bozrah Light and Power Company, filed with the Commission on December 23, 1992.

NUSCO renews its request that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective no later than February 1, 1993.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: March 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Co. v. Tucson Electric Power Co. and Century Power Corp.

[Docket No. EL93–19–000]

Take notice that on February 11, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a complaint against Tucson Electric Power Company (Tucson) and Century Power Corporation (Century) and moves for an order on summary disposition directing Tucson and Century to refund certain amounts that they improperly billed SDG&E in violation of the Ten Year Power Sale and Interconnection Agreement entered into by SDG&E and Tucson on November 29, 1978, and assigned by Tucson to Century effective November 1, 1984.

Comment date: March 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co.

[Docket No. ER93–219–000]

Take notice that on February 16, 1993, Northeast Utilities Service Company (NUSCO), tendered for filing supplemental information regarding construction of modifications to the Western Massachusetts Electric Company's distribution system on behalf of Chicopee Municipal Lighting Plant.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective on January 16, 1993.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: March 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4573 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 710–000 Wisconsin]

Wisconsin Power and Light Co.; Availability of Environmental Assessment

February 23, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the

existing Shawano Hydroelectric Project, located on the Wolf River in Shawano and Menominee Counties, near the City of Shawano, Wisconsin, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff analyzed the environmental effects of the existing project and has concluded that approval of the application for subsequent license, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4639 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1553–001, et al.]

Hydroelectric Applications; Paramount Communications Inc., et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. *a. Type of Application:* Surrender of License.

b. Project No: 1553–001.

c. Date Filed: December 11, 1992.

d. Applicant: Paramount Communications Inc.

e. Name of Project: Fall Creek.

f. Location: On Fall Creek, a tributary of Eagle River, in Eagle County, Colorado, within White River National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Thomas P. Humphrey, Esquire, Davis, Graham & Stubbs, 1200 Nineteenth Street, NW., suite 500, Washington, DC 20036–2402, (202) 822–8660.

i. FERC Contact: Donald Wilt, (202) 219–2676.

j. Comment Date: April 8, 1993.

k. Description of Project: The facilities of the constructed project include: (1) A gated concrete diversion wall; (2) a short diversion ditch; (3) a concrete intake box; (4) a 2,885-foot-long pipeline; (5) a powerhouse with an installed capacity of 360 kW; and (6) appurtenant facilities.

Licensee states that power generated from the project was used in mining operations at the Eagle Mine and was not sold commercially. Because the mining operation has been closed, the project is no longer economically feasible to operate. The licensee has been cooperating with various federal and state agencies to restore the site to its original state. The license was issued on January 13, 1977, and would have expired June 27, 2000.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2. *a. Type of Application:* Subsequent License.

b. Project No.: 2552–007.

c. Date Filed: November 26, 1991.

d. Applicant: Central Maine Power Company.

e. Name of Project: Fort Halifax Project.

f. Location: On the Sebasticook River, Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. FERC Contact: Robert Bell (RB) (202) 219–2806.

j. Comment Date: Initial Comments March 29, 1993; Reply Comments May 13, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached standard paragraph D9.

l. Description of Project: The existing project consists of: (1) A concrete Ambursen dam about 552.75 feet long and 29 feet high, having from south to north, (a) a non-overflow abutment section about 80.5 feet long with one 4-foot by 3-foot slide gate; (b) a spillway section about 351.75 feet long controlled by 4-foot-high pin supported flashboards; and (c) an intake/powerhouse section about 120.5 feet long with waterwheel flume; (2) a concrete retaining wall about 30 feet long located adjacent to the powerhouse section; (3) a brick powerhouse containing two turbine-generator units with a total installed capacity of 1500-kW; (4) a tailrace; (5) a transmission line; and (6) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Maine Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

3. *a. Type of Application:* New License.

b. Project No.: 2616–004.

c. Date Filed: December 18, 1991.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Hoosic River Project.

f. Location: On the Hoosic River in Rensselaer and Washington Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Jerry L. Sabattis, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6215.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: April 8, 1993.

k. Status of Environmental Analysis: This application is accepted for filling but, is not ready for environmental analysis at this time—see attached standard paragraph E1.

j. Description of Project: The proposed project consists of the following two developments:

Johnsonville Development

The existing Johnsonville Development's principal features consist of a dam structure, intake and forebay structures, a powerhouse, sluice gate structure, and appurtenant facilities and equipment. The existing development has a generator capacity of 4.8 megawatts (MW), a hydraulic capacity range of 380 to 1,288 cubic feet per second (cfs), and an average annual generation of about 14,600 megawatt-hours (MWh).

The applicant has proposed to change the existing operation of storage and release peaking to storage and release pulsing.

In detail, the project is described as follows:

1. A concrete gravity dam, 529 feet in length, varying in height from 13 feet high at the south abutment to 39 feet high at the north abutment. The entire length of the dam is topped with 2.5 foot-high trippable wooden flashboards;

2. A sluice gate structure measuring 44 feet wide by 39 feet long by 47 feet high incorporating four cast iron sluice gates measuring 9 feet high by 6 feet wide;

3. A 54-foot-wide by 48-foot-long concrete intake structure consisting of

(a) two bays each measuring 20.5 feet by 33 feet high and housing a duplex turbine unit; and (b) a concrete forebay structure measuring 80 feet by 54 feet;

4. A powerhouse 84 feet wide by 38 feet long by 48 feet high, equipped with two turbine-generating units. The turbines are horizontal double runner Francis turbines. The turbines were originally rated at 3400 HP at 38 feet of head but downrated to 2100 HP at 34 feet of head, because of head losses associated with an old design draft tube/chest utilized at the plant. Two synchronous type GE generators are rated at 2,400-kW. The two units have a combined hydraulic capacity range of 380 to 1,288 cubic feet per second (cfs) and an average annual generation of 14,600 megawatt-hours (MWh). The powerhouse has a gross head of 38 feet.

5. An impoundment having (a) a surface area of 450 acres; (b) an existing useable storage capacity of 1,150 acre-feet and a proposed increased capacity of 540 acre-feet; and (c) a normal headwater elevation of 346.0 feet msl and a tailwater elevation of 307 feet msl;

6. Appurtenant facilities.

7. There are no transmission lines included in the project.

Schaghticoke Development

The existing Schaghticoke Development's principal features consist of a dam structure, waste gates, canal intake structure, an intake canal, a pipeline intake and ice sluice, a pipeline, a surge tank, penstocks, a powerhouse, and appurtenant facilities. The existing development has an existing generator capacity of 15.1 megawatts (MW), and with an upgraded existing generator with proposed waterwheel conversion total a capacity would be 16.4 MW. In addition, the development has an existing hydraulic capacity range of 360 to 1,640 cubic feet per second (cfs), a proposed hydraulic capacity range of 360 to 1,670 cfs (Niagara Mohawk will limit hydraulic capacity to 1,470 cfs due to generator restrictions), and an average annual generation of about 68,300 megawatt-hours (MWh).

The applicant has proposed to change the existing operation of storage and release peaking to storage and release pulsing. The applicant would maintain within the bypass reach a year-round minimum flow of 10 cfs and a baseflow below the powerhouse of 40 cfs. The consulting agencies requested a year-round minimum flow between 130 to 160 cfs.

In detail, the project is described as follows:

1. A concrete gravity dam, 700 feet in length, varying in height from 12 feet to 28 feet. The entire length of the dam is topped with 2.5 foot-high trippable wooden flashboards;

2. A waste gate structure measuring 30 feet long by 25 feet wide by 34 feet high and incorporates two timber gates measuring 9 feet high by 6 feet wide;

3. A concrete canal intake structure measuring 20.5 feet long by 82.5 feet wide by 19.5 feet high consisting of eight openings each measuring nine feet high by six feet wide, each serviced by a cast iron gate;

4. An intake canal cut into rock (trapezoidal in section) measuring 2,300 feet in length and 15.6 feet deep under normal operating conditions; the canal is generally 19 feet wide at the bottom, and ranges from 28 feet to 48 feet wide at the top;

5. A pipeline intake structure located at the end of the intake canal that measures 53 feet long by 33 feet high by 73 feet wide and consists of: (a) four 14-foot-high by 5.8-foot-wide openings which converge into a 12.5-foot-diameter, 870-foot-long steel pipeline; (b) a concrete ice sluice structure measuring 40.5 feet long by 20 feet wide by 27 feet high and incorporates a ten foot wide opening to pass ice and trash;

6. A steel surge tank measuring 40 feet in diameter by 50 feet high, is the terminus of the 12.5 foot diameter steel pipeline;

7. Steel penstocks, located at the exit of the steel surge tank described as follows: (a) four penstocks measuring 6.5 feet in diameter by 320 feet long each service a hydroturbine; and (b) a fifth penstock measuring two feet in diameter by 350 feet long, formerly used for waterwheel exciters in the powerhouse;

8. A powerhouse, 55 feet wide by 156 feet long by 77.5 feet high, equipped with four turbine-generating units. The turbines are vertical Francis turbines manufactured by Pelton, and are rated at 6,300 HP but, due to head loss, only have a capability of 5500 HP at 146 feet head. The four GE generators vary in size. Unit 1 is rated 3,280 kW, while Units 3 and 4 are rated 4,264 kW. Unit 2 will be rewound and have an upgraded power capacity of 4,264 kW from its current 3,280 kW capacity. The four units have a combined hydraulic capacity range of 460 to 1640 cfs. In addition, the two existing water wheel exciters will be refurbished to provide the proposed base flow. The water wheel exciters include two Pelton-type turbines rated at 300 HP at 146 feet head. Proposed generators for the water wheel exciters include two induction type generators rated at 150 kW. The water wheel exciters have a combined hydraulic capacity of 30 cfs. The powerhouse has a gross head of 153 feet and an average annual generation of 68,300 megawatt-hours (MWh).

9. An impoundment having (a) a surface area of 198 acres with flashboards in place; (b) a useable storage capacity of 480 acre-feet; and (c) a normal headwater elevation of 267.35 feet msl;

10. Appurtenant facilities.

11. There are no transmission lines included in the project.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $6,409,461.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3140, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 or by calling (315) 428–6215.

4. *a. Type of Application:* Approval of Plan for Construction of Recreation Facilities.

b. Project No: 2645–040.

c. Date Filed: January 8, 1993.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Beaver Falls Project.

f. Location: Beaver River, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Gregg Carrington, Niagara Mohawk Power Corporation, 300 Erie Boulevard, Syracuse, NY 13202, (315) 428–5583.

i. FERC Contact: Heather Campbell, (202) 219–3097.

j. Comment Date: April 5, 1993.

k. Description of Project: The Niagara Mohawk Power Corporation, licensee for the Beaver River Project, requests Commission approval of a plan to construct recreation facilities at the Soft Maple/Effley and High Falls developments. The proposed plan consists of constructing parking facilities and access points at the Soft

Maple/Effley pond and at High Falls Pond.

l. This notice also consists of the following standards paragraphs: B, C, and D2.

5. *a. Type of Application:* Major License.

b. Project No: 5772–002.

c. Date Filed: July 8, 1983.

d. Applicant: City of Augusta, Georgia.

e. Name of Project: Augusta Canal Water Power Project.

f. Location: On the Savannah River, Richmond County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles T. Dillard, 701 Municipal Building, Augusta, GA 30911, (404) 821–1706.

i. FERC Contact: Michael Dees, (202) 219–2807

j. Deadline Date: Initial Comments March 29, 1993; Reply Comments May 11, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached standard paragraph D9.

l. Description of Project: The proposed project would consist of: (1) An existing stone masonry dam 1,666 feet long and 11.5 feet high; (2) an existing reservoir; (3) an existing section of the Augusta Canal; (4) four proposed concrete penstocks, 14 feet by 14 feet square and 550 feet long; (5) a proposed powerhouse containing two 7.5 MW hydropower units; (6) a proposed tailrace structure approximately 250 feet long; (7) a proposed 115-kV transmission line 2,000 feet long; and (8) appurtenant facilities. The estimated annual energy production is 90.5 GWh. Project energy would be sold to Oglethorpe Power Corporation.

m. This notice also consists of the following standard paragraphs: A4, and D9.

n. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371.

6. *a. Type of Application:* Amendment of Exemption.

b. Project No: 6274–002.

c. Date Filed: 12/23/92.

Applicant: Herbert H. Beckwith.

e. Name of Project: Paradise Irrigation District Project 'C'.

f. Location: On the Paradise Irrigation District's water supply pipeline in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Herbert Beckwith, 776 Bush Street, Apt. 203, San Francisco, CA 94108, (415) 397–3134.

i. FERC Contact: Michelle Laabs, (202) 219–3274.

j. Comment Date: March 29, 1993.

k. Description of Amendment: Mr. Herbert Beckwith requests to amend the exemption for the Paradise Irrigation District Project 'C'. The amendment will add two existing units located at site 'D' to the project. They are located approximately ⅓ mile downstream from site 'C'. Additionally, the amendment will also add on existing unit located the site 'C'. The exemption as amended will consist of two units at site 'D' rate at 40 hp each (60 kW total equivalency) and two units at site 'C' rated at 20 hp and 40 hp (45 kW total equivalency), for a total project capacity of 105 kW.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. *a. Type of Application:* Major License.

b. Project No.: 10981–000.

c. Date filed: July 31, 1990.

d. Applicant: Bangor Hydro-electric Company.

e. Name of Project: Basin Mills Project.

f. Location: On the Penobscot and Stillwater Rivers, Penobscot County, Maine.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Douglas Morrell, Bangor Hydro-electric Company, 33 State Street, P.O. Box 932, Bangor, Maine 04401, (207) 945–5621.

i. FERC Contact: Mary Golato (202) 219–2804.

j. Deadline Date: Initial Comments March 29, 1993 Reply Comments May 13, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The proposed project would consist of three developments: (1) Veazie Development; (2) Basin Mills Development; and (3) Orono Development. The existing dams are owned by the applicant.

(i) *Veazie Development*

The Veazie Development would consist of: (1) An existing 25-foot-high, 902-foot-long concrete gravity dam; (2) a reservoir with a surface area of 390 acres, a storage capacity of 4,800 acre-feet, and a normal water surface elevation of 34.8 feet NGVD with; (3) 6.5-foot-high hinged flashboards; (4) an existing concrete forebay; (5) two existing brick and concrete powerhouses; (a) powerhouse A is located along the west bank and contains 15 turbine-generator units for a total installed capacity of 5.4 MW; and (b) powerhouse B is located at the downstream end of the forebay and contains two turbine-generator units with a total installed capacity of 3 MW; (6) a new concrete powerhouse containing one generating unit with an installed capacity of 8 MW; (7) an existing tailrace; (8) a transmission line, 200 feet long; and (9) appurtenant facilities. The average annual generation would be 87 million kWh.

(ii) *Basin Mills Development*

The Basin Mills Development would consist of: (1) A new 18-foot-high, 1,650-foot-long concrete gravity dam; (2) a reservoir with a surface area of 325 acres, a storage capacity of 5,000 acre-feet, and a normal water surface elevation of 64.0 feet NGVD; (3) a new intake gate; (4) a new concrete powerhouse containing three pit-type turbine units with a total installed capacity of 38 MW: (5) a transmission line, 200 feet long; and (6) appurtenant facilities. The average annual generation would be 183 million kWh.

(iii) *Orono Development*

The applicant proposes to decommission the existing facilities at the Orono Development by removing the existing penstocks and powerhouse. The applicant proposes to retain the existing 18-foot-high, 1,174-foot-long concrete dam and flashboards and the 175-acre, 1,300-acre-feet reservoir which is at elevation 72.4 feet NGVD.

m. Purpose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Douglas Morrell, Bangor Hydro-electric Company, 33 State Street, P.O. Box 932, Bangor, ME, (207) 945–5621.

8. *a. Type of Application:* Minor License.

b. Project No.: 11058–001.

c. Date filed: November 2, 1992.

d. Applicant: A.L.L. Natural Resources, Inc.

e. Name of Project: Fitchburg Paper Mill Dam #4.

f. Location: On the North Nashua River, in Worcester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: James Lane A.L.L. Natural Resources, Inc., 29 Westminster St., Fitchburg, MA 01420, (508) 342–4029.

i. FERC Contact: Mary C. Golato (202) 219–2804.

j. Comment Date: March 29, 1993.

k. Description of Project: The proposed project consists of: (1) an existing granite block and concrete dam 200 feet long; (2) an existing reservoir with a surface area of 1 acre and a total storage volume of 3 acre-feet at the proposed normal maximum surface elevation of 525.6 feet NGVD; (3) a proposed powerhouse containing (a) two proposed 8-foot-diameter by 6-foot-wide overshot waterwheels, constructed of ship-grade steel, each with a maximum hydraulic capacity of 37.5 cfs (providing a combined maximum hydraulic capacity of 75 cfs) and rated at 25 kW (providing a total capacity of 50 kW), and (b) two proposed 25 kW generators (providing a total plant rating of 50 kW); and (4) existing and proposed appurtenant facilities.

l. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance of the notice and serve a copy of the request on the applicant.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

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.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned 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.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (March 29, 1993 for Project Nos. 2552–007 and 5772–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (May 11, 1993 for Project No. 5772–002 and May 13, 1993 for Project No. 2552–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time,

and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (March 29, 1993 for Project No. 10981–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (May 13, 1993 for Project No. 10981–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: February 24, 1993

Lois D. Cashell,

Secretary.

[FR Doc. 93–4636 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–219–000, et al.]

Williams Natural Gas Co., et al., Natural Gas Certificate Filings

February 22, 1993.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Co.

[Docket No. CP93–219–000]

Take notice that on February 17, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application with the Commission in Docket No. CP93–219–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service provided to Union Gas Systems, Inc. (Union) under WNG's FERC Rate Schedule X–14, all as more fully set forth in the application which is open to public inspection.

WNG requests permission and approval to abandon its transportation under Rate Schedule X–14 of approximately 1,000 dekatherms of natural gas per day for Union.[1] The transportation agreement provided for WNG to receive gas from Union in Osage County, Oklahoma, and to deliver the gas to Union at three Osage County delivery points and through existing pipeline facilities in Montgomery County, Kansas. In 1986 LeAnn Gas

[1] The Commission authorized WNG's transportation service for Union by the order issued September 19, 1977, in Docket No. CP77–376 (59 FPC 2,054).

Company (LeAnn) acquired Union. LeAnn and WNG mutually agreed via letters dated June 5, 1991, and June 14, 1991, to terminate the original transportation agreement and to combine the three Osage County delivery points into a single billing location on an existing transportation agreement between WNG and LeAnn.

No facilities would be abandoned in this proposal.

Comment date: March 15, 1993 in accordance with Standard Paragraph F at the end of the notice.

2. Texas Gas Transmission Corp.

[Docket No. CP93–217–000]

Take notice that on February 16, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–217–000, a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by removal a sales tap in Washington County, Mississippi, under its blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that a letter dated December 17, 1992, from Mississippi Valley Gas Company (Mississippi Valley), Texas Gas proposes to abandon the B.L. Rivers sales tap. In its letter, Mississippi Valley states that it has removed its facilities for receiving gas from the B.L. Rivers. Mississippi Valley further states that it does not anticipate receiving gas at this point in the future and that Texas Gas may now abandon and remove this facility.

Comment date: April 8, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP93–216–000]

Take notice that on February 16, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–216–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 12 new sales taps for end users in Kansas and Nebraska, under K N's blanket certificate issued in Docket No. CP82–140–000 *et al.*, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate the taps for delivery to end users located on its system for the sale of gas from K N's system supply for end users, as detailed in the appendix. It is stated that K N will use the proposed taps for the delivery of up to 922 Mcf of natural gas on a peak day to the end users and 10,833 Mcf on an annual basis. It is estimated that the cost of installing the facilities is $20,833. K N states that the deliveries would have no significant impact on its peak day or annual deliveries and that the additional taps are not prohibited by any of K N's existing tariffs.

Comment date: April 8, 1993, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Name	Location	Volume (Mcf)		End use	Cost
		Peak	Annual day		
R. Nelson	Kearney Co., NE	24	790	Irrigation	$850
E. Choquette	Franklin Co., NE	30	990	Irrigation	1,150
A.L. Quiring	York Co., NE	48	1,580	Irrigation	1,700
D. Graves	York Co., NE	43	395	Grain Dryer	1,150
L. Lundell	York Co., NE	43	395	Grain Dryer	1,150
Kumm Farms	Knox Co., NE	100	917	Grain Dryer	2,500
D.P. Friesen	York Co., NE	86	786	Grain Dryer	2,500
J.D. Goertzen	York Co., NE	144	1,310	Grain Dryer	2,500
A. George	Hamilton Co., NE	29	262	Grain Dryer	1,150
Mingo Co-op Grain Co.	Thomas Co., KS	216	1,966	Grain Dryer	2,500
E.E. George	Hamilton Co., NE	94	852	Grain Dryer	2,500
K. Drizner	York Co., NE	65	590	Grain Dryer	1,150

4. Northwest Pipeline Corp.

[Docket Nos. CP93–197–000, CP91–780–005 and CP91–780–006]

Take notice that on February 3, 1993, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket Nos. CP93–197–000, CP91–780–005 and CP91–780–006:

(1) An application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, with pre-granted abandonment, requesting authorization to temporarily construct and operate a mobil compressor unit at the Stanfield Compressor Station when necessary to facilitate physical transportation deliveries to Pacific Gas Transmission Company (PGT);

(2) A petition to amend the system expansion certificate authorization granted in Docket No. CP91–780–000 *et al.*, to conform with Applicant's construction of the Stanfield Compressor Station exclusive of the originally authorized permanent compressor unit; and

(3) A notice of withdrawal of the petition to vacate certificate, in part, which was filed by Applicant on January 11, 1993 to reflect Applicant's intent to forego installation of the previously authorized permanent compressor unit at the Stanfield Compressor Station, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that, by order issued June 5, 1992 in Docket Nos. CP91–780–000 *et al.*, Applicant was granted certificate of public convenience and necessity authorizing the construction and operation of approximately $373.4 million of additional pipeline and compression facilities necessary to accommodate a 433,415 Dth per day expansion of firm transportation service on Applicant's system. Applicant further states that part of the authorized system expansion facilities included the new Stanfield Compressor Station located near Applicant's existing interconnection with PGT pipeline system near Stanfield, Umatilla County, Oregon.

Applicant indicates that the authorized Stanfield Compressor Station

was to consist of a Solar Saturn turbine compressor rated at 1,343 sea level ISO horsepower; a five-valve manifold and pipeline necessary to provide suction connections with Applicant's existing 22-inch mainline and proposed new 24-inch mainline loop; and appropriate auxiliary facilities. Applicant further indicates that the Stanfield Compressor Station was designed to provide physical deliveries of up to approximately 62 MMcf per day, at a suction pressure of 661 psig and a discharge maximum allowable operating pressure of 911 psig. Applicant estimates the cost of the Stanfield Compressor Station to be $2,973,600.

Applicant states that deliveries of gas from Applicant to PGT at Stanfield normally could occur by displacement of Applicant's on-going physical receipts of gas from PGT at Stanfield. Applicant contemplated that the new Stanfield Compressor Station would be operated to provide physical deliveries of gas to PGT only when adequate displacement capacity was unavailable. Applicant further states that is currently has only one contract with CanWest Gas Supply U.S.A., Inc. (CanWest) for up to 51,500 Dth per day which would require it to make firm deliveries to the Stanfield interconnect with PGT.

Applicant submits that, at the time of its original application in Docket No. CP91–780, PGT was declining to accept gas from Applicant at Stanfield by displacement. Applicants further submits that, as a result of the Commission's May 1, 1992 order in Docket No. CP92–3231–000, PGT became willing to accept receipt of transportation gas by displacement at Stanfield. Applicant states that it has the obligation to have sufficient facilities available to ensure the satisfaction of its firm delivery obligations to CanWest at Stanfield even when displacement capacity may not be available. Applicant indicates that it has devised an alternative to the authorized permanent compressor unit in order to accomplish the objective more economically.

Applicant states that, instead of installing the authorized permanent compressor unit at Stanfield, it can maintain service reliability by relying upon its ability to move to Stanfield, and temporarily install, one of its equivalent-sized mobile compressor units whenever physical deliveries to PGT are necessary. Applicant indicates that it presently owns two mobile compressor units, each consisting of a Solar Saturn turbine compressor unit rated at 1,343 sea-level ISO horsepower mounted on a trailer. Applicant indicates that one unit will be moved to Stanfield when compression is needed at that station. Applicant estimates that each temporary installation and subsequent removal of the mobile compressor unit will cost approximately $5,000, which will be treated as an operating and maintenance expense.

Applicant requests the Commission to amend its order granted June 5, 1992, to conform with Applicant's construction of the certificated Stanfield Compressor Station exclusive of the originally authorized permanent Solar Saturn compressor unit. Applicant states that the following will remain covered by the system expansion certificate, as amended, in order to support the contemplated use of a trailer-mounted, mobile compressor when needed at the site: The 4.9 acre station site; the five-valve manifold; and the appropriate auxiliary facilities, including a horizontal gas filter/separator, an auxiliary building, a 150-gallon condensate storage tank, miscellaneous piping and valves, telecommunication and automation equipment and a security fence. Applicant estimates the total cost of the station installation to be approximately $1.6 million.

Applicant requests the Commission to issue a blanket certificate of public convenience and necessity, with pre-granted abandonment, authorizing temporary installations and operation, and subsequent removals, of an existing trailer-mounted mobile compressor unit at the Stanfield Compressor Station during the occasional, short-term periods when Applicant may need to supplement its displacement delivery capability to PGT with physical delivery capacity in order to fulfill its transportation delivery commitments to PGT at that point.

Applicant requests to withdraw its petition to vacate certificate, in part, which was filed by Applicant on January 11, 1993 in Docket No. CP91–780. Applicant states that it is replacing both the petition to vacate in part and the contemplated, separate certificate application for the mobile compressor by the instant pleading, which incorporates both a request for mobile compressor certificate authority and the related petition to amend the system expansion certificate.

Comment date: March 15, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4572 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–215–000]

K N Energy, Inc.; Notice of Application

February 23, 1993.

Take notice that on February 16, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–215–000 an application pursuant to section 7(b) of the Natural Gas Act wherein it requests issuance of an order permitting and approving abandonment of an exchange and sales service with Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N (formerly Kansas-Nebraska Natural Gas Company, Inc.) states that by Commission order issued June 19, 1970, in Docket Nos. CP70–243 and CP70–249 (43 FERC 925), as amended, the Commission authorized an exchange and sales service between K N and Panhandle in accordance with an agreement between the parties dated March 27, 1970, as amended. Such agreement is on file with the Commission as Rate Schedule X–10 of K N's FERC Gas Tariff, Second Revised Volume No. 2 and as Rate Schedule TSTE–1 of Panhandle's FERC Gas Tariff.

K N states that in accordance with the March 27, 1970 agreement, as amended, it is obligated to receive up to 100,000 Mcf per day of gas into its Wyoming System from Panhandle in Converse County, Wyoming. Concurrently, K N delivers thermally equivalent volumes of gas to Panhandle at points of interconnect between their facilities in Oklahoma and Kansas. K N has the option to purchase a portion of the gas received from Panhandle. By letter dated December 23, 1992, Panhandle requested the termination of the above-mentioned agreement. K N states that it has agreed to the termination of the agreement effective March 27, 1993.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 16, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N Energy, Inc. to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4637 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–20–000]

Southern Electric Wholesale Generators, Inc.; Application for Commission Determination of Exempt Wholesale Generator Status

February 23, 1993.

On February 8, 1993, Southern Electric Wholesale Generators, Inc. (SEWG) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32 (a)(1) of the Public Utility Holding Company Act of 1935 as amended.

SEWG stated that (1) it is a wholly-owned subsidiary of The Southern Company; (2) it was organized to exclusively be engaged in the ownership of exempt wholesale generators; (3) it currently owns all of the outstanding stock of certain entities which indirectly own one existing facility, and one projected facility. The former facility is a 290 MW oil fired combined cycle cogeneration facility located at Barbers Point, Oahu, Hawaii. The latter facility is a 200 MW coal-fired electric station which is projected to be built in King George County, Virginia

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application., All such motions and comments should be filed on or before March 5, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4571 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–17–000]

Tennessee Natural Gas Co.; Settlement Conference

February 23, 1993.

Take notice that on Friday, March 12, 1993, a conference will be convened to further discuss settlement of the issues raised by Tennessee Gas Pipeline Company's filing in the above-captioned docket. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement.

The conference will be held at 10 a.m. in room 2402–A of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4640 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TX93–1–000]

Tex-La Electric Cooperative of Texas; Clarifying Intervention Date

February 23, 1993.

Motions to intervene and protests to both Tex-La's January 19, 1993 application and the February 9, 1993 amended filing may be filed on or before March 15, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4641 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10497–002 Oklahoma]

Tulsa Metropolitan Utility Authority, City of Tulsa; Surrender of Exemption

February 23, 1993.

Take notice that the Tulsa Metropolitan Utility Authority, City of Tulsa, exemptee for the Lake Eucha Dam Hydropower Project No. 10497 located on Spavinaw Creek in Delaware County, Oklahoma, has requested that its exemption from licensing be terminated. The exemption was issued on February 21, 1992. The exemptee states that no construction has been done on this project and that the project is no longer economically feasible.

The exemptee filed the request on October 16, 1992, and the exemption for Project No. 10497 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described 18 CFR 385.007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4638 Filed 2–26–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4562–7]

Review of National Ambient Air Quality Standards for Nitrogen Dioxide; Proposed Consent Decree

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; opportunity for public comment.

SUMMARY: EPA hereby gives notice of a proposed consent decree in litigation concerning review of the national primary and secondary ambient air quality standards for nitrogen dioxide established under section 109 of the Clean Air Act. EPA is providing an opportunity for public comment on the proposed consent decree pursuant to section 113(g) of the Act.

DATES: Written comments on the proposed consent decree must be received by March 31, 1993.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Timothy D. Backstrom, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the proposed consent decree may be obtained from Betty S. Mobley at the same address (telephone 202–260–7606).

FOR FURTHER INFORMATION CONTACT:

John H. Haines (Program Officer), telephone 919–541–5533 or Timothy D. Backstrom (Senior Attorney), telephone 202–260–7517.

SUPPLEMENTARY INFORMATION: In *Oregon Natural Resources Council, Inc.* v. *Reilly*, Civil No. 91–6529–HO (D. Or.), the plaintiffs sued EPA seeking an order compelling EPA to complete the second periodic review of the air quality criteria and National Ambient Air Quality Standards (NAAQS) for the pollutant nitrogen dioxide, and to make appropriate revisions of such criteria and standards, as required by Clean Air Act section 109(d)(1). EPA and the plaintiffs have lodged with the U.S. District Court for the District of Oregon a proposed consent decree intended to resolve this litigation. The proposed decree would require the EPA Administrator to sign a notice for publication in the **Federal Register** announcing the Administrator's decision whether or not to propose any modification of the NAAQS for nitrogen dioxide on or before February 15, 1995. The proposed decree would also require the Administrator to sign a notice for publication in the **Federal Register** announcing the Administrator's final decision whether or not to modify the NAAQS for nitrogen dioxide on or before March 31, 1996.

Final approval and entry of the proposed decree are subject to section 113(g) of the Act, which requires notice and opportunity for comment on certain consent orders and settlement agreements to which the United States is a party. Accordingly, for a period of thirty (30) days following the date of publication of this notice, EPA will receive any written comments on the proposed decree. Under section 113(g), EPA or the Department of Justice may withhold or withdraw consent to the decree if the comments disclose facts or circumstances indicating that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Dated: December 17, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 93–4631 Filed 2–26–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Los Angeles, et al.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200744.

Title: City of Los Angeles/Matson Terminals, Inc. Preferential Marine Terminal Agreement.

Parties: The City of Los Angeles, Matson Terminals, Inc.

Filing Party: Ms. Catharine H. Vale, Assistant City Attorney, City of Los Angeles, City Hall, P.O. Box 151, San Pedro, California 90733–0151.

Synposis: The Agreement supersedes Agreement No. 224–011088, between the City of Los Angeles and Matson, and covers terminal operations for Berths 206–209. The term of the Agreement is for five years.

Dated: February 24, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4645 Filed 2–26–93; 8:45 am]

BILLING CODE 6730–01–M

Port of Miami Operating Co., L.C. (POMTOC) Operating Agreement, et al.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200616–001.
Title: Port of Miami Terminal Operating Co., L.C. ("POMTOC") Operating Agreement.
Parties:
Continental Stevedoring and Terminals, Inc.,
Oceanic Stevedoring, Inc.,
Florida Stevedoring, Inc.,
Sel Maduro (Florida), Inc.

Synopsis: To permit the parties to form a limited liability company, under Florida State Law, to engage in the business of a marine terminal operating company at the Port of Miami or other locations in Dade County, Florida.

Agreement No.: 224–200742.
Title: Manchester Terminal Crop./Gulf Stream Marine Terminal Agreement.
Parties:
Manchester Terminal Corporation ("MTC"),
Gulf Stream Marine, Inc. ("Gulf Stream").

Synopsis: The Agreement permits Gulf Stream to move cargo and containers through MTC's facilities in the Port of Houston.

By Order of the Federal Maritime Commission.

Dated: February 24, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4644 Filed 2–26–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Maritz Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Maritz Inc. and Maritz Travel Company
1375 North Highway Drive
Fenton, St. Louis County, MO 63099
Vessel: CROWN MONARCH

Dated: February 22, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4566 Filed 2–26–93; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 93–05]

Tropical Shipping & Construction Co., Ltd. v. Valley Wide Produce, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Tropical Shipping & Construction, Ltd. ("Complainant") against Valley Wide Produce, Inc. ("Respondent") was served February 23, 1993. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by inducing complainant to provide transportation on a collect basis by entering into a credit agreement, failing and refusing to pay ocean freight charges lawfully assessed pursuant to Complainant's applicable tariffs on four shipments of coconut yautia from Puerto Plata, Dominican Republic to Vassalia, California, between September 20, 1991 and October 11, 1991 and entering into an Acknowledgement of Debt and Settlement Agreement, but failing to make the payments under said agreement.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 21, 1994, and the final decision of the Commission shall be issued by June 21, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4565 Filed 2–26–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[File No. 912 3194]

Collins Buick, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Kentucky auto dealership and its principal operating officer from misrepresenting—in advertising any extension of consumer credit or any consumer lease—the financing or other terms of the advertised transaction, and from violating certain provisions of the Truth in Lending Act or the Consumer Leasing Act.

DATES: Comments must be received on or before April 30, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds, FTC/S–4429, Washington, DC 20580. (202) 326–3230.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Collins Buick, Inc., a corporation, and William Kevin Collins, individually and as an officer of the corporation.

Agreement Containing Consent Order to Cease and Desist

The agreement herein, by and between Collins Buick, Inc., a corporation, by its duly authorized officer, and William Kevin Collins, individually and as an officer of the corporation (hereinafter sometimes referred to as "proposed respondents" or "respondents"), and counsel for the

Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Collins Buick, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office and place of business located at 4120 Bardstown Road, Louisville, Kentucky 40218. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

2. William Kevin Collins is an individual and an officer and director of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 4120 Bardstown Road, Louisville, Kentucky 40218. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached or that the facts alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (a) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I. *It is ordered* that respondent Collins Buick, Inc., a corporation, its successors and assigns and its officers, and William Kevin Collins, individually and as an officer of the corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, as "advertisement," and "consumer credit" are defined in the TILA and Regulation Z, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment or second series of installment payments, and the amount of any balloon payment or the number and amount of any second series of installment payments.

B. Stating any number or amount of payment(s) required to repay the debt, without stating accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment;

(2) The terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments, and

(3) the annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and § 226.24(c) of Regulation Z, 12 CFR 226.24(c), as more fully set out in § 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(c)).

C. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment;

(2) The terms of repayment, and

(3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and § 226.24(c) of Regulation Z, 12 CFR 226.24(c)).

D. Stating a rate of finance charge without stating the rate as an "annual percentage rate" using that term or the abbreviation "APR," as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Section 144 of the TILA, 15 U.S.C. 1664, and § 226.24(b) of Regulation Z, 12 CFR 226.24(b)).

E. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states

specific credit terms, as required by Regulation Z.

(Section 144 of the TILA, 15 U.S.C. 1664, and § 226.24(a) of Regulation Z, 12 CFR 226.24(a)).

II. *It is ordered* that respondent Collins Buick, Inc., a corporation, its successors and assigns and its officers, and William Kevin Collins, individually and as an officer of the corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote or assist directly or indirectly any consumer lease, as "advertisement," and "consumer lease" are defined in the CLA and Regulation M, do forthwith cease and desist from:

A. Stating the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the following items are disclosed, clearly and conspicuously, as applicable, as required by Regulation M:

(1) That the transaction advertised is a lease;

(2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;

(3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(Section 184 of the CLA, 15 U.S.C. 1667c, and § 213.5(c) of Regulation M, 12 CFR 213.5(c)).

B. Stating that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms, as required by Regulation M.

(Section 184 of the CLA, 15 U.S.C. 1667c, and § 213.5(a, of Regulation M, 12 CFR 213.5(a)).

III

It is further ordered that respondents, their successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

IV

It is further ordered that respondents, their successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

V

It is further ordered that for five years after the date of service of this order respondents, their successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI

It is further ordered that respondents, their successors and assigns shall, within sixty (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Collins Buick, Inc. and William Kevin Collins, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have disseminated or caused to be disseminated advertisements that state an initial low monthly payment and an initial number of payments, but fail to state that the financing requires the consumer to make a substantial balloon payment or a second series of installment payments at the conclusion of the initial payments, and have therefore engaged in a deceptive act or practice, in violation of Section 5(a) of the Federal Trade Commission Act. The complaint also alleges that these advertisements state an initial number and amount of payments required to repay the indebtedness, but fail to state the terms of repayment, by failing to disclose the amount of the final balloon payment or the number and amount of the second series of installment payments required at the end of the initial payments, based on the financing signed at purchase of the vehicle, in violation of § 226.24(c) of Regulation Z.

The complaint also alleges that respondents have disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR," in violation of § 226.24(c) of Regulation Z.

The complaint also alleges that respondents have disseminated or caused to be disseminated advertisements that state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consumption of the lease or that no such payments are required; the number, amount, due dates or periods of scheduled payments, and the total of such payments under the lease and a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), in violation of § 213.5(c) of Regulation M.

The proposed order prohibits respondents, in any advertisement to promote any extension of consumer credit, from misrepresenting in any manner the terms of financing the purchase of a vehicle, including but not limited to whether there may be a

balloon payment or second series of installment payments and the amount of any balloon payment or the number and amount of any second series of installment payments.

The proposed order also requires respondents in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately state, clearly and conspicuously, all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments, and the annual percentage rate.

The proposed order also requires respondents in any advertisement to promote any extension of consumer credit, whenever the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge is stated, to state, clearly and conspicuously, all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, and the annual percentage rate. The proposed order also requires respondents, to state any rate of finance charge as an annual percentage rate in any credit advertisement. The proposed order also requires respondents to state only those terms that actually are or will be arranged or offered by the creditor in any credit advertisement.

The proposed order also requires respondents in any advertisement to aid, promote or assist any consumer lease, whenever the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease is stated, to state, clearly and conspicuously, all of the terms required by Regulation M, as applicable, as follows; That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability. The proposed order also requires respondents in any lease advertisement to state that a specific lease of any property at specific amounts or terms is available, only if the lessor usually and customarily leases or will lease such property at those amounts or terms.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–4650 Filed 2–26–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health, Secretary's Council on Health Promotion and Disease Prevention; Postponement of Meeting

The meeting of the Secretary's Council on Health Promotion and Disease Prevention which was scheduled to take place on March 4, 1993, from 9 a.m. to 4 p.m. has been postponed. The new date will be announced later.

Dated: February 23, 1993.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 93–4620 Filed 2–26–93; 8:45 am]

BILLING CODE 4160–17–M

National Institute of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S.in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Mr. John Fahner-Vihtelic, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Copies of issued patents may be obtained from the Office of Technology Transfer or from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

05/544,933 Method and Apparatus for Plating and Counting Aerobic Bacteria (U.S. Patent No. 3,962,040)

05/737,590 Direct Contact Microwave Diathermy Applicator (U.S. Patent No. 4,108,147)

06/266,379 Ultrasonic Therapy Applicator That Measures Dosage (U.S. Patent No. 4,390,026)

06/440,728 Process and Device for X-ray System Quality Assurance (U.S. Patent No. 4,550,422)

06/461,954 Helical Coil for Diathermy Apparatus (U.S. Patent No. 4,527,550)

06/468,776 Drill Guide for Bone Plate Fixation U.S. Patent No. 4,502,475)

07/016,427 Adaptive Ultrasonic Phased Array Imaging System and Method Therefor

07/037,203 Diathermy Coil (U.S. Patent No. 5,052,997)

07/076,228 Method and Apparatus for Sensing and Analyzing Electrical Activity of the Human Heart (U.S. Patent No. 4,850,370)

07/234,737 Device for Rotary-Seal Free Flow-Through Coil Planet Centrifuge Equipped with Multiple Column Holders Connected (see also 07/363,371)

07/261,303 Pressure Sensor Element and Method to Measure Contact Stress (U.S. Patent No. 4,967,764) (see also 07/769,418)

07/305,331 Pyroelectric Calorimeter (see also 507,544) (U.S. Patent No. 4,940,896)

07/363,371 Device for Rotary-Seal Free Flow-Through Coil Planet Centrifuge Equipped with Multiple Holders (see also 07/234,737)

07/448,090 Dynamically Stable Association Learning Neural Network System (see also 07/864,337) (U.S. Patent No. 5,119.469)

07/496,573 Apparatus and Methods for Determining In Vivo Response to Thermal Stimulation in an Unrestrained Subject

07/507,544 Pyroelectric Calorimeter (see also 07/305,331) (U.S. Patent No 5,030,012)

07/513,269 Phantom for Evaluation of Prosthetic Valves and Cardiac Ultrasound Procedures (U.S. Patent No. 5,052.934)

07/516.056 Corrective Calibration Mixture for Flow Cytometry

07/536,861 Supercritical Fluid Extraction Enhancer (U.S. Patent No 5.151,188)

07/552,284 Method and Apparatus for Testing a Protective Barrier Material for Pinholes and Tear Strength
07/557,038 NMR Glomerular Filtration Test and Kit (see also 07/832,292) (U.S. Patent No. 5,100,646)
07/659,490 Breath Sampler (U.S. Patent No. 5,081,871)
07/688,220 Adaptation of Microtiter Plate Technology to Measurement of Platelet Aggregation
07/722,823 Method and Apparatus for Imaging a Physical Parameter in Turbid Media Using Diffuse Waves
07/742,500 Cross-Axis Synchronous Flow Through Coil Planet Centrifuge for Large Scale Preparative Countercurrent Chromatography (U.S. Patent No. 5,104,531)
07/758,824 Apparatus for and Method of Making Ultra Thin Walled Wire Reinforced Endotracheal Tubing and Product Thereof (see also 07/878,784)
07/769,418 Pressure Sensor Element and Method to Measure Contact Stress (see also 07/261,303) (U.S. Patent No. 5,125,408)
07/789,517 Multidimensional Imaging Using a Single Point Detector for a Phase Encoded Modulated Optical Carrier
07/793,215 All Tantallum Stopped Flow Microcalorimeter
07/798,328 Apparatus for Countercurrent Chromatography Separations and Stable Methods for Monitoring the Effluent Thereof (U.S. Patent No. 5,169,521)
07/802,305 Semiconductor Structure Using Protein As Its Active Element
07/822,018 Optical Method for Monitoring Arterial Blood Hematocrit
07/831,603 High Resolution Digital Thermometer
07/832,292 NMR Glomerular Filtration Test and Kit (see also 07/557,038)
07/841,994 Method to Enhance the Sensitivity of MRI for Magnetic Susceptibility Effects
07/842,957 Splash Containment Testing Device for Emergency Wash Units
07/846,824 Spectroscopic Imaging Device Employing Imaging Quality Spectral Filters
07/859,778 Fabrication of Micron-Range Holes in Protective Barriers and Encapsulating Materials
07/862,625 Handheld Spirometry with Improved Accuracy
07/864,337 Dynamically Stable Associative Learning Neural System (see also 07/448,090)
07/878,784 Sealing Means for Endotracheal Tubes (see Also 07/758,824)
07/883,013 Device for Measuring Incident Light in a Body Cavity
07/885,069 Separation of Rare Earth Elements with High-Speed Countercurrent Chromatography
07/886,006 In Vivo DMRI Method for Determining Cerebral Blood Flow and Volume Variation
07/890,194 Probe for Thermospray Mass Spectrometry
07/918,661 Nitric Oxide Specific Electrode
07/919,063 Detection of Nitric Oxide Using Electron Spin Resonance
07/921,182 Computer Aided Video-Epifluorescence-Microscopy for Studying the Effects of Therapeutic Agents on Individual DNA Molecules
07/924,982 Miniature Mechanical Vacuum Pump
07/926,010 A Single Shot Magnetic Resonance Method to Measure Diffusion, Flow and/or Motion
07/939,142 Method of Stimulating Angiogenesis

Dated: February 17, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–4590 Filed 2–26–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Method for Evaluating and Establishing Reimbursement Rates for Health Care Services Authorized Under the Indian Health Service Contract Health Service Regulations; Portland Area

AGENCY: Indian Health Service, HHS.

ACTION: Extension of project date.

SUMMARY: The termination date for the Portland Pilot Project now being conducted in the Portland Area to determine an alternative method of evaluating and establishing reimbursement rates for contract health services has been changed from March 31, 1993 to March 31, 1995.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. J. T. Garrett, Acting Director, Division of Health Care Administration/Contract Health Services, room 6A–41, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8373 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) issued a General Notice in 56 FR 10566 on March 13, 1991 to inform the public that the IHS was conducting a pilot project in the IHS Portland Area. This project is designed to determine whether an alternative method of evaluating and establishing reimbursement rates for contract health services will result in greater participation by health care providers and lower costs to IHS. The project was originally scheduled to end on March 31, 1992. the project invited providers, within the Portland Area, to submit their most favorable rate quotations. The response was far greater than the expectation of the IHS. As a result of the response and the need to develop complex rate quotation analyses methodologies for facilities, outpatient and professional providers, and the need to develop preferred provider lists from these analyses, the pilot project termination date was extended to March 31, 1993 (57 FR 10671 on March 27, 1992). Also, the IHS published notification on June 18, 1992 (57 FR 27262) that additional sites were added to the pilot project to provide more information from a wide geographic area.

A formal evaluation process was scheduled to be conducted during the last two months of the project. However, due to the unexpected complexities of the Rate Quotation Process including increased time required to compile provider mailing lists, mailing of Rate Quotation Solicitation packages, providing answers to provider questions, contacting providers who did not respond, and the rate quotation analyses, additional time will be needed to complete the pilot project. The extension of the termination date of the project to March 31, 1995 will allow time for completion of the evaluation, and will provide necessary time for the IHS to assess the results. Based upon the results of the evaluation, IHS will formulate, publish and implement a new payment and procurement policy for contract health services. We are, therefore, extending the termination date of this pilot project from March 31, 1993 to March 31, 1995.

The pilot project does not change the current IHS payment policy requirement that health care services be procured at rates which do not exceed prevailing Medicare rates.

Dated: February 22, 1993.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 93–4602 Filed 2–26–93; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of final decision.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) has decided not to change the existing Operating Criteria as a result of the recently completed review process. The review has been conducted by the Bureau of Reclamation (Reclamation) as a public process, including the formal consultation with representatives of the Governors of the seven Colorado River Basin States (Basin States). The results of Reclamation's review indicate that modification of the Operating Criteria is not justified at the present time.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Messrs. Bruce Moore, Bureau of Reclamation, Upper Colorado Region, P.O. Box 11568, Salt Lake City, Utah 84147, (801) 524–5415 or Walt Muir, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, (702) 293–8461.

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** notice (56 FR 534, January 7, 1991) announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On January 15, 1991, over 250 letters enclosing a copy of the **Federal Register** notice and the Operating Criteria were sent to all known and anticipated interested parties, inviting their review and comment. In response to requests, an additional 30-day comment period was announced in the **Federal Register** (56 FR 14273, April 8, 1991).

Comments from the two **Federal Register** notices were received from 32 respondents. The comments were reviewed by Reclamation for identification and analysis of the issues. A public meeting was held on November 19, 1991, to discuss the identified issues and analyses. All those on the original mailing list were invited to this public meeting, along with any others who had expressed interest. All of the 32 respondents and all who attended the meeting were provided with a document containing copies of all comments which had been received plus the identified issues and analyses. The analyses of the issues were revised to reflect information resulting from the public meeting.

As required by Public Law (Pub. L.) 90–537, a formal consultation meeting with the designated Governors' representatives of the Basin States was held on March 24, 1992, to discuss the results of the review. This consultation meeting was open to the public for observation, and everyone on the original mailing list plus subsequent additions were notified of the meeting and invited. Immediately after the formal consultation, the meeting was extended for questions and comments from the general public.

Following these meetings, a third **Federal Register** notice was issued (57 FR 41519, September 10, 1992) which listed the comments received and the analysis prepared in response to the comments. Several comments were received as a result of this third notice, and the response section of the notice was modified to more accurately portray the language of existing legislation, compacts, and decrees.

The decision to not change the existing Operating Criteria was reviewed under the National Environmental Policy Act (NEPA) and determined to qualify for a categorical exclusion.

Background

The Operating Criteria, promulgated pursuant to the Colorado Basin Storage Act Section 602 of Public Law 90–537 (43 U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact (Compact), the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

Long-range operations generally refers to the planning of reservoir operations over the next 5 to 20 years, as opposed to the Annual Operating Plan (AOP), which details reservoir operations for the next operating year. Furthermore, specific monthly, daily, and hourly operations at individual facilities are not governed by the Operating Criteria, but rather by criteria applicable only to each facility. Thus, Glen Canyon Dam's short term operations are separately addressed by the interim operating criteria announced by the Secretary on November 1, 1991, and will, in the future, be subject to the requirements of the Grand Canyon Protection Act of 1992 (Title XVIII of Pub. L. 102–575), which was signed into law on October 30, 1992.

The Operating Criteria provide that the Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by such Basin State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate. Public Law 90–537 allows the Secretary, as a result of actual operating experiences or unforeseen circumstances, to modify the Operating Criteria to better achieve their specified statutory purposes, after consulting with the representatives of the Basin States.

In both 1975 and 1980, after consulting with the Basin States and others, the Secretary determined that there was not a need for a formal review. Review of the Operating Criteria in 1985 resulted in no changes. That review was conducted following a meeting among representatives of the Basin States (designated by the respective Governors) and Reclamation. The Secretary concluded that outstanding issues concerning the operation of the reservoir system and the Operating Criteria could be resolved without the necessity of a formal review of the Operating Criteria. The representatives of the Basin States were invited to participate in a technical work group with Reclamation to identify the extent of operational flexibility consistent with the Operating Criteria and to seek a consensus in the procedures used to formulate the AOP for the following several years, until the Basin States demands were more fully developed.

Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, this current review has involved the general public as well as a wider range of agencies and organizations. The scope of this review has been consistent with the statutory purposes of the Operating Criteria, which are "to comply with and carry out the provisions of the Colorado River Compact, Upper Colorado River Basin Compact, and the Mexican Water Treaty."

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include navigation, recognition of project purposes, minimizing spills, river conditions from Hoover Dam to Mexico, operations at Glen Canyon Dam, factors for determining 602(a) storage, and storage equalization between Lakes Powell and Mead. The Operating Criteria were purposely designed to be flexible so that, during the development of the AOP, variations in water supply conditions and changing demands for water use can be accommodated. The process for developing the AOP is open to the public and interested parties. Special studies that address some of the issues raised during the review of the Operating Criteria will be conducted during development of future AOPs.

Some issues, such as short-term navigation concerns or specific issues relating to river conditions can often be handled on a case-by-case basis. Those with such concerns are invited to contact Reclamation so a cooperative solution can be worked out.

The minimum release objective from Lake Powell was carefully considered. Impacts of changing this parameter may be considerable and range from impacts on the levels in Lakes Powell and Mead

to impacts on flows in the Grand Canyon. Insufficient data exist concerning these impacts and any change in the minimum release objective without a thorough analysis of the impacts would be premature. Thus, studies will be conducted to examine the combined effects of various minimum release objectives, 602(a) storage determinations, and storage equalization between Lakes Powell and Mead.

The decision not to change the Operating Criteria is subject to NEPA and appropriate compliance has been accomplished. It was not deemed appropriate to combine this process with the Glen Canyon Dam Environmental Impact Statement (GCDEIS), or to delay this review and decision on the Operating Criteria until the GCDEIS is completed.

With respect to the issues raised by the Indian Tribes, they are assured of their right to participate in reviews of the Operating Criteria and in the AOP development process.

Based on the results of the review and the analysis of public comments, it has been decided not to modify the Operating Criteria at this time.

Analysis of Issues

Issue 1: Whether the Operating Criteria should include keeping the river navigable from Lake Mead up to the Grand Canyon and below Hoover Dam, whether navigation should take precedence over power in determining dam releases, and whether river management should conform to the priorities in the 1964 decree of the United States Supreme Court in *Arizona* v. *California*, 376 U.S. 340 (Decree).

Analysis: Water releases by Reclamation from Hoover Dam on a monthly basis are normally controlled by water needs downstream (including reservoir regulation), or by flood control regulations if conditions require. Within the constraints imposed by water demands, daily and hourly releases are controlled by power demands and scheduling.

Article II of the Decree lists river regulation, improvement of navigation, and flood control as the first priority uses of Hoover Dam and Lake Mead. However, the Compact states in Article IV that navigation shall be subservient to water supply and power. The Decree (Article VIII) also states that it (the Decree) shall not affect any issue of interpretation of the Compact.

It is the Department of the Interior's (Interior) position (which is supported by the findings in *Laughlin River Tours* v. *United States*, CV–S–87–823–HDM) that the dams and reservoirs have already greatly improved navigation over the natural conditions, and that operating in accordance with the Decree does not require maximizing the first priority elements to the detriment of the other priorities. The Operating Criteria comport with the statute, the Compact, and the Decree, and the operation of Hoover Dam and the other dams on the lower Colorado River is in conformance therewith.

Navigability of the river upstream of Lake Mead is dependent on releases from Lake Powell. Because the Decree deals with storage and release of water only with respect to Lower Basin reservoirs, it affords no priority to navigation on the river upstream of Lake Mead.

The Operating Criteria do not specifically address priorities of purposes. Specific concerns of balancing priorities should be addressed during development of the AOP. The Operating Criteria need no changes with respect to priorities of purposes.

Issue 2: Whether the minimum release objective stated in the Operating Criteria should be changed.

Analysis: Article II (2) of the Operating Criteria states that "* * * the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet * * *." The Operating Criteria make no explicit provisions for annual releases of less than 8.23 million acre feet (MAF), but they do address conditions which both prohibit and mandate annual releases greater than 8.23 MAF.

Releases greater than 8.23 MAF are prohibited when the forecast for September 30 shows that either:

1. Upper Basin storage will be less than 602(a) storage, or

2. Lake Powell active storage will be less than the active storage of Lake Mead.

Releases from Lake Powell greater than 8.23 MAF are mandated if, in the plan of operation, the forecast of September 30 shows that Upper Basin active storage will be greater than the quantity of 602(a) storage, in order to accomplish any or all of the following objectives:

1. If such releases can reasonably be applied in the Lower Division States to the uses specified in Article III(e) of the Compact, and provided that active storage in Lake Powell is not less than active storage in Lake Mead,

2. To equalize active storage between Lakes Powell and Mead, or

3. To avoid anticipated spills from Lake Powell.

The Compact apportions the beneficial consumptive use of 7.5 MAF for the Upper Basin and 8.5 MAF for the Lower Basin from the Colorado River System within the United States (Article III (a) and (b)), requires that any Mexican Water Treaty deficiency be equally borne by the Upper and Lower Basins (Article III (c)), requires that the Upper Basin not deplete the flow at Lee Ferry below an aggregate of 75 MAE for any 10-year period (Article III (d)), and prohibits the Upper Basin from withholding and the Lower Basin from requiring the delivery of water which cannot reasonably be applied to domestic and agricultural uses (Article III (e)). The principal purpose of the Operating Criteria is to make provision for the storage of water in Storage Units of the Colorado River Storage Project and in Lake Mead and for the release of water in accordance with Section 602 of the Colorado River Basin Project Act (Pub. L. 90–537) in order to comply with the carry out the compact.

The application of the minimum release objective has several implications, including:

(1) A lower Lake Powell storage volume during drought periods and a more stable Lake Mead storage volume,

(2) A more consistent release regime through the Grand Canyon, and

(3) A more consistent base for marketing the energy and capacity from the Glen Canyon Dam powerplant. The resulting releases have less variability than either the pre-dam flows or the flows that would result from applying the delivery requirements contained in Articles III (c) and (d) of the Compact.

There are complicated and extensive impacts both negative and positive that could result from a change in the current minimum release objective of 8.23 MAF from Glen Canyon Dam, including conditions such as storage levels in Lakes Powell and Mead, maximum and minimum streamflow levels, and the frequency of spills. The exact nature of these effects and their relationship to other parts of the Operating Criteria are currently unknown. Therefore, the minimum release provisions of the Operating Criteria should not be changed at this time. A comprehensive investigation will be undertaken by Reclamation to determine the combined effects of possible changes to the Operating Criteria. This investigation will consider changes to minimum annual releases, the determination of 602(a) storage, and storage equalization between Lakes Powell and Mead.

Issue 3: Whether operations should give consideration to all listed project purposes and whether appropriate priorities between purposes should be reflected.

Analysis: Principal documents where project purposes are authorized are the Colorado River Basin Project Act, Colorado River Storage Project Act, and Boulder Canyon Project Act. The Operating Criteria address project purposes as follows: "The plan of operation * * * shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors."

In the development of each AOP, consideration must be given to all project purposes as delineated in each specific facility's authorizing legislation. Modification of the long-term Operating Criteria is not necessary to provide such consideration. There is sufficient flexibility within the current Operating Criteria to give appropriate consideration to all project purposes.

Issue 4: Whether the Operating Criteria or AOP should include minimizing spills (including minimizing high flows and flood control releases); whether full pool level should be identified in the Operating Criteria; and whether the probability of spills at Glen Canyon Dam should be reduced by altering or removing the 602(a) storage requirement.

Analysis: This issue relates to the monthly and annual operations of Glen Canyon Dam that are scheduled to avoid spills. Spills are referenced in Public Law 90–537, Section 602(a)(3), and are defined in the Operating Criteria, Article IV (1)(a) as "* * * water released from Lake Powell which cannot be utilized for project purposes * * *." Examples of spills include powerplant bypasses and water released in excess of consumptive use requirements downstream of Lake Powell.

The operation of all of the Colorado River reservoirs is forecast-based and includes mandatory flood control restrictions in the operation of Hoover Dam consistent with flood control as one of the purposes of that project. At each point during the year-round forecast period (typically the first of each month from January through July), evaluations of the current inflow forecast are made and the scheduled releases are adjusted in order to avoid spills from Glen Canyon Dam (while attempting to maximize storage available for future use). "Anticipated spills" have been interpreted as being those that are expected as a result of forecasted inflow.

To reduce the probability of spills from Lake Powell, operations have been implemented which include a combination of scheduling higher winter releases and "targeting" reservoir filling at about 500,000 acre-feet less than full capacity (as a buffer) until the peak runoff has clearly passed. Because the reservoir can still be filled after any danger of spills has passed, conservation storage is not affected.

The Operating Criteria are general enough to allow such adjustments to be part of the AOP development process. The AOP is developed annually and the current reservoir conditions, all project requirements, the probability of inflows, and alternative release strategies are all considered in a public forum.

The 602(a) storage requirement must be retained in the Operating Criteria because it is statutorily mandated. Furthermore, the quantification of the 602(a) storage level currently has no effect on spills from Glen Canyon Dam, although it may at some future time when Upper Basin uses are more fully developed.

The Operating Criteria are, and should remain, flexible enough to accommodate wide variations in hydrologic conditions. Expected reservoir levels and risk of spills will be addressed during preparation of each AOP. Sufficient flexibility exists in the current Operating Criteria to allow development of AOPs with desired risks of spill.

Issue 5: What should be included in the GCDEIS, and whether NEPA compliance for the current review of the Operating Criteria will be combined with the GCDEIS.

Analysis: The GCDEIS is a NEPA effort currently underway to assess alternative operations at Glen Canyon Dam. Those issues which are pertinent to Glen Canyon Dam operations are being addressed in the GCDEIS. Issues which are pertinent to other specific reaches of the river or specific facilities or pertinent to daily or short-term operations would be properly addressed in NEPA analyses of the specific projects or facilities involved. The NEPA compliance to be accomplished on results of the review of the Operating Criteria should not be combined with the GCDEIS.

Issue 6: Whether the Operating Criteria should take into account riverine conditions below Hoover Dam along the river between reservoirs as well as within the reservoirs, particularly with respect to fish and wildlife, recreation, and other environmental and ecological factors.

Analysis: The only Lower Basin reservoirs to which the Operating Criteria apply are those constructed and operated under the authority of the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act. The Operating Criteria are primarily concerned with longer-term water operations in the Upper and Lower Basins.

Flows in the river system from Hoover Dam to Mexico are governed overall by the Compact, the Decree, the Mexican Water Treaty, flood control regulations, and contracts with water users. Within the limits imposed by these factors and the reservoir space available for regulation, flows are also affected by power operations. Fish and wildlife, recreation, and environmental considerations are taken into account, and flows can be modified (and have been in the past) to enhance these project purposes within the limits defined by the governing factors mentioned above. The existing Operating Criteria are flexible enough to allow this and need not be modified. Considerations of all purposes are addressed during development of the AOP. State, Federal, and local agencies concerned primarily with fish and wildlife, recreation, and environmental purposes are part of the AOP process.

Issue 7: Whether the Operating Criteria should be flexible enough to accommodate interim flows and operational changes at Glen Canyon Dam.

Analysis: The Operating Criteria were developed to accomplish the objectives of section 602(a) of the 1968 Colorado River Basin Project Act (Pub. L. 90–537). Specific monthly, daily, and hourly operations at Glen Canyon Dam were not detailed in Public Law 90–537, and, correspondingly, they are not detailed in the Operating Criteria. Such specific operational parameters are addressed by the interim operating criteria for Glen Canyon Dam and the requirements of the Grand Canyon Protection Act of 1992.

Issue 8: Whether scheduled special releases, ecosystems, needs, historical stream flow criteria, and a critical period should be factors considered in determining 602(a) storage.

Analysis: Section 602(a) of Public Law 90–537 provides for sufficient storage of water in the Upper Basin to assure required deliveries to the Lower Basin without impairing the annual Upper Basin consumptive uses pursuant to the Compact. Article II(1) of the Operating Criteria requires the Secretary to determine for each AOP, after consideration of all applicable laws and relevant factors, the quantity of 602(a) storage which is required. The article lists several relevant factors, but specifically states that the Secretary is not limited to those listed. The Secretary is therefore allowed, and

indeed required, to consider all other factors which are relevant to the determination of the 602(a) storage quantity during the preparation of each AOP. Since the Operating Criteria already provide for considering additional factors when determining 602(a) storage, and since the process for preparing AOPs has recently been expanded to include additional agencies, organizations, and representatives from the public who can provide input for the identification of the relevant factors, the Operating Criteria need not be modified for this purpose.

Issue 9: Whether the review of the Operating Criteria should be subject to NEPA, and whether the Environmental Impact Statement process could be used to assess operational aspects at Colorado River dams.

Analysis: Reclamation is currently applying the NEPA process to several projects associated with the Colorado River where proposed actions are being considered. Two of these are GCDEIS and Hoover Dam modification.

NEPA compliance has been accomplished on the results of the review of the Operating Criteria. Reclamation has determined that a categorical exclusion is appropriate and the same has been prepared.

Issue 10: Whether the Colorado River System reservoirs are being operated in accordance with: The Operating Criteria as promulgated; provisions of the "Law of the River" as it currently exists; best management practices for the use, management and supply of water under current conditions and standards; whether the Operating Criteria, risk analysis, future use estimates, critical storage requirements, and maximizing beneficial use in operation of Colorado River reservoirs are subjected to loose definitions and piecemeal application; and whether the Operating Criteria need to be more rigorously applied during the AOP process.

Analysis: The State of California and its water users believe that attention to the above matters will allow greater beneficial uses of water in the Lower Basin without unduly increasing the risk of shortage to other United States users. Specifically, they want assurances that the system of reservoirs is being operated:

1. In accordance with the Operating Criteria as promulgated;

2. In accordance with provisions of the "Law of the River" as it currently exists; and

3. In accordance with best management practices for the use, management, and supply of water under current conditions and standards.

Based on their review of the Operating Criteria and their experience with the AOP development process, they believe that:

1. The Operating Criteria are being implemented in a piecemeal fashion rather than being considered in their entirety.

2. Consideration of all applicable laws and relevant factors including water supply risk assessment are not being considered adequately in the development of the AOP.

3. Accurate and reasonable estimates of current and future consumptive use within the Colorado River Basin are not factored into the analyses of the reservoir operations and assessments of risk.

4. Critical reservoir storage requirements for meeting the need for water in the Upper Basin and the Lower Basin have not been developed.

5. The degree of confidence in the risk assessment related to water conservation is not commensurate with the degree of certainty being required for other parameters used to guide the operation of the system reservoirs.

6. Risk assessments and reservoir operations have not been modified in consideration of best management practices appropriate for the use, management, and supply of water under current conditions and standards.

7. Several provisions contained in the Operating Criteria lack precise definition or are being interpreted based on convenience, rather than in accordance with the intent of the statutes.

8. Maximizing the beneficial use of the available water resources within the Colorado River Basin and each State's Colorado River apportionment are not primary considerations when the AOP is developed.

It is acknowledged that these areas need to be considered and studied so that the Colorado River is operated in the best manner possible. Reclamation and the Basin States have committed to continued support and participation in an ongoing analysis (through the Colorado River Management Work Group) on the above issues and other related matters. Necessary studies will be completed and specific procedures will be recommended for guiding preparation of future AOPs for the Colorado River System reservoirs.

Issue 11: Whether the Operating Criteria should recognize the Federal Indian trust responsibility and provide for participation in reviews by Indian Tribes to the same extent as participation by Basin States.

Analysis: Section 602(b) of Public Law 90–537 specifically requires the Secretary to consult with State representatives (as designated by the Governors) if modification of the Operating Criteria is considered. In addition, however, the Operating Criteria provide that "The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate."

The Indian Tribes and many other parties and agencies were notified and invited to participate in this review, and will be invited to participate in future reviews as well. No change should be made in the Operating Criteria, but the Indian Tribes should be assured of their right to participate in reviews of the Operating Criteria, as well as in the AOP development process.

Issue 12: Whether a long range operation plan for Colorado River reservoirs should be developed before the decision is made on Glen Canyon Dam.

Analysis: It is presumed that the commentor is referring to the decision on whether to modify the existing Operating Criteria when mentioning a "long-range operational plan." Some operational parameters at Glen Canyon Dam may be altered as a result of the GCDEIS, but these need not be specified in the Operating Criteria since they will be addressed in final Glen Canyon Dam operating criteria. Furthermore, the type of parameters that could change would be more appropriately addressed in the AOP development process. Therefore, it is not necessary to wait for results of the GCDEIS prior to making a decision on the operating Criteria.

Issue 13: Whether the Operating Criteria should be more flexible in the time allowed for equalization of storage between Lakes Powell and Mead to allow a more gradual reduction in annual flows when going from a wet period to a dry period.

Analysis: The storage equalization provision originates in Public Law 90–537, Section 602(a)(3)(ii) and is repeated in Article II(3)(b) of the Operating Criteria. The equalization provision requires releases from Lake Powell of water not required for storage in order to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell. Storage equalization releases shall be made from Lake Powell only if the active storage in Lake Powell is greater than the active storage in Lake Mead. Also, these releases can only be made if the storage in Lake Powell is greater than that required for 602(a) purposes.

This provision is one of the three considerations under which water excess to 602(a) storage requirements is to be transferred to Lake Mead and the Lower Basin. It also helps to equalize power generation benefits and to keep the recreation pools of the two lakes relatively equal.

The decision on when and over what time period to equalize is made through the current AOP process. The flexibility inherent in the process allows storage equalization to be made over a period of several months in a way that benefits project purposes. The proposal to delay equalization for several years does not meet the requirements of section 602(a)(3). The Operating Criteria should not be changed with respect to storage equalization.

Final Decision

Based upon a careful review of the existing Operating Criteria, the involved parties' responses to Reclamation's initial analysis, consultation with the Governor's representatives of the Basin States, and Reclamation's revision of its analysis in response to comments received, it has been determined that the Operating Criteria do not need to be revised at this time in order to better achieve the purposes specified in Section 602(a) of Public Law 90–537.

Dated: February 22, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–4653 Filed 2–26–93; 8:45 am]

BILLING CODE 4310–09–M

River Maintenance Program for the Rio Grande—Velarde to Caballo Dam, Rio Grande and Middle Rio Grande Projects, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of correction of public hearing location on the draft supplement to the final environmental impact statement (DSFEIS) DES–93–02.

SUMMARY: The Bureau of Reclamation (Reclamation) is changing the location of the Albuquerque, New Mexico, public hearing to the Ramada Hotel, 6815 Menaul Boulevard NE., Albuquerque, New Mexico, with the hearing to start at 2 p.m. on March 10, 1993. The pubic hearings will remain at the same locations for Espanola, New Mexico, and Socorro, New Mexico.

DATES: The public hearing locations are:

- March 9—Espanola, New Mexico—Park Inn, 920 North Riverside Drive, North Highway 68, Espanola, New Mexico, at 7 p.m.
- March 10—Albuquerque, New Mexico—Ramada Hotel, 6815 Menaul Boulevard NE, Albuquerque, New Mexico, at 2 p.m.
- March 11—Socorro, New Mexico—Macy Center, New Mexico Tech University, Socorro, New Mexico, at 6 p.m.

ADDRESSES: For comments, requests to testify, and further information contact: Projects Manager, Bureau of Reclamation, Albuquerque Projects Office, 505 Marquette NW., suite 1313, Albuquerque NM 87102–2162; telephone: (505) 766–3381.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Burleigh (Activity Manager, Albuquerque Projects Office); telephone: (505) 766–2518.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Albuquerque Projects Office, at the above address to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on March 5, 1993.

Oral comments at the hearing will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order and will be recalled to the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Albuquerque Projects Office, at the above address, by March 15, 1993, for inclusion in the hearing record.

Dated: February 23, 1993.

Kathy E. Gordon,

Deputy Assistant Commissioner—Administration.

[FR Doc. 93–4594 Filed 2–26–93; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service. U.S. Department of the Interior.

ACTION: Notice of Meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Saturday, March 27, 1993, at the Old Capitol Building on State Street at Capitol Street, House Chamber, Jackson, MS, 39201. The meeting will begin at 9 a.m. and conclude before 1 p.m.

This meeting constitutes the fourteenth meeting of the Commission. The primary focus of the meeting will be on the Commission's report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Mississippi and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: February 22, 1993.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 93–4670 Filed 2–26–93; 8:45 am]

BILLING CODE 4310–70–M

Gauley River National Recreation Area

AGENCY: National Park Service; Department of the Interior, Gauley River National Recreation Area Advisory Committee.

ACTION: Cancellation.

SUMMARY: This notice advises of the cancellation of the Gauley River National Recreation Area Advisory Committee meeting which was published February 10, 1993 in Volume 58, #26, Page 7896.

DATES: March 18, 1993—7 p.m.

ADDRESSES: Nicholas County Veterans Memorial Park—dining hall. (North of Summerville on U.S. Rt. 19, adjacent to/just South of Nicholas County High School property).

FOR FURTHER INFORMATION CONTACT: Joe L. Kennedy, Superintendent, New River Gorge National River, P.O. Box 246, Glen Jean, WV 25846; (304) 465–0508.

John MacKenna,

Regional Director, Mid-Atlantic Region.

[FR Doc. 93–4671 Filed 2–26–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. USX Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 19, 1993, a proposed Second Consent Decree resolving *United States* v. *USX Corp.*, C.A. No. 91–329, DJ No. 90–5–2–3–1034C, and alleged violations of the Amended Consent Decree in *United States* v. *USX Corp.*, C.A. No. 79–709 (W.D. Pa.), DJ No. 90–5–2–3–1034B, was lodged with the United States District Court for the Western District of Pennsylvania.

The United States' Complaint in C.A. No. 91–329 was filed in April, 1991 under section 113 of the Clean Air Act, to enjoin allegedly violative emissions of air pollution at USX's Clairton Coke Works, and to require USX to pay civil penalties for the alleged violations. The Complaint addressed alleged violations, which occurred primarily during the period 1987–1990, of standards prohibiting the release of raw coke oven gas into the atmosphere and the use of contaminated water to quench hot coke.

The United States' Complaint in C.A. No. 79–709 was filed in 1979 to enjoin allegedly violative emissions of air pollution at the Clairton Works and various other "Mon Valley" steel plants. A Consent Decree was entered in that case in 1979 and modified on five occasions, most recently in 1985. On September 27, 1988, an Amended Consent Decree was entered in that case. The United States has alleged that USX violated standards set forth in the Amended Consent Decree regulating coke oven charging, pushing, and desulfurization operations, and emissions from coke oven doors, stacks, lids, and off-takes.

Pursuant to the agreement set forth in the proposed Second Consent Decree, USX has agreed to an injunction requiring it to comply in the future with the Pennsylvania State Implementation Plan ("SIP") provisions regulating emissions of pollutants in Allegheny County. USX has agreed to pay a civil penalty of $1.8 million for past violations of the SIP and the Amended Consent Decree (in C.A. 79–709). The proposed Second Consent Decree contains a comprehensive schedule of stipulated penalties for any violations of emissions standards set forth within the Second Consent Decree which may have occurred during the period July 1, 1992 through January 1, 1993. Moreover, the Decree requires USX to comply with standards regulating door emissions and the efficiency of the Clairton Works desulfurization system which are 20% stricter that the standards contained within the SIP.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Second Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, DOJ Ref. Nos. 90–5–2–3–1034B and 1034C.

The proposed Second Consent Decree may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Second Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–4586 Filed 2–26–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 21, 1993, Sanofi Winthrop L. P., DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230) a basic class of controlled substance in Schedule II. The firm plans to import small quantities for research purposes only.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 31, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 19, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–4627 Filed 2–26–93; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 93–019]

NASA Advisory Council, Space Science and Applications Advisory Committee, Microgravity Science and Applications Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public

Law 92–463, the National Aeronautics and Space Administration Announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Microgravity Science and Applications Subcommittee (MSAS).

DATES March 9, 1993, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Conference Room MIC–7–H46A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Crouch, Code SN, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0818.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of the Microgravity Division Programs
—Progress Reports and Review of Charters of the MSAS and Discipline Working Groups
—Programmatic Decision Rules and Criteria for Prioritization

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 19, 1993.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 93–4574 Filed 2–26–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice: 93–020]

Intent To Grant a Patent License

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA intends to grant the University of Maryland at College Park, College Park, Maryland, an exclusive, royalty-bearing, revocable license to practice U.S. Patent Application Serial No. 07/915,567 entitled "A Six-Degree-of-Freedom Parallel Minimanipulator with Three Inextensible Limbs." The invention is a manipulator with six-degrees-of-freedom. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.200 *et seq.* NASA will grant the patent license in accordance with its licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Written objections to this proposed license grant must be received by April 30, 1993.

ADDRESSES: Written objections should be sent to: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff at (202) 358–2041.

Dated: February 19, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–4575 Filed 2–26–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #1 Section) to the National Council on the Arts will meet on March 15–16, 1993 from 9 a.m.–5:30 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 24, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4599 Filed 2–26–93; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #2 Section) to the National Council on the Arts will meet on March 26, 1993 from 9 a.m.–5:30 p.m. and March 27 from 8 a.m.–5:30 p.m. in room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 24, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4600 Filed 2–26–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Exemption

In the Matter of: Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3).

I.

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Westchester County, New York.

II.

By letter dated July 17, 1992, as supplemented December 23, 1992, the licensee requested an amendment to the Technical Specifications (TS) that would allow containment isolation valve local leak rate tests (LLRTs) to be performed at intervals up to 30 months. In addition, the licensee's letter requested an exemption from the requirements of the Code of Federal Regulations (CFR) since 10 CFR part 50, appendix J, Paragraph III.D.3, requires that licensees perform Type C tests during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are LLRTs of containment isolation valves.

The licensee did not require an exemption from 10 CFR part 50, appendix J, Paragraph III.D.2.(a) for Type B tests (LLRTs of containment penetrations) since the license has a continuous leakage monitoring system installed. Specifically, the weld channel and containment penetration pressurization system provides a continuous monitoring function. The CFR at 10 CFR part 50, appendix J, Paragraph III.D.2.(a) allows Type B tests, except for air lock tests, to be performed every other reactor shutdown for refueling but in no case at intervals greater than 3 years if a continuous leakage monitoring system is installed. The licensee's TS currently allows this 3-year test interval, therefore, an exemption for Type B tests was not required to accommodate operation on a 24-month fuel cycle.

The licensee commenced operating on 24-month fuel cycles, instead of the previous 18-month fuel cycles, with fuel cycle 9. Fuel cycle 9 start in August 1992. In order to conform with the requirements of 10 CFR part 50, appendix J, Paragraph III.D.3, the licensee would have to shutdown IP3 and enter a forced outage prior to the next scheduled refueling outage. The next refueling outage is scheduled to commence in the September 1994 time frame.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not prevent an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present. According to 10 CFR 50.12(a)(2)(iii), special circumstances are present when "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; * * *

The CFR at 10 CFR part 50, appendix J, Paragraphs III.D.3 states: "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years * * *" This requirement to perform Type C LLRTs at intervals no greater than 2 years presumed the 2-year time interval was adequate to accommodate the 12-month fuel cycles which were common when appendix J to 10 CFR part 50 was published in 1973. However, IP3, along with several other facilities, is utilizing a core design which allows operation on a 24-month cycle.

The NRC staff recognized that the current 2-year intervals for Type C LLRTs would likely require a facility to shutdown to perform these LLRTs before completion of the facility's 24-month fuel cycle. Consequently the NRC staff issued Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle." This generic letter provides guidance to licensees on how to prepare requests for TS amendments and CFR exemptions which are needed to accommodate a 24-month fuel cycle. Enclosure 3 to Generic Letter (GL) 91–04 indicated, in part, that two issues should be addressed to justify extending the 2-year Type C LLRT interval: (1) A possible reduction in the combined leakage limit for Type B and C LLRTs and (2) the basis for concluding that the containment leakage rate would be maintained within the acceptable limits with an LLRT interval increase of up to 30 months. The licensee's letter of July 17, 1992, as supplemented December 23, 1992, addressed both of these issues.

The first issue is a reduction in the combined containment penetration and isolation valve leakage rate limit for Type B and C LLRTs which increases the margin to the maximum allowable leakage rate. The maximum allowable leakage rate, which is referred to as L_a, is specified in the facility's TS. The acceptance criteria for Type B and C LLRTs is that the combined leakage rate shall be less than 0.60 L_a. This constitutes a margin of 0.40 L_a (40 percent of L_a). Enclosure 3 to GL 91–04 states in part, that in order to justify an exemption to the Appendix J requirements and extend Type C LLRT intervals up to 30 months, licensees should either: (1) Use LLRT data to demonstrate that the margin of 0.40 L_a will not be reduced as a result of the test interval increase or (2) propose an acceptance criterion limit of less than 0.60 L_a as a TS change. The licensee has proposed an acceptance criterion limit of 0.50 L_a for IP3. This constitutes a 25 percent increase in margin (40 percent to 50 percent). The staff has reviewed the proposed reduction in the combined leakage rate limit to 0.50 L_a and finds it is consistent with the recommendations of Enclosure 3 to GL 91–04 and is, therefore, acceptable.

The second issue is the basis for concluding that containment leakage would be maintained within acceptable limits with an LLRT interval increase of up to 30 months. Ten LLRTs have been performed at IP3 since the facility began commercial operation. The as-found results of the first two tests (1978 and 1979) did not meet the acceptable leakage limit due to excessive leakage from one valve in 1978 and four valves in 1979. The as-found results of the next six tests were below the acceptable leakage limit. Finally, the as-found results of the two most recent tests (1989 and 1990) did not meet the acceptable leakage limit due to excessive leakage from three valves in 1989 and one valve in 1990. For each of the tests that did not meet the leakage limits, repairs to the noted valves were conducted and the as-left values were well below the limits. For example, the as-left leakage values from the 1989 and 1990 tests were 0.031 L_a and 0.041 L_a respectively. The licensee reviewed the test results from these ten LLRTs and concluded that the leakage failures, except for one valve which was replaced in 1990, were random and nonrecurring. Therefore, the licensee concluded that these failures were not indicative of a poor performance trend and that there was no evidence that the containment leakage was a function of time. The NRC staff has reviewed the LLRT data provided by the licensee as well as the methodology used by the licensee to extrapolate LLRT data to a 30-month test interval and the staff concludes that there is reasonable assurance that the containment leakage rate would be maintained within acceptable limits with an LLRT interval increase to 30 months.

Strick compliance with the testing periodicity required by the current regulations would require mid-cycle outages which would result in undue hardship or other costs that would be significantly in excess of those contemplated when the regulations were adopted. Thus, there are special circumstances present which satisfy the requirements of 10 CFR 50.12(a)(2)(iii).

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12,

that (1) the exemptions as described in Section III are authorized by law, will not endanger life or property, and are otherwise in the public interest and (2) special circumstances exist pursuant to 10 CFR 50.12(a)(2)(iii). Therefore, the Commission hereby grants the following exemption: The Power Authority of the State of New York is exempt from the requirement of 10 CFR part 50, appendix J, Paragraph III.D.3, in that the interval for Type C tests may be extended greater than 2 years but in no case greater than 30 months for the Indian Point Nuclear Generating Unit No. 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the quality of the human environment (58 FR 5424).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of February 1993.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–4614 Filed 2–26–93; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Geography and Regional Science; 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: March 19, 1993, 8 am to 5:30 pm.

Place: Room 1242, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contract Person: Dr. Brian P. Holly, Program Director, Division of Social, Behavioral, and Economic Research, room 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7326.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate doctoral dissertation improvement 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 assocaited with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 24, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–4676 Filed 2–26–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure.

Date and Time: March 9, 1993; 8:30 a.m. to 5 p.m.

Place: Room 417, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Darleen Fisher, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking and Communications Research Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging meeting date.

Dated: February 24, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–4621 Filed 2–26–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280]

Virginia Electric and Power Company Surry Power Station, Unit 1; Environmental Assessment

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the Virginia Electric and Power Company (the licensee) from the requirements of 10 CFR 50.55a(g)(4)(ii) for the Surry Power Station, Unit No. 1, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would extend the Surry, Unit 1 second 10-year inservice test interval for pumps and valves from December 22, 1992 to March 10, 1994.

The Need for the Proposed Action

Due to extended maintenance outages, both Surry Units 1 and 2 have extended their intervals in accordance with provisions of Section XI of the ASME Code for pumps and valves. However, the interval start dates for Surry Units 1 and 2 are different. The proposed exemption would result in the Inservice Testing Programs for both units being on and remaining on the same interval and require compliance with the same edition of the code and addenda. A common start date will also reduce the program administrative burden by permitting only a single submittal to be made for both units.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and determined that the continued implementation of the existing second 10-year test program until May 10, 1994, meets the underlying purpose of the regulation. Thus radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated November 10, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland this 18th day of February, 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Project Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–4610 Filed 2–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company, Surry Power Station, Units 1 and 2; Environmental Assessment

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would modify Technical Specification (TS) Table 3.7–2, Item 5, "NON-ESSENTIAL SERVICE WATER," to include operability requirements for the actuation logic. Specifically, Item 5.b, "Automatic actuation logic," is being added to indicate total number of channels, minimum operable channels, channels to trip, and Operator Action 14. The action statement will require the unit to be placed in hot shutdown within 12 hours when the minimum channels operable requirements are not met and allow one channel of the actuation logic to be bypassed for up to 8 hours for surveillance testing.

The proposed action is in accordance with the licensee's application for amendment dated September 4, 1992.

The Need for the Proposed Action

The proposed changes to the TS permit an allowable outage time for surveillance testing of the non-essential service water actuation logic and include operability requirements and an action statement for the actuation logic.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would allow an 8-hour permissible bypass condition for the performance of the non-essential service water isolation actuation logic surveillance testing and include operability requirements for the actuation logic. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 20, 1992 (57 FR 47884). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated September 4, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 18th day of February 1993.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–4611 Filed 2–26–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Severe Accidents and Probabilistic Risk Assessment

The ACRS Subcommittees on Severe Accidents and Probabilistic Risk Assessment will hold a joint meeting on March 18, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, March 18, 1993—8:30 a.m. until the conclusion of business.*

The Subcommittees will begin the discussion of severe accident and PRA issues in regard to the Advanced Boiling Water Reactor (ABWR) Certification Review (Chapter 19 of the ABWR Standard Safety Analysis Report submittal). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their

consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, GE Nuclear Energy, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 22, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–4613 Filed 2–26–93; 8:45 am]

BILLING CODE 7590–01–M

Eastern U.S. Seismic Hazard Program; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the public, including industry representatives, to discuss the current Lawrence Livermore National Laboratory probabilistic seismic hazard estimates.

DATES: March 9, 1993, 9 a.m.–3 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, Room: Ballroom, Plaza 1, 1750 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Goutam Bagchi, Chief, Civil Engineering and Geosciences Branch, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–3305.

SUPPLEMENTARY INFORMATION: NUREG/CR–5250 describes probabilistic seismic hazard estimates for nuclear power plants in the Eastern U.S. Because of the advances in the state-of-the-art since the publication of the NUREG report in 1989, a need for a revision to the hazard methodology has been established. The seismicity and ground motion experts have revised their inputs and Lawrence Livermore National Laboratory has calculated revised seismic hazard estimates. The purpose of this meeting is to meet with the public, including industry representatives, to discuss the revised seismic hazard estimates.

Dated at Rockville, Maryland, this 19th day of February, 1993, for the Nuclear Regulatory Commission.

James E. Richardson,

Director, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 93–4612 Filed 2–26–93; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Forest Lakes Village, El Paso County, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the Forest Lakes Village parcel, located north of Colorado Springs, El Paso County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until June 1, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. William Messer, Resolution Trust Corporation, Kansas City Office, 7400 West 110th Street, suite 500, Kansas City, MO 66210–2346, (913) 344–8100, Fax (913) 344–8134.

SUPPLEMENTARY INFORMATION: The Forest Lakes Village parcel is located approximately fifteen (15) miles north of Colorado Springs, El Paso County, Colorado, one half (½) mile west of I–25 and one (1) mile south of Baptist Assembly Road. There is no direct access to the site. The property has recreational value and in contiguous with the United States Air Force Academy. Federally listed endangered species may also occur on the site. The portion of the Air Force Academy lands that are contiguous with the Forest Lakes Village parcel are managed for open space and wildlife habitat. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Forest Lakes Village parcel consists of approximately 181 acres of vacant, undeveloped land that is partially forested. The site has been subdivided and zoned for residential use, however, no improvements have been made to the property.

Property size: Approximately 181 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before June 1, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by June 1, 1993 to Mr. William Messer at the above ADDRESSES and in the following form:

Notice of Serious Interest

Re: Forest Lakes Village Parcel
Federal Register Publication Date: March 1, 1993.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: February 23, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–4581 Filed 2–26–93; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Mountain Creek, Dallas County, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Mountain Creek, located in Dallas, Dallas County, Texas, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until June 1, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Office, 4000 MacArthur Boulevard; 2nd Floor, East Tower, Newport Beach, CA 92660–2516, (714) 263–4648, Fax (714) 852–7623.

SUPPLEMENTARY INFORMATION: The Mountain Creek property is located within the city limits of Dallas, Texas, at Spur 408 and IH–20. The property has recreational value, contains habitat for the federally endangered Black-capped vireo, and is adjacent to Cedar Hill State Park. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: Mountain Creek consists of fifty-four (54) legal parcels that form five (5) non-contiguous parcels comprising a total of approximately 3,323.84 acres. The topography of Mountain Creek varies from relatively flat land situated in a floodplain abutting Mountain Creek Lake on the west to more rugged terrain adjacent to Spur 408 on the east. There is a rise in elevation of 295 feet from west to east. The hillside area in the eastern part of Mountain Creek contains the White Rock Escarpment which is an ecologically sensitive area protected by the City of Dallas for purposes of public access to the escarpment zone. The property shares common boundaries with Cedar Hill State Park to the south.

Property size: Approximately 3,323.84 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before June 1, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices are interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by June 1, 1993 to Mr. E. Ted Hine at the above ADDRESSES and in the following form:

Notice of Serious Interest

Re: Mountain Creek **Federal Register** Publication Date: March 1, 1993.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: February 23, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–4582 Filed 2–26–93; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272–5407.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 26a–3; File No. 270–293

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission ("SEC") has submitted for extension of OMB approval proposed Rule 26A–3 under the Investment Company Act of 1940 ("1940 Act").

Rule 26a–3 would codify standards for granting exemptive relief from provisions of the 1940 Act to permit insurance company separate accounts to impose "risk charges" in connection with variable annuity contracts. Twenty-five respondents would each spend about eight hours, annually, complying with the requirements of the rule.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235–0333) [Rule 26a–3], room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 17, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4579 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272–5407

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Affairs, Washington, DC 20549.

Proposed Revisions

Form SB–2	File No. 270–366
Form 10–SB	File No. 270–367
Form 10–KSB	File No. 270–368
Form 10–QSB	File No. 270–369
Regulation S–B	File No. 270–370
Form S–1	File No. 270–58
Form S–2	File No. 270–60
Form S–3	File No. 270–61
Form S–4	File No. 270–287
Form S–8	File No. 270–66
Form S–11	File No. 270–64
Form F–1	File No. 270–249
Form F–2	File No. 270–250
Form F–3	File No. 270–251
Form F–4	File No. 270–288
Form F–6	File No. 270–270
Form F–7	File No. 270–331
Form F–8	File No. 270–332
Form F–9	File No. 270–333
Form F–10	File No. 270–334
Form F–80	File No. 270–335
Form 20–F	File No. 270–156
Form 40–F	File No. 270–335
Form 10–Q	File No. 270–49

Form 10–K	File No. 270–48
Form 11–K	File No. 270–101
Form 18–K	File No. 270–108
Form 6–K	File No. 270–107
Form 8–A	File No. 270–54
Form 8–B	File No. 270–55
Form 8–K	File No. 270–50
Form 10	File No. 270–51
Form 10C, Rules 13a–17 and 15d–17.	File No. 270–206
Form 15	File No. 270–170
Form 18	File No. 270–105
Form F–X	File No. 270–336
Regulation S–K	File No. 270–2
Regulation S–X	File No. 270–3
Regulation S–T	File No. 270–375
Industry Guides under the Securities Act of 1993 and the Securities Exchange Act of 1934.	File No. 270–69
Form SE	File No. 270–289
Form ID	File No. 270–291
Form ET	File No. 270–290
Regulation 12B	File No. 270–70
Rule 12b–25	File No. 270–71
Regulations 13D and 13G.	File No. 270–137
Rule 13e–1	File No. 270–255
Rule 13e–3	File No. 270–1
Rule 13e–4	File No. 270–190
Regulation 14A	File No. 270–56
Regulation 14C	File No. 270–57
Regulations 14D and 14E.	File No. 270–114
Rule 14f–1	File No. 270–108
Form T–1	File No. 270–121
Form T–2	File No. 270–122
Form T–3	File No. 270–123
Form T–6	File No. 270–344
Requirements as to Form and Content of Applications and reports under the Trust Indenture Act of 1939.	File No. 270–115
Rules 8b–1 through 8b–32.	File No. 270–135
Rules 20a–1 through 20a–4.	File No. 270–132
Rule 24f–1	File No. 270–130
Rule 24f–2	File No. 270–131
Rule 30b2–1	File No. 270–213
Rule 30d–1	File No. 270–21
Form N–1A	File No. 270–21
Form N–2	File No. 270–21
Form N–3	File No. 270–281
Form N–4	File No. 270–282
Form N–5	File No. 270–172
Form S–6	File No. 270–181
Form N–14	File No. 270–297
Form N–8A	File No. 270–135
Form N–8B–2	File No. 270–186
Form N–8B–3	File No. 270–179
Form N–8B–4	File No. 270–180
Form N–18F–1	File No. 270–187
Form N–23C–1	File No. 270–230
Form N–6F	File No. 270–185
Form N–54A	File No. 270–182
Form N–54C	File No. 270–184
Form N–SAR	File No. 270–292
Form 2–E	File No. 270–222
Form 13F	File No. 270–22
Rule 20	File No. 270–128
Rule 24	File No. 270–129
Rule 45	File No. 270–164
Form U5A	File No. 270–168
Form U5B	File No. 270–168
Form U5S	File No. 270–168
Form U–1	File No. 270–128
Form U–13–1	File No. 270–80
Form U–6B–2	File No. 270–81
Form U–12–IA	File No. 270–161
Form U–12–IB	File No. 270–161
Form U–13E–1	File No. 270–74
Form U–R–1	File No. 270–166
Form U–13–60	File No. 270–79
Form U–3A–2	File No. 270–83
Form U–3A3–1	File No. 270–77
Form U–7D	File No. 270–75

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission has submitted for OMB approval proposed revisions to a number of rules, regulations and forms relating to the implementation of the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. The proposed revisions will affect the burden hours associated with the rules, regulations and forms listed below in the following manner:

(1) Form S–2—This form is used as a registration statement under the Securities Act of 1933 ("Securities Act"). Form S–2 affects approximately 84 filers and results in 499 burden hours.

(2) Form S–3—This form is used as a registration statement under the Securities Act. Form S–3 affects approximately 2280 filers and results in 418 burden hours.

(3) Form S–4—This form is used for registration of securities under the Securities Act in connection with business combinations. Form S–4 affects approximately 505 filers and results in 1244 burden hours.

(4) Form S–8—This form is used by qualifying issuers for registration under the Securities Act of securities relating to employee benefit plans. Form S–8 affects approximately 2854 filers and results in 46 burden hours.

(5) Form F–2—This form is available to foreign private issuers for registration of securities under the Securities Act. Form F–2 affects approximately six (6) filers and results in 859 burden hours.

(6) Form F–3—This form is available to foreign private issuers for registration of securities under the Securities Act. Form F–3 affects approximately four (4) filers and results in 309 burden hours.

(7) Form F–4—This form is available to foreign private issuers for registration under the Securities Act of securities in connection with business combinations. Form F–4 affects approximately two (2) filers and results in 1404 burden hours.

(8) Rule 13e–3—This rule governs going private transactions. Rule 13e–3 affects approximately 221 filers and results in 139.25 burden hours.

(9) Rule 13e–4—This rule governs tender offers by issuers. Rule 13e–4 effects approximately 121 filers and results in 232 burden hours.

(10) Regulation 14A—This regulation contains federal disclosure and other requirements relating to proxy solicitations. Regulation 14A affects approximately 8000 filers and results in 89 burden hours.

(11) Regulation 14C—This regulation contains federal disclosure and other requirements relating to information statements distributed in connection with shareholder meetings. Regulation 14C affects approximately 63 filers and results in 90 burden hours.

(12) Regulations 14D and 14E—These regulations contain federal disclosure and other requirements relating to tender offers. Regulations 14D and 14E affect approximately 366 filers and result in 353.25 burden hours.

(13) Form T–3—This form is an application for qualification of trust indentures under the Trust Indenture Act of 1939. Form T–3 affects approximately 55 filers and results in 43 burden hours.

(14) Form ID—This form is used to obtain identification numbers and passwords to gain access to the EDGAR system. Form ID affects approximately 7000 filers and results in .15 burden hours.

(15) Form ET—This form is used as a cover sheet to make filings with the Commission on computer diskettes and magnetic tape. Form ET affects approximately 300 filers and results in approximately .25 burden hours.

(16) Form SE—This revised form will be used for exhibits relating to electronic filings that are submitted in paper pursuant to a hardship exemption. Form SE will affect approximately 1000 filers and results in .10 burden hours.

(17) Rule 30d–1—This form prescribes the minimum content of reports to shareholders that management investment companies must send at least semi-annually. Rule 30d–1 affects approximately 2,866 filers and results in 299 burden hours.

(18) Form N–14—This form is used for registration under the 1933 Act of securities issued in business combination transactions by registered investment companies and business development companies. Form N–14 affects approximately 60 filers and results in 2,499 burden hours.

While EDGAR will have an impact on compliance with the other rules, regulations and forms listed below, it is anticipated that the rules implementing EDGAR will have no effect on existing burden hours. Those rules, regulations

and forms are: Form SB–2; Form 10–SB; Form 10–KSB; Form 10–QSB; Regulation S–B; Form S–1; Form S–11; Form F–1; Form F–6; Form F–7; Form F–8; Form F–9; Form F–10; Form F–80; Form 20–F; Form 40–F; Form 10–Q; Form 10–K; Form 11–K; Form 18–K; Form 6–K; Form 8–A; Form 8–B; Form 8–K; Form 10; Form 10C and Rules 13a–17 and 15d–17; Form 15; Form 18; Form F–X; Regulation S–K; Regulation S–X; Regulation S–T; the Industry Guides under the Securities Act of 1933 and the Securities Exchange Act of 1934; Regulation 12B; Rule 12b–25; Regulations 13D and 13G; Rule 13e–1; Rule 14f–1; Form T–1; Form T–2; Form T–6; Requirements as to Form and Content of Applications and reports under the Trust Indenture Act of 1939; Rules 8b–1 through 8b–32; Rules 20a–1 through 20a–4; Rule 24f–1; Rule 24f–2; Rule 30b2–1; Form N–1A; Form N–2; Form N–3; Form N–4; Form N–5; Form S–6; Form N–8A; Form N–8B–2; Form N–8B–3; Form N–8B–4; Form N–18F–1; Form N–23C–1; Form N–6F; Form N–54A; Form N–54C; Form N–SAR; Form 2–E; Form 13F; Rule 20; Rule 24; Rule 45; Form U5A; Form U5B; Form U5S; Form U–1; Form U–13–1; Form U–6B–2; Form U–12–IA; Form U–12–IB; Form U–13E–1; Form U–R–1; Form U–13–60; Form U–3A–2; Form U–3A3–1; Form U–7D.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, (PRA Project Nos. 3235–0072, 3235–0073, 3235–0324, 3235–0066, 3235–0257, 3235–0256, 3235–0325, 3235–0105, 3235–0057, 3235–0059, 3235–0007, 3235–0203, 3235–0102, 3235–0328, 3235–0329, 3235–0327, 3235–0330, 3235–0184, 3235–0247, 3235–0166, 3235–0186, 3235–0169, 3235–0318, 3235–0316, 3235–0026, 3235–0307, 3235–0220, 3235–0158, 3235–0176, 3235–0006, 3235–0238 3235–0236, 3235–0237, 3235–0230, 3235–0211, 3235–0175, 3235–0233, 3235–0336, 3235–0025, 3235–0159, 3235–0155, 3235–0125, 3235–0126, 3235–0154, 3235–0170, 3235–0170, 3235–0125, 3235–0182 3235–0163, 3235–0173, 3235–0162, 3235–0152, 3235–0153, 3235–0161, 3235–0160, and 3235–0165), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 28, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4578 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31898; File No. SR–OCC–92–27]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Quarterly-Index Expiration Options

February 22, 1993.

On September 22, 1992, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–92–27) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on November 18, 1992, to solicit comment from interested persons.[2] On February 17, 1993, OCC filed with the Commission a non-conversial, technical amendment. No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change would amend OCC By-Laws and Rules to authorize OCC to issue, clear, and settle the Quarterly Index Expiration Options ("QIX") that have been proposed for trading by the Chicago Board Options Exchange, Incorporated ("CBOE")[3] and the American Stock Exchange, Inc. ("Amex").[4] QIX are stock index options that have an expiration date different than the expiration date for currently traded stock index options. Currently, stock index options expire on the Saturday following the third Friday of the expiration month. In contrast, QIX would expire on the first business day of the month following the end of a calendar quarter. While the processing of QIX would necessitate some modifications to OCC's systems, OCC would process QIX exactly like other index options and would margin QIX consistent with other index options taking into account the longer expiration date. The only significant modification to OCC's system is with respect to the fact that QIX, by its definition, will expire on a business day.

OCC proposes to handle the business day expiration similar to the way it currently handles Saturday exercise-by-exception ("ex-by-ex") processing with a minor modification.[5] In the present Saturday expiration, OCC has the luxury of running a Preliminary and a Final Report to assist Clearing Members in determining whether to follow the ex-by-ex processing.[6]

Because QIX expire on a business day, only one report will be given to the Clearing Member at the beginning of the day.[7] By a threshold established by OCC,[8] the report will reflect all QIX positions as in-the-money, at-the-money, or out-of-the-money.[9] The Clearing Member would be required: (1) To review the report to ensure that all positions reflected in the report are correct; (2) to make a determination that it has instructions from its customers to instruct OCC to exercise all in-the-money QIX positions in the customers' account; (3) to make a determination (a) not to submit any changes to the report to indicate that it concurs with the ex-by-ex processing of QIX positions identified as in-the-money; (b) to submit changes to the report to instruct OCC to exercise more or less contracts than reflected as in-the-money positions in

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31418 (November 6, 1992), 57 FR 54435.

[3] Securities Exchange Act Release No. 31800 (February 1, 1993) [File No. SR–CBOE–92–13] (order approving proposed rule change).

[4] Securities Exchange Act Release No. 31844 (February 9, 1993), 58 FR 8796 [File No. SR–Amex–92–29] (notice of filing and order approving proposed rule change).

[5] Ex-by-ex processing presumes that Clearing Members desire to exercise all options that are in-the-money by a certain threshold. Accordingly, OCC identifies all options as either in-the-money, at-the-money, or out-of-the-money in a Preliminary and a Final Report provided to each Clearing Member. The Reports given to the Clearing Members reflect that the Clearing Members are instructing OCC to exercise all in-the-money options. Clearing Members are then given the option to change any or all of the in-the-money instructions or to instruct OCC to exercise any options that are not reflected as in-the-money in the Report.

[6] OCC Rule 805, Expiration Date Exercise Procedures, sets forth procedures for the issuance of the Preliminary and Final Reports.

[7] OCC Rule 806, Exercise Date Exercise Procedures for Business Day Expirations, as amended by this filing, sets forth procedures for the issuance of this report.

[8] There are two thresholds established by OCC for QIX, one for customer positions and one for all other positions. This is consistent with OCC's current procedures for index options.

[9] Whether a QIX position is in-the-money, at-the-money, or out-of-the-money will be determined by taking the closing or opening value of the underlying index and subtracting that value from the exercise settlement value of the index option.

the report, or (c) to submit changes to instruct OCC to exercise any QIX that are not reflected as in-the-money in the report; and (4) to make a determination that all exercise instructions as submitted by the Clearing Member are accurately reflected in the report. Clearing Members would be required to submit such exercise instructions to OCC by the 7 p.m. cut-off time. Specific changes are identified below.

A. Proposed Amendments to OCC's By-Laws

Several modifications have been made to Article XVII, section 1 of OCC's By-Laws. First, to accommodate the processing of QIX, OCC has amended the definition of "expiration date" so that the expiration date of an index option contract with an expiration date other than the Saturday following the third Friday of the expiration month will be the date as set forth by the exchange. As proposed, the term expiration date will allow flexibility as the exchanges develop new products with varying expiration dates. Secondly, OCC has added a definition for QIX which identifies the specific expiration date respecting that product. Lastly, OCC has alphabetized this section and has modified certain cross-references in the By-Laws to conform to the alphabetizing scheme.

B. Proposed Amendments to OCC's Rules

1. Chapter VIII

Because QIX was designed to be cleared and settled within OCC's current system, OCC's Rules need only minor modifications. OCC Rule 806, which currently references European style options that expire on a business day, has been amended to remove the language limiting such options to European style options.[10]

Other than the change to generalize the styles of options, chapter VIII is unchanged.

2. Chapter XVIII

A new subsection (b) to OCC Rule 1804, Expiration Date Exercise Procedures for Index Options, has been proposed to accommodate the expiration day processing of QIX. As proposed, holders of QIX may exercise their QIX positions by tendering an exercise notice to OCC in accordance with OCC Rule 1804(b)(1), which refers to exercise procedures for business day expirations under Rule 806, or be "deemed" to have exercised in accordance with a modified ex-by-ex procedure set forth in Rule 1804(b)(2). The ex-by-ex procedures would allow OCC to exercise all index option contracts carried in a customers' account that are in-the-money by $25.00 or more per contract and all index option contracts carried in any other account that are in-the-money by $1.00 or more per contract. As with other ex-by-ex procedures contained elsewhere in OCC's Rules, a Clearing Member may choose not to avail itself of these ex-by-ex procedures by instructing OCC not to exercise all or certain contracts identified as in-the-money in the report provided by OCC at the beginning of the expiration day. OCC is adding Interpretations and Policies ("I&P") .01 to Rule 1804 to remind Clearing Members that the exercise thresholds are administrative procedures established by OCC to expedite its processing of exercises of expiring options and are not intended to dictate to Clearing Members which positions in the customers' accounts should or must be exercised.[11]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[12] Section 17A(b)(3)(F) of the Act[13] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible.

The changes that OCC has proposed in its By-Laws and Rules in order to clear and settle QIX are technical in nature. Except for the differences noted above, OCC's procedures for clearing and settling QIX will be the same as OCC's existing procedures for processing index options. The fact that QIX will expire on a business day rather than on a Saturday and the fact that Clearing Members will receive one report for ex-by-ex processing instead of two should not impede OCC's ability to carry out its statutory obligations of promoting prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds in its custody or control.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the above-mentioned proposed rule change (File No. SR–OCC–92–27) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4580 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31912; File No. SR–OCC–92–33]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Flexible Exchange Options

February 23, 1993.

On September 17, 1992, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–92–33) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] concerning Flexible Exchange ("FLEX") options such as those currently proposed for trading by the Chicago Board Options Exchange ("CBOE").[2] Notice of the proposal appeared in the **Federal Register** on November 18, 1992, to solicit comments from interested persons.[3] On February 22, 1993, OCC filed a nonsubstantive, technical amendment. No comments were received by the Commission. This order approves the proposal.

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[10] In 1985, the Commission approved rules proposed by OCC that allow OCC to clear and settle European-style currency options that expire on a business day. Securities Exchange Act Release No. 22369 (August 28, 1985), 50 FR 36176. In 1986, the Commission approved similar rules that allow OCC to clear and settle European-style Treasury options that expire on a business day. Securities Exchange Release Act No. 23004 (March 12, 1986), 51 FR 9563. The latter rule change was the genesis of OCC Rule 806 (adopted March 12, 1986), and the references to "business day expirations" that are in current OCC Rules. Currently, there is no trading of options that expire on a business day.

[11] I&P .01 is substantially the same as existing I&P .02 to Rule 805.

[12] 15 U.S.C. 78q–1 (1988).

[13] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[14] 15 U.S.C. 78s(b) (1988).

[15] 17 U.S.C. 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31361 (October 27, 1992), 57 FR 52655 [File No. SR–CBOE–92–17] (notice of filing of CBOE proposal to trade FLEX options).

Recently, the American Stock Exchange filed a proposed rule change (File No. SR–AMEX–93–05) to list for trading FLEX options on its Major Market, Institutional, Japan, and S&P MidCap indexes.

[3] Securities Exchange Act Release No. 31419 (November 6, 1992), 57 FR 54436.

I. Description of the Proposal

The purpose of the proposed rule change is to establish the necessary framework for OCC to clear and settle FLEX options. As explained in the CBOE's filing, certain terms of FLEX options will be customized, within Exchange-specified limits, by the parties to each FLEX option transaction. Specifically, parties will be able to establish for each FLEX option trade the expiration date, the exercise style, the exercise price, the cap interval (in the case of capped-style options),[4] and the method to be used for establishing the current index value for purposes of settling expiration date exercises.[5]

In addition to customization, FLEX option transactions will differ from regular Exchange-traded index options in terms of size.[6] An initial transaction in any unopened FLEX series must have an underlying value of at least $10 million,[7] and secondary transactions in opened series generally must have an underlying value of $1 million or more.[8]

FLEX options will be traded initially in only two index option classes, the Standard and Poor's ("S&P") 100 and the S&P 500, which are classes of index options that OCC already clears.[9] Each FLEX option transaction will consist of a stated number of index options in one class or the other. Further, at the time a FLEX option transaction is reported by CBOE to OCC, all the terms of that option will have been established in CBOE's report, and virtually all the FLEX option's terms will correspond to terms of existing index options. OCC expects FLEX option positions to exhibit virtually the same characteristics as regular index options. As a result, on receipt of a matched trade report from the CBOE or another exchange, OCC will establish long and short FLEX option positions in Clearing Member accounts in precisely the same way it currently does for regular index options. As a general matter, OCC will incorporate FLEX options in its premium settlement, margin collection, exercise notice, exercise assignment, and exercise/expiration statement processes without significant changes to those processes.[10]

OCC states that only a limited number of OCC's By-Laws and Rules require adjustment to accommodate FLEX options. The principal changes involve: (1) Definitional and technical changes to OCC By-Laws, Article VI and XVII, (2) modifications to exercise date exercise procedures in OCC Rules 801 and 1804, and (3) modifications to clearing margin procedures in OCC Rule 602.

1. Definitions and Technical Amendments

a. Definitions

OCC proposes to add new definitions and to revise existing definitions in section 1 ("Definitions") of article XVII ("Index Options") of OCC's By-Laws. In particular, the proposal will add definitions of "FLEX Option,"[11] "FLEX Clearing Member,"[12] and "Index Value Determinant" ("IVD"),[13] and the term "Class of Options"[14] will be redefined to enable OCC to treat each FLEX option having a different IVD as a separate class. Because FLEX options having different IVDs are not fungible, OCC states that these definitional amendments are necessary to avoid intermingling nonfungible FLEX options during exercise and assignment processing.

b. Technical Amendments

The proposed technical amendments to paragraph (b), section 10 ("Terms of Cleared Securities"), article VI ("Clearance of Exchange Transactions") of OCC's By-Laws are designed: (1) To remove any implication that only the expiration date and exercise price are to be determined by the exchange when a new series of FLEX options is opened for trading and (2) to clarify that notice to OCC of the terms of any newly-opened series of FLEX options needs to be made by the exchange not later than 4:30 p.m. Central Time on the day on which the FLEX option series is opened for trading. OCC states that these changes will eliminate any disparities that exist between section 10(b) of article VI as currently written and the changes that are proposed to other OCC rules in this filing.

A proposed amendment to section 5 ("Time for Determination of Current Index Value"), article XVII ("Index Options") of OCC's By-Laws will confirm that an exchange will supply OCC with the appropriate current index value in connection with settlement of an exercised FLEX option contract. OCC states that absent such a rule change, it would be unclear whether OCC could use a current index value other than the closing value in setting the exercise settlement amount for an expiring FLEX option.

A second amendment to section 5 of article XVII will clarify that the IVD is applicable only for expiration date exercises. For exercises of FLEX options on days other than the expiration date, the exercise settlement amount will be determined by reference to the closing value of the applicable index.

2. Expiration Date Exercise Procedures

The proposal will amend section (c) of Rule 801 ("Exercise of Options") to confirm that expiring FLEX options meeting the parameters set forth in section (c) of Rule 1804 ("Expiration Date Exercise Procedure for Index Options") will be exercised automatically on the expiration date in accordance with Rule 1804(c).[15] In turn, Rule 1804(c), as proposed, provides that the procedures set forth in Rule 806 ("Expiration Date Procedure for Business Day Expiration") will apply to expiration date exercise processing except that all FLEX options that are in-the-money on expiration date will be automatically exercised.

OCC has selected Rule 806 as the cross-reference rule, rather than Rule 805 ("Expiration Date Exercise Procedure"), because Rule 806 uses a single-report approach, as opposed to

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[4] A capped-style index option is one for which the exchange or in the case of FLEX options the parties establish a cap interval. A capped-style option is automatically exercised when the current index value is equal to or exceeds the exercise price plus the cap interval (in the case of a call option) or is equal to or is less than the exercise price minus the cap interval (in the case of a call option).

[5] Proposed CBOE Rule 24A.4. (c)(vi) allows the index value reported at the close or at the open of trading on the Exchange or as an average over a specified period of time to be used in setting the exercise settlement amount.

[6] By definition, FLEX options are index options. *Infra* note 8.

[7] Proposed CBOE Rule 24A.4. (e) (ii).

[8] Proposed CBOE Rule 24A.4. (e) (iii).

[9] *Supra* note 2.

In the event that an Exchange proposes to offer a FLEX option with anything other than an established index as the underlying asset, OCC will file a proposed rule change under Section 19(b)(2) of the Act. Furthermore, OCC has represented that before it begins to clear and settle any new FLEX option with an established index as the underlying asset, it will notify the Commission by letter.

[10] For a detailed description of OCC's processing of index options, refer to Securities Exchange Act Release No. 19486 (February 10, 1983) 48 FR 6219 [File No. SR–OCC–82–19].

[11] The term FLEX option is defined as an index option having an expiration date, exercise price, exercise style, an index value determinant, and, in the case of a capped option, a cap interval, that are reported to OCC by an Exchange pursuant to OCC By-Laws and Rules.

[12] The term FLEX Clearing Member is defined as a Clearing Member approved to clear transactions in FLEX options.

[13] An IVD is defined as the method for determining the current index value for purposes of settling a FLEX option exercised on its expiration date.

[14] The term class of options when used with respect to index options is defined as all options of the same type and style covering the same index group; the term will include FLEX options having the same IVD.

[15] OCC Rule 1804(e) provides for exercise-by-exception ("ex-by-ex") processing. Pursuant to ex-by-ex processing, all Clearing Members' options that are in-the-money by certain thresholds established by OCC are automatically exercised. Clearing Members are allowed to instruct OCC to not exercise any such options.

Rule 805's two report approach, to exercise processing which OCC finds more workable for FLEX options. OCC believes that such an approach, together with the automatic exercise feature, will reduce paper-handling risks and increase the ease and efficiency of expiration date exercise processing.

3. Clearing Margin

The proposal will amend the definition of "premium margin" in section (b) ("Definitions") of Rule 602 ("Margins on Positions in Non-Equity Options, Market Baskets and Commodity Options and Futures") to increase the factors and data that OCC may use in deriving a "premium quotation" for each unexercised long or unassigned short position in FLEX options. OCC states that this change will reflect the possibility that on any given day trading activity in currently opened series of FLEX options may not occur.

The possibility of limited or no trading activity in a FLEX option series requires OCC to be prepared to derive a premium quotation for each FLEX option for which Clearing Members have unexercised long or unassigned short positions. OCC will derive premium quotations by extrapolating and interpolating from information about trading activity and quotations in other series of index options. Accordingly, when no premium quotation is available in a given FLEX series on a particular day, OCC will, among other things, identify comparable index options series covering the same index group, and using OCC's existing TIMS analytic logic [16] will determine implied volatilities and other relevant pricing-related information, and will calculate a derived value for the FLEX option. OCC believes that such an approach will provide OCC with a secure method to derive appropriate marking prices and to set premium margin levels for FLEX options.

OCC states that the other aspects of OCC's existing margin scheme for index options appear to be workable for FLEX options without amendment. These include:

(1) Provisions in Rule 602(b) specifying the method for calculating premium margin,

(2) The definition of "marking price," and

(3) The margin calculation formulae in Rules 602 (c) and (d). OCC further states that it plans to monitor and test the adequacy of its margin program in light of the trading activity of FLEX options and that it is prepared to make further adjustments as experience dictates.

II. Discussion

The Commission believes that the proposal is consistent with the Act and in particular section 17A of the Act.[17] Sections 17A(b)(3) (A) and (F) of the Act [18] require that the rules of a clearing agency be designed: (1) To promote the prompt and accurate clearance and settlement of securities transactions; and (2) to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible. Moreover, Section 17(a)(2) of the Act [19] directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

As discussed above, by permitting the parties to FLEX options to customize the terms of their transactions within certain limits established by an exchange, OCC will bring into the clearance and settlement system options transactions that otherwise would be cleared and settled outside the system. Thus, investors will have the ability to tailor options transactions to meet their specific needs and at the same time, will have the benefit of having those transactions cleared and settled through OCC with its proven risk analysis and risk reduction procedures.

OCC has represented that it expects it can process FLEX options in the same manner as it processes other options. Certain features of the FLEX options, however, will be unique. For example, FLEX options are not expected to have a continuous auction market or any other form of daily public pricing mechanism. Consequently, OCC will have to "derive" FLEX prices from other sources to mark-to-the-market for clearing margin purposes. In addition, although FLEX positions will be margined like any other position,[20] the possibility exists that Clearing Members could hold positions in FLEX options series that are concentrated, illiquid, and far in excess of the average daily trading volumes or open interest in existing index options series. This could result in a proportionately higher degree of economic risk inherent in these positions when compared to the risk posed by the option series that OCC currently issues and clears. For example, OCC has advised the Commission that TIMS cannot calculate certain components of FLEX risk, specifically a long-term option's increased sensitivity to interest rate changes (an option's "rho" risk) and to volatility shifts (an option's "vega" risk).[21] Finally, because FLEX options will be issued in extremely large dollar amounts and may be infrequently traded, questions could arise about the liquidity of FLEX positions in the event a Clearing Member that holds FLEX options becomes insolvent and its FLEX options must be liquidated.

OCC believes that its existing safeguards will be adequate to meet the challenge of identifying and addressing the potential financial exposure. For example, FLEX positions, particularly concentrated naked short positions, will be subject to substantial additional margin requirements to protect against liquidation at prices within OCC's margin interval. OCC also will scrutinize the effect of liquidation at prices well beyond the margin interval in light of the Clearing Member's current net capital. If necessary, OCC will collect additional margin to protect against the liquidation risk.

The Commission believes that OCC will exercise appropriate caution in measuring the risks of FLEX options. Nevertheless, the Commission recognizes that FLEX options are a new product with no track record, and the measures that OCC intends to employ may prove difficult in practice: Derived prices for FLEX options may not work in the marketplace, the lack of liquidity in FLEX options may prove more troublesome than anticipated by the proposal, and concentrated positions may pose unacceptable levels of risk. To

[16] TIMS refers to OCC's Theoretical Intermarket Margin System, a software system that OCC uses to calculate clearing margin for option products. TIMS is based on an option pricing model (the Cox-Rubinstein Model) that applies mathematical techniques to option strategies by a formula that expresses the value of an option as a function of: its underlying assets, length of time until maturity, exercise price, prevailing interest rates, risk data, and similar factors. For further information, see Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12].

[17] 15 U.S.C. 78q-1 (1988).

[18] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[19] 15 U.S.C. 78q-1(a)(2) (1988).

[20] As an illustration of OCC's risk protection measures, the current margin and clearing fund requirements for a 200,000 contract index option position selling for $50.50/contract would be as follows:

(1) *at-the-money;* margin: $180M +/− daily mark-to-market—clearing fund: $12.5M + 7% of the daily mark-to-market

(2) *in-the-money;* margin: $360M +/− daily mark-to-market—clearing fund: $25M + 7% of the daily mark-to-market

(3) *out-of-the-money;* margin: $90M +/− daily mark-to-market—clearing fund: $6.3M + 7% of the daily mark-to-market

[21] OCC has developed and is testing a PC-based margining system ("MDIS") that calculates margin requirements using real time prices. OCC has represented that it has built into MDIS the ability to take rho and vega risks into account when performing margin calculations. OCC will use MDIS in making margin calculations and in assessing risks presented by FLEX trading.

address this concern, OCC has agreed to establish additional review and financial monitoring parameters to identify those circumstances where a Clearing Member's FLEX position poses financial risk due to the size of that position in comparison to other factors such as the total of all positions in that series, class, or product. OCC has also agreed to continue to monitor and fine tune the modifications to its margining and other risk management systems that it is implementing for FLEX activity. Not later than April 30, 1994, OCC has agreed to report to the Commission on FLEX activity.[22] The Commission expects the report to be only an interim step in a continuing monitoring process that will precede and follow the report.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[23] that the above-mentioned proposed rule change (File No. SR–OCC–92–33) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4625 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19290; 811–5874]

LMS Money Fund; Notice of Application

February 23, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: LMS Money Fund.

RELEVANT ACT SECTION: Order requested under 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 January 25, 1993.

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 March 22, 1993, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 800 Scudders Mill Road, Plainsboro, New Jersey 08536–0911.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a trust under the laws of Massachusetts and is registered under the Act. On September 1, 1989, Applicant filed a notification of registration on Form N–8A and a registration statement on Form N–1A. Such registration statement, including Pre-Effective Amendments thereto filed on October 13, 1989, September 28, 1990, and December 20, 1991, was never declared effective.

2. Applicant has never offered or sold and does not intend to offer or sell its shares.

3. Applicant has no assets. All of Applicant's expenses have been and will be borne by its investment adviser, Fund Asset Management, Inc. Applicant has no debts or liabilities and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4624 Filed 2–26–93; 8:45 am]

BILLING CODE 8010–01–M

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[22] OCC has agreed, as an integral part of this Approval Order, to provide the Commission with an in-depth study of FLEX operations by April 30, 1994. Telephone conversation between Paul G. Stevens, Jr., President, OCC, George S. Hender, Senior Executive Vice President, OCC, John C. Hiatt, Executive Vice President, OCC, Timothy Hinkes, Assistant Vice President, OCC, and James C. Yong, Deputy General Counsel, OCC, and Jonathan Kallman, Associate Director, Division of Market Regulation ("Division"), Commission, Jerry W. Carpenter, Branch Chief, Division, Commission, and Thomas C. Etter, Jr., Attorney, Division, Commission (February 3, 1993).

[23] 15 U.S.C. 78s(b) (1988).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Statement of Personal History (For Use by Small Business Lending Companies and Other Non-Bank Lenders, Including Certified Development Companies).

SBA Form No.: SBA Form 1081.

Frequency: On Occasion.

Description of Respondents: Non-Bank Lending Institutions.

Annual Responses: 300.

Annual Burden: 150.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–4601 Filed 2–26–93; 8:45 am]

BILLING CODE 8025–01–M

Administration; Delegation of Loan Approval Authority

AGENCY: Small Business Administration.

ACTION: Notice Delegating Loan Approval Authority to Specific Agency Field Personnel.

SUMMARY: This notice sets the delegated authority of certain specific Small Business Administration (SBA) field personnel to approve SBA guaranteed loans. This authority is based upon the education, training, and experience of such personnel and is meant to expedite Agency action in processing loan applications.

EFFECTIVE DATE: This notice is effective March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, Tel. (202) 205–6490.

SUPPLEMENTARY INFORMATION: On December 19, 1991, SBA published in the **Federal Register**, a final rule amending § 101.3–2 of part 101, Title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices (56 FR 65823). Previously, § 101.3–2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience, and/or training. The December 19, 1991 publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease, or set the level of authority for any individual SBA field official in a regional, district, or branch office, based upon education, training, or experience, by publication of a notice in the **Federal Register**.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. SBA is authorized to guarantee up to 90% of a loan depending upon total loan amount. Further, SBA has certain authority to make direct loans. As such, it is essential that the Agency have qualified loan officers to process expeditiously and accurately the applications submitted. Agency officials in the field who are delegated greater levels of authority in light of their additional education, training, or experience allow for loan applications of greater amounts being processed where both the lender and the borrower are located. In this fashion, the loan applicant and the lender are both served with quicker and more accurate processing, while the Agency is served by quality lending and, in the case of guaranteed loans, better relations with its participating lenders.

This notice sets the delegated authority of specific SBA officials to approve guaranteed and direct loan applications, as well as to undertake other loan related activities, based upon those official's education, training, and experience. The SBA Assistant Branch Manager for Finance and Investment and the Supervisory Loan Officer, Finance Division in Sacramento, CA. have successfully completed commercial credit analysis training courses offered by the Agency. Such training qualifies these officials to better analyze and process loan applications. This training, along with their experience, justifies increasing their level of delegated authority.

This notice sets the delegated direct loan approval authority for the Assistant Branch Manager for Finance and Investment and the Supervisory Loan Officer, Finance Division in Sacramento, CA. to $350,000 and the guaranteed loan approval authority for such positions at $750,000. In addition, both officials are delegated authority to approve or decline loans to a local development company not exceeding $750,000 (overall project cost not exceeding $2,500,000) and to approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies not exceeding $750,000 (overall project cost not exceeding $1,500,000). Further, this delegation provides authority to such officials to: Enter into loan participation agreements; cancel, reinstate, modify and amend loan authorizations; extend loan disbursement periods; and approve service charges. This delegation of authority is specific to the individuals presently incumbent and continues only so long as these individuals remain in such positions.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–4416 Filed 2–26–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1770]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travellers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restrictions on the ground that such exemption was in the national interest.

On February 18, 1992, the restriction on use of the United States passport for travel to, in or through Iraq was extended for another year. Although armed hostilities had ended, the Government of Iraq had continued to direct hostile acts against United States citizens and nationals. In light of those circumstances, it was determined that Iraq continued to be a country "* * * where there is imminent danger to the public health or physical safety of United States travelers". Conditions in Iraq remain unsettled and hazardous for American citizens. Iraq continues to direct hostile acts against United States citizens. Over the past year there were two incidents of Iraqi officials kidnapping American citizens from the Kuwaiti side of the border with Iraq and taking them to Baghdad. Also, Iraq has shown a willingness to take western hostages to deter the use of armed force to enforce the sanctions regime against it.

In addition, the deteriorating infrastructure in Iraq has contributed to an increase in public health and economic risks and a significant rise in crime in major cities which the authorities have been unable to control.

Further, the United States does not have consular officers in Iraq who can assist American citizens. The United States has limited ability to protect Americans in Iraq. The ability of the U.S. Interest Section of the Polish Embassy in Baghdad to obtain consular access to detained Americans and to perform other emergency services continues to be constrained by Iraqi

unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens who were residing in Iraq on February 1, 1991 who continue to reside there nor to American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the Federal Register and shall expire at the end of one year unless sooner or extended or revoked by Public Notice.

Dated: February 23, 1993.

Clifton R. Wharton, Jr.,

Acting Secretary of State.

[FR Doc. 93–4593 Filed 2–26–93; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings: Agreements Filed During the Week Ended February 19, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48660
Date filed: February 17, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex–024f—Local Currency Fare Changes—Finland, Comp Telex–033f—Local Currency Rate Changes—Finland
Proposed Effective Date: Effective March 1/April 1, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–4567 Filed 2–26–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 19, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*) The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the applicant by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48658
Date filed: February 17, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 17, 1993
Description: Application of Southern Air Transport, Inc., pursuant to section 401(d)(l) of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing it to provide foreign scheduled air transportation of property and mail on the scheduled routes: A. The points Anchorage, AK; Chicago, IL; Guam; Honolulu, HI; Los Angeles, CA; New York, NY; San Francisco, CA; and Seattle, WA, on the one hand, and the terminal point Hong Kong, on the other hand. B.1.A point or points in the United States, on the one hand, via the intermediate points Honolulu, HI, Canton Island, American Samoa, French Polynesia, Fiji, New Caledonia and New Zealand, to Sydney, Australia, on the other hand, and to the beyond points; (a) Darwin, Australia and points in Southeast Asia, including the Republic of the Philippines and beyond; (b) Melbourne, Australia and Perth, Australia, Cocos (Keeling) Island, and beyond to points in South Asia and Africa and Beyond, and (c) Melbourne, Australia and New Zealand and beyond to Antarctica and beyond. 2. A point or points in the United States including Alaska, on the one hand, via intermediate points in Canada, Alaska, the Kurile Island, Japan and Southeast Asia, including the Republic of the Philippines, and the terminal points Sydney, Australia and Melbourne, Australia. C. A point or points in the United States, on the one hand, via intermediate points, to points in the Republic of Korea and beyond, on the other hand. D. A point or points in the United States, on the one hand, via intermediate points, and the points Taipei, Taiwan and Kaoshung, Taiwan and beyond via intermediate points to the United States, on the other hand; and to grant such other, further and different relief as may be appropriate under the circumstances. E. A point or points in the United States, on the one hand, and Shannon, Ireland, on the other hand, and countries beyond, via intermediate points, in both directions.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–4568 Filed 2–26–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–93–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 22, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 23, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Exemption

Docket No.: 27121.
Petitioner: Tower Air, Inc.
Sections of the FAR Affected: 14 CFR 121.434(e).
Description of Relief Sought: To allow Tower Air, Inc., to utilize flight attendants who have operating experience on the same aircraft type with a foreign carrier, without those attendants receiving the 5 hours of supervised initial operating experience on the petitioner's aircraft.

[FR Doc. 93–4603 Filed 2–26–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of public meetings.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold meetings of its Coordinating Council on April 14, 1993, and of its Board of Directors on April 16, 1993. IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).
DATES: The Coordinating Council of IVHS AMERICA will meet on April 14, from 8 a.m. to 12 noon, e.t. The session is expected to focus on: (1) Action on the recommendations of the Coordinating Council Committees Review (Sunset/Sunrise) Task Group, (2) Status of DOT program planning effort, (3) Technical committees actions to the Council, (4) New members/report from the Nominating Committee, and (5) Other technical activities of IVHS AMERICA.

The Board of Directors will meet on April 16, 1993, from 8:30 a.m. to 12 noon, e.t. The session is expected to focus on: (1) Election of new officers of the Board of Directors, (2) Review of election results, installation of new Board members, (3) Review and action pertaining to the recommendations of the Coordinating Council on Committees Review (Sunset/Sunrise), (4) Report of the International Liaison Committee and planning for an IVHS World Congress, (5) Appointment of Coordinating Council members, (6) IVHS AMERICA planning process and schedule, and (7) Establishment of regional and student chapters.
ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Ave., NW., Washington, DC 20008.
FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, FHWA, HSR–1, 6300 Georgetown Pike, McLean, VA, 22101, (703) 285–2021, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Mr. Daniel Toohey, IVHS AMERICA, 1776 Massachusetts Avenue, NW., Washington, DC 20036, (202) 857–1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 22, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93–4589 Filed 2–26–93; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; Titan Indemnity Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29393 to reflect this addition:

Titan Indemnity Company Business Address: P.O. Box 60007, San Antonio, TX, 78209. Underwriting Limitation [b]: $2,169,000. Surety Licenses [c]: AL, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WI, WY. Incorporated in: Texas.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6507.

Dated: February 19, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–4569 Filed 2–26–93; 8:45 am]
BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 58, No. 38
Monday, March 1, 1993

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

Federal Energy Regulatory Commission

18 CFR Parts 365 and 381

[Docket No. RM93–1–000; Order No. 550]

Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status

Correction

In rule document 93–3629 beginning on page 8897 in the issue of Thursday, February 18, 1993, make the following corrections:

1. On page 8903, in the third column, after the last line, insert the following text:

"the applicant may always refile with additional information or explanation.

J. Judicial Review

1. Comments

Enron states that EWG determinations may not be subject to judicial review".

2. On page 8905, in the first column, remove the first eight lines of text.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

Correction

In notice document 93–1575 beginning on page 6062 in the issue of Monday, January 25, 1993, make the following corrections:

1. On page 6066, in the first column, under **Subpart B**, in paragraph 1., in the second line, insert "(" after "used".

2. On the same page, in the second column, in paragraph 6., in the last line, before "C" insert "−38°".

3. On page 6067, in the third column, in paragraph (5), in the first line, "20" should read "10".

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AD62

Clarification of Statutory Authority for Purposes of Criminal Enforcement

Correction

In the correction to rule document 92–28228 appearing on page 62605 in the issue of Thursday, December 31, 1992, make the following correction:

§ 110.67 [Corrected]

On page 62605, in the first column, under the heading **§ 110.67 [Corrected]**, in the fourth line, "fourth" should read "sixth".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–11]

Establishment of the Bangor International Airport Airport Radar Service Area; ME

Correction

In rule document 93–2927 beginning on page 7738 in the issue of Tuesday, February 9, 1993, make the following corrections:

1. On page 7742, in the second column, in the first full paragraph, in the seventh line from the bottom, "not" should read "most".

2. On page 7743, in the first column, in the first full paragraph, in the ninth line from the bottom, "the" should read "other".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–335; Ref. Notice Nos. 739, 744]

RIN 1512–AB09

Labeling of Bulk Process Sparkling Wine (90F167P)

Correction

In rule document 93–1386 beginning on page 5608 in the issue of Friday, January 22, 1993, make the following correction:

§ 4.21 [Corrected]

On page 5615, in the second column, in § 4.21, in the heading, "identify" should read "identity".

BILLING CODE 1505–01–D

federal register

Monday
March 1, 1993

Part II

Environmental Protection Agency

40 CFR Part 88

Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[AMS–FRL–4592–3]

RIN 2060–AD32

Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Provisions of the Clean Air Act Amendments enacted in 1990 require the establishment of a Clean Fuel Fleet Program. These provisions require that the affected states modify their state implementation plans to require that some of the new vehicles purchased by certain fleet owners meet clean-fuel fleet vehicle (CFFV) exhaust emission standards. The program applies in 22 covered areas (certain ozone and carbon monoxide nonattainment areas). This rule enacts regulations governing the states' implementation of the purchase credit program and the transportation control measures (TCMs) exemptions prescribed in the Act as part of the fleet program. The credit program allows fleet owners to earn purchase credits from early or extra purchases of CFFVs or by acquiring vehicles which are certified to stricter emission standards than required. This action also requires that states provide to all CFFVs exemptions from temporally-based TCMs established wholly or partially for a subgroup of CFFVs, known as inherently low-emission vehicles (ILEVs).

ILEVs, which will be labeled as "Clean Air Vehicles", are CFFVs with essentially no fuel vapor emissions. Initially, ILEVs will receive exemptions from high-occupancy vehicle (HOV) lane restrictions; other exemptions/incentives are now under consideration. EPA had also proposed provisions implementing the federal facility provisions of section 246(g) of the Act; EPA has decided to finalize this action as guidance not regulation, and this is included in this final rule document.

EFFECTIVE DATE: March 3, 1993. The information collection requirements contained in 40 CFR 88.312–93 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. A technical amendment announcing the effective date of the information collection requirements for 40 CFR 88.312–93 will be published in the **Federal Register**.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–91–25 located at the U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. The docket may be inspected between the hours of 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Bryson, U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Rd., Ann Arbor, MI 48105–2425, Telephone: (313) 741–7828.

SUPPLEMENTARY INFORMATION: The content's of today's preamble are listed in the following outline:

I. Background

A. The Clean Air Act
B. Future Actions
C. Public Participation

II. The Credit Program

A. Credit Program Timing
B. Generation and Use of Credits
1. Generation of Credits
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III. Exemptions From Transportation Control Measures

A. TCM Exemptions for CFFVs
B. Expanded TCM Exemptions for ILEVs
1. The ILEV Concept
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C. Labeling of Clean-Fuel Fleet Vehicles

IV. Provisions for Federal Fleets and Facilities

V. Consultation With DOE and DOT

VI. Judicial Review

VII. Statutory Authority

VIII. Administrative Designation and Regulatory Analysis

IX. Compliance With Regulatory Flexibility Act

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I. Background

This final rule establishes regulations governing the clean-fuel fleet credit program and the exemption of clean-fuel fleet vehicles from certain transportation control measures (TCMs). Also included is guidance related to participation by affected federal facilities.

The purpose of this background section is to describe the statutory requirements and the rulemaking history of the clean-fuel fleet program in order to provide a context from which to view the regulations finalized today. This section also includes a review of future EPA regulatory actions with regard to the fleet program.

A. The Clean Air Act

The statutory provisions underlying the fleet program are contained in Part C, Clean Fuel Vehicles, of Title II of the Clean Air Act, as amended (CAA or the Act). The program is designed to introduce lower-emitting vehicles into centrally fueled fleets of vehicles in areas with ozone and carbon monoxide air quality problems, and will be implemented by the affected states.

By choosing to introduce clean-fuel vehicles (CFVs) in centrally fueled fleets, Congress focused on vehicle operators that often have more control over their source of fuel than does the general public. Additionally, the central control which operators maintain over their fleets simplifies the issues related to vehicle maintenance and refueling. Finally, because fleet vehicles typically travel more miles on an annual basis and are replaced more frequently than non-fleet vehicles, they offer a greater opportunity to improve air quality, on a per-vehicle basis and in a more timely manner, than potentially could be achieved by concentrating on a similar number of non-fleet vehicles. A brief description of the fleet industry can be found in the Notice of Proposed Rulemaking (NPRM) for this rule (56 FR 50196) and the supporting analysis located in the public docket for this rule, document number IV-B–01. Entries of this nature throughout this document indicate where such material can be found in public docket A–91–25.

Section 241(5) of the CAA defines a "covered fleet" as a fleet of ten or more motor vehicles that are owned or operated by a single person. Section 241(6) of the Act further restricts the fleet program to those vehicles which are in a class for which CFFV emission standards apply, and which are in covered fleets which are centrally fueled (or capable of being centrally fueled). Also according to section 241(6), vehicles which under normal operations are garaged at a personal residence at night are not considered capable of being centrally fueled.

Section 241(5) of the Act also provides exemptions from the program for motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, nonroad vehicles (including farm and

construction vehicles), and vehicles which the Secretary of Defense deems should be exempt from the program for national security reasons. Heavy-duty vehicles above 26,000 lbs. GVWR are also not subject to the purchase requirements of the program.

Although they are not explicitly exempted by the Act or by this rule, EPA believes that it is unlikely that "fleets" of collector cars such as antique vehicles are covered by the fleet purchase requirements because they are rarely centrally fueled. In any event, these vehicles are frequently not registered as motor vehicles, and typically have very little mileage accumulation.

The CAA directs states which contain areas covered by this program to require that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area (section 246(b)). The states which contain covered areas (discussed below) are required to revise their State Implementation Plans (SIPs) to include programs which ensure that covered fleet owners meet this purchase requirement when they acquire vehicles for their fleets. Regulated fleet owners will retain discretion regarding other choices about vehicle purchases, such as the fuel technology of the vehicles.

A clean-fuel fleet vehicle (CFFV) is one which meets any one of three sets of CFFV exhaust emission standards. These standards will be proposed in the near future in a forthcoming EPA notice. The emission standards and the vehicles which meet them are referred to as low-emission vehicles (LEVs), ultra low-emission vehicles (ULEVs) and zero-emission vehicles (ZEVs). Transitional Low-Emission Vehicles (TLEVs) from the California LEV program and the California Pilot Program are not a part of the fleet program and are not CFFVs. (A description of these programs can be found in the FRM regarding the California Pilot Credit Program (57 FR 60038).) Only LEVs are required to be purchased under the statute; covered fleet operators purchasing ULEVs and ZEVs in lieu of LEVs will receive purchase credits against the CFFV purchase requirements pursuant to the credit program finalized today. Three vehicle classes are covered by the program: light-duty vehicles and trucks (LDVs and LDTs) under 6000 lbs. Gross Vehicle Weight Rating (GVWR), LDTs between 6000 lbs. and 8500 lbs. GVWR and heavy-duty vehicles (HDVs) over 8500 lbs. GVWR but under 26,000 lbs. GVWR.

The CAA prescribes purchase requirements in terms of a percentage of the total number of new covered fleet vehicles of each class purchased each year by a covered fleet operator. The purchase requirements begin with model year 1998 vehicles. For light-duty vehicles and light-duty trucks this date may be extended by up to three years if the appropriate vehicles are not available for sale in California. EPA believes that the vehicles will actually be available before 1998 due to the early implementation of the California Pilot Program and the California LEV program. In accordance with section 246(c) of the CAA, EPA will propose to delay the fleet rule in the future should this turn out that such vehicles will not be available until after model year 1998.

The program's purchase requirements are phased in over three years. Two phase-in schedules are specified: one for LDVs and LDTs and one for HDVs, as shown in Table 1.

TABLE 1.—VEHICLE PURCHASE REQUIREMENT PHASE-IN RATE

[Percent]

Vehicle class	Model year: 1998	Model year: 1999	Model year: 2000+
LDVs/LDTs	30	50	70
HDVs	50	50	50

The table of CFFV phase-in requirements for fleets contained in CAA section 246(b) refers expressly to "light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles" and to "heavy-duty trucks above 8,500 lbs. GVWR." However, this table does not specify phase-in requirements for light-duty trucks (LDTs) of 6,000 lbs. or more. For the reasons set forth in the NPRM, EPA believes that the omission of heavier-LDTs from this table was an oversight and that Congress intended that they be covered under the same phase-in schedule as the other LDTs and light-duty vehicles (LDVs). Moreover, even though the table fails to mention the heavier-LDTs, the language of CAA section 246(b) requires SIP revisions to include minimum purchase requirements for LDTs over 6,000 lbs. and specifies emission standards for such vehicles.

In the preamble to the proposal, EPA stated its view that these trucks were included in the purchase requirement in its proposal as though LDTs between 6,000 and 8,500 lbs. were covered vehicles in the same way as LDTs below 6,000 lbs. That is, 30 percent of a fleet owner's LDT acquisitions must be clean-fuel fleet vehicles beginning in 1998 and credits will only be earned if purchases exceed this amount. Only one comment was received on this issue. Federal Express interpreted the Act to not include LDTs between 6,000 lbs. and 8,500 lbs. EPA, however, continues to believe that the interpretation of the Act it provided in the NPRM is correct as it believes that the language of section 246(b) setting forth the purchase requirement applies to LDTs over 6,000 lbs. and that their omission from the table was an oversight. A fuller explanation of the reasons behind EPA's interpretation is provided in the NPRM.

The purchase requirements of this program can be met by purchasing new vehicles which meet the clean-fuel fleet vehicle LEV, ULEV, or ZEV standards, as stated above, by converting conventional vehicles to clean-fuel fleet vehicles which meet the applicable standards, or redeeming credits. These credits can be used by the fleet operator which generates them or obtained from other entities as discussed below.

The purpose of the credit program is to provide flexibility for the regulated fleet operators. It recognizes that some fleet operators may, at times, find it attractive to buy more clean-fuel fleet vehicles or to buy lower-emitting vehicles than required, if in doing so they can get credit against future purchase requirements, or can sell the credits to someone else who prefers not to make the required clean-fuel fleet vehicle purchases. If properly implemented, such a credit trading program will result in no net loss in air quality benefits when compared with the result of a program based strictly on the purchase requirements without the flexibility afforded by credits. This concept has been successfully implemented in other programs, such as that dealing with the trading and banking of heavy-duty engine (HDE) oxides of nitrogen (NO_X) and particulate matter emissions (55 FR 30584, July 26, 1990).

Clean Air Act section 246(a) designates the "covered areas" regulated by the program to be those areas with 1980 populations of 250,000 or greater that are serious, severe, or extreme ozone nonattainment areas (based on 1987–1989 data) or carbon monoxide (CO) nonattainment areas with a design value above 16.0 parts per million (based on 1988–1989 data). Areas reclassified in the future as serious, severe, or extreme ozone nonattainment areas will also be subject to the program. There are currently 22 covered areas in 19 states (see Table 2). This number has increased from the 21 areas referenced in the NPRM due to the redefinition of

some of the affected nonattainment areas (56 FR 56694, November 6, 1991). Currently, the only affected CO nonattainment area which is not also classified as an ozone nonattainment area, based on 1987–1989 data, is the Denver-Boulder, Colorado area.

TABLE 2.—STATES AND AREAS AFFECTED BY THE CLEAN-FUEL FLEET PROGRAM

Affected area	State(s)
1. Atlanta	Georgia.
2. Baltimore	Maryland.
3. Baton Rouge	Louisiana.
4. Beaumont-Port Arthur	Texas.
5. Boston-Lawrence-Worcester (Eastern Massachusetts).	Massachusetts, New Hampshire.
6. Chicago-Gary-Lake Countyy.	Illinois, Indiana.
7. Denver-Boulder	Colorado.
8. El Paso	Texas.
9. Greater Connecticut	Connecticut.
10. Houston-Galveston-Brazoria.	Texas.
11. Los Angeles-South Coast Air Basin.	California.
12. Milwaukee-Racine	Wisconsin.
13. New York-Northern New Jersey-Long Island.	Connecticut, New Jersey, New York.
14. Philadelphia-Wilmington-Trenton.	Delaware, Maryland, New Jersey, Pennsylvania.
15. Providence (All Rhode Island).	Rhode Island.
16. Sacramento Metro	California.
17. San Diego	California.
18. San Joaquin Valley	California.
19. Southeast Desert Modified AQMA.	California.
20. Springfield (Western Massachusetts).	Massachusetts.
21. Ventura County	California.
22. Washington (District of Columbia).	Maryland, Virginia, District of Columbia.

Several of these 22 areas include parts of more than one state. EPA expects that the states which must design a program for a multi-state nonattainment area will work together to create one program which covers the entire area, and that this will be reflected in their state implementation plans. Further discussion of these interstate relationships will appear in the upcoming NPRM on remaining clean fuel fleet issues, as described below.

B. Future Actions

In the near future, EPA will issue a notice proposing regulatory action on several remaining issues related to clean fuel fleet vehicles. In part, this new NPRM will propose emission standards for all CFFVs. (These anticipated standards are used in the establishing of credit values in this final rule.) Also included in the new NPRM will be proposed regulations governing conversions of conventional vehicles to CFFVs, which, as required by section 247 of the Act, will be eligible for the credits program and TCM exemptions. The final major part of the new NPRM will be proposed definitions for a number of terms used in the Act in connection with the fleet program for which EPA has decided to propose uniform national definitions in regulations. The terms for which EPA will propose definitions are key for establishing when fleets and fleet vehicles are covered by the program.

EPA has decided that several additional terms in the CAA do not require mandated national uniformity; instead, the Agency expects to issue guidance on how states will be encouraged to address issues related to these terms their 1994 CFFV SIPs. EPA expects to release this guidance in 1993.

The fleet program will require the combined effort of many parties in order to be a success. As discussed above, the CAA requires EPA to develop certain parts of the program, and the states to develop other parts of the program and implement it. EPA intends to provide assistance to the states in designing and implementing their programs.

Covered states that intended to request not to participate in the fleet program (i.e., to "opt out" of the program) were required to submit a committal SIP [1] to EPA before November 15, 1992. In this submittal, states were required to include alternate plans for equal or greater long-term ozone and air toxics reductions in accordance with the provisions of section 182(c)(4)(B) of the Act. Several states have submitted committal SIPs to reserve the option of opting out of the fleet program. EPA has also taken the position that CO areas may opt-out of the fleet program by adopting substitute measures that achieve equivalent or greater long-term CO and air toxics reductions. EPA has six months from the submittal date in which to approve or reject such SIP revisions. The Inherently Low-Emission Vehicle (ILEV) program, described below, is a federally administered program and would not be affected by a state action to opt out of the Clean-Fuel Fleet Program.

Each affected state which does not opt out of the program must submit a SIP revision incorporating the fleet program within 42 months of the date of the CAA Amendments of 1990 (that is, by May 15, 1994) according to section 182(c)(4) of the Act. In addition, CAA section 246(a)(3) expressly provides that all states containing all or part of an area with a 1980 population of 250,000 or more that is reclassified at any time in the future as a serious, severe or extreme ozone nonattainment area, or exceeds a CO design value of 16.0 parts per million, are to prepare revised SIPs within one year of such reclassification.

Additionally, as discussed further below, EPA will consider additional TCM exemptions/incentives for ILEVs, such as credit for employee trip reduction programs and relief from tolls/fees designed to reduce air pollution from motor vehicles by limiting their use in designated areas, in a proposal to be published later this year.

C. Public Participation

EPA published its proposed rules for the clean-fuel fleet credit and TCM exemption programs on October 3, 1991 (56 FR 50196). A public hearing was held on October 31, 1991, and written comments were subsequently accepted. A transcript of the hearing and copies of each of the written comments during the comment period have been placed in section IV–B of the public docket. See **ADDRESSES** above for further information on how to inspect these documents.

The comments received on the NPRM are discussed in the document entitled "Summary and Analysis of Comments" which is contained in section V–C of the docket. The comments on the proposal are divided into three broad topics: the credit program, TCM exemptions and the ILEV program, and federal fleet and facility provisions. The following sections describing the program represent the Agency's conclusions from assessing the comments.

In addition to comments related to the proposed rules, EPA also received many comments regarding the definitions of certain terms and other key provisions which were discussed but not proposed in the NPRM. In the NPRM, EPA had stated that it would issue guidance to the states in order to foster consistency among state programs regarding the interpretation of the key terms and provisions used in the statute. However, comments strongly supported the view that EPA should propose definitions for key terms and provide interpretations in other provisions by rule. In response to requests from representatives of the states and the affected industry, the forthcoming NPRM on CFFV standards and other provisions will include proposed definitions for these key terms in order to provide greater assurance that fleet programs would be implemented consistently in different areas and facilitate planning by affected parties. The proposal will also address issues of concern to distributed fleets and will propose coordination

[1] See the Title 1 General Preamble published April 16, 1992 (57 FR 13498) for information on SIP submittals.

requirements for multi-state nonattainment areas.

II. The Credit Program

This section describes the timing of the credit program, how credits will be calculated and earned, and how they can be used to comply with the fleet program purchase requirements.

A. Credit Program Timing

The CFFV purchase requirements of the program do not go into effect until 1998 model year vehicles are available. However, states are required to grant purchase credits and TCM exemptions to CFFV purchases in the period after SIP approval but before the 1998 model year implementation date. In addition, after SIP approval, states are permitted the discretion to grant retroactive credits to CFFVs purchased prior to SIP approval.

The CAA requirements for the use of clean fuels in CFFVs when operating within the covered area will apply to early CFFVs acquired before the 1998 implementation date as well as required CFFV purchases. Otherwise, little or no air quality benefit may be produced by the early purchases. Consequently, fleet owners desiring to make early CFFV purchases in this time period should first ensure that they can obtain the appropriate clean fuel. Violation of the clean fuel use requirement would be expected to result in the same penalties under the states' programs during this pre-implementation time period as would be incurred in the post-implementation period. One penalty particularly appropriate in this context would be the forfeiture of credits earned. If these credits have already been traded to another fleet, another possible penalty might be a requirement that the fleet owner obtain additional credits to take the place of the original credits redeemed.

B. Generation and Use of Credits

EPA will leave the form of administration of the credit program (such as record keeping) to the states, rather than mandating such requirements by rule. The credit program is merely one aspect of the overall fleet program, and federally-mandated procedures would unnecessarily reduce state flexibility in program implementation. However, in multi-state nonattainment areas that include parts of more than one state, it is important that the affected states not adopt systems that hamper the free trading of credits across state lines. To this end, EPA encourages such states to coordinate the development and implementation of their programs. As described above, the forthcoming NPRM for fleet vehicle standards and conversions will propose specific requirements for this type of coordination.

1. Generation of Credits

Under today's rule, covered fleets are required to comply with the CFFV purchase requirements and in return, will earn certain TCM exemptions. They can also earn (and use) CFFV purchase credits if they choose to exceed the minimum compliance requirements. Non-covered fleets are not subject to the purchase requirements, but are not necessarily excluded from credit generation and TCM exemptions.

Covered fleets may earn credits by purchasing more CFFVs than required in any year, by purchasing vehicles which meet stricter emission standards than those required, or by purchasing CFFVs before the purchase requirements go into effect. As discussed below, states may also allow non-covered fleets to generate credits.

Certain covered fleets may contain non-covered vehicles and certain fleets may consist entirely of non-covered vehicles. Partially-covered fleets are those which contain ten or more covered vehicles, but also contain non-covered vehicles. Some types of vehicles are specifically exempt from the fleet program requirements: law enforcement and other emergency vehicles (CAA section 241(5)), vehicles which are not "centrally fueled (or capable of being centrally fueled)," and vehicles which under normal operations are "garaged at a personal residence at night" (section 241(6)). EPA proposed allowing only covered fleet owners to receive credits and TCM exemptions for the purchase of CFFVs, but asked for comments on broadening the eligibility of fleets to be allowed to earn credits. Additionally, EPA proposed that states be required to grant credits and TCM exemptions for purchases of CFFVs in non-covered categories purchased by covered fleets which contain non-covered as well as covered vehicles.

In this final rule, EPA is requiring states to extend credits and TCM exemptions to non-covered vehicles in partially covered fleets because such fleets would already have an administrative framework in place. However, EPA is not requiring states to extend the eligibility for credit generation and TCM exemptions to non-covered fleets because EPA's authority extends only to covered fleets. Nonetheless, EPA encourages states to include such provisions to extend these incentives to purchase CFFVs in non-covered fleets in their SIPs. Assuming effective enforcement, the replacement of conventional fleet vehicles with CFFVs will enhance air quality. As proposed, EPA is requiring states to allow purchases of CFFVs in non-covered categories which are part of a covered fleet to generate credits and receive TCM exemptions.

2. Use of Credits

Credits may be used by covered fleets as substitutes for vehicle purchases to meet the purchase requirement. In accordance with CAA section 246(f)(2), credits may be held or banked for use at a later time with no depreciation. Credits earned may be held and used to show compliance with the purchase requirements by redemption to the state at a later date. They may also be traded or sold to another covered fleet in the same covered nonattainment area so that another fleet may demonstrate compliance in the current or any later year. Credit trading is market driven, with no monetary value of credits set by EPA. Credit trading is prohibited between the light-duty and heavy-duty vehicle weight classes. As proposed, the program promulgated today meets the requirements of the CAA by precluding the trading of credits between fleet operators who are not located or do not operate within the same nonattainment area. The program also prohibits a fleet owner who owns a fleet distributed among more than one nonattainment area from using credits generated in one area to show compliance in another. Without this requirement, it would be possible for credits to be generated and used in a way that would undermine the environmental benefits of the fleet program in nonattainment areas to which credits were traded.

a. *Subclass Credit Trading.* As contemplated by the CAA, the regulations finalized today require the states to allow trading of normalized credits between all subclasses of LDVs and LDTs. Allowing some trading makes the credit program more flexible and useful to fleet operators and also simplifies record keeping. However, also in accordance with the Act, these regulations prohibit trading between heavy- and light-duty vehicle classes. In order to prevent this, credits generated by the purchase of LDVs and LDTs will need to be designated as such in order to ensure that they are not used to demonstrate compliance with HDV fleet program requirements; such cross-class trading is prohibited by section 246(f)(2)(B) of the CAA.

However, because trading between LDV and LDT subclasses is allowed, light-duty subclass credit designations are not required. All credits are

normalized so that the credits will reflect the amount of emission reduction actually achieved and can be easily traded between the LDV/LDT subclasses. A detailed discussion of the process to normalize the credit values over the subclasses was presented in the NPRM; EPA is implementing that approach in today's action.

Like LDTs, HDVs are divided into several subclasses based on vehicle weight ratings. These subclasses reflect rather different vehicles, which typically have substantially different usage patterns, useful life, fleet life, rebuild practices, fuel consumption, annual mileage, and duty cycles, among other factors. All of these factors have an impact on the per-vehicle emission rate and total vehicle/engine lifetime emissions. Allowing cross-subclass trading without a prorating factor accounting for these differences would lead to an emissions increase in those cases where the credit-using vehicle had a longer life, more rebuilds, worse fuel consumption, etc., than the credit-generating vehicle. EPA proposed a conservative credit trading scheme that allowed only downward trading with no proration for different subclasses. EPA also asked for comment on whether and how credits could be traded between the heavy-duty subclasses, in light of the different usage patterns. Many commenters desired cross-subclass trading within the HDV class in order to make the program more flexible, and some information was received from them, but it was not sufficient to develop cross-subclass weighting factors.

Until such time as these values are available, subclass trading is allowed in the downward direction without proration. That is, credits generated by the purchase of clean-fuel fleet heavy HDVs or medium HDVs can be used to demonstrate compliance with clean-fuel fleet medium HDV or light HDV purchase requirements on a one-for-one basis. Otherwise, trading of HDV credits may only occur within the light HDV and medium HDV subclasses. Trading in an upward direction, i.e., using credit generated by the purchase of light HDVs to satisfy medium HDV purchase requirements, is not permitted. Given the uncertainties involved, this approach will generally prevent the loss of overall emission reductions due to credit trading. With this approach, it is also necessary to designate credits generated by each HDV subclass as either heavy, medium or light HDV credits in order to ensure that upward credit trading does not occur.

EPA requests information to develop the prorating factors. Information is needed for fleet vehicles in the various subclasses regarding years and miles in fleet use, fuel consumption, rebuild practices, load factors, and duty cycles (speed distribution, frequency of accelerations and decelerations, etc.). These data must be for urban-use only vehicles (not long-haul vehicles), and will need to be developed for both gasoline and diesel engines as well as clean-fuel engines. From these data, factors to convert grams per brake horsepower hour to grams per mile can be developed.

b. *Credit Trading to Stationary Sources.* EPA suggested in the NPRM the possibility of establishing credit trading programs allowing emission credits generated in the CFFV vehicle program to be traded against emissions from stationary sources. The Agency received many comments on this idea, which are discussed in detail in the Summary and Analysis of Comments.

EPA is currently reviewing a variety of mobile source to stationary source trading issues and is planning to issue a guidance document that will address the subject. Thus, EPA is not including any provisions in these regulations regarding trading to stationary sources.

3. Calculation of Credits

The exact emission levels which will make vehicles eligible for credits will be based on the clean-fuel fleet vehicle emission standards, which are not yet promulgated. However, reasonable assumptions can be made about the standards, because the Clean Air Act directs EPA either to use the very specific standards set forth in the statute or to use California's standards. If EPA's assumptions about the appropriate standards prove to be incorrect in a way which affects the relative values of the credits finalized today, these credit values will be amended. EPA will propose emission standards for clean-fuel fleet vehicles as a part of the forthcoming NPRM on fleet vehicle standards and conversions. Notwithstanding any changed standards, the credit calculation method will not change.

Section 246(f)(2)(C) of the Act requires that credits be appropriately weighted to reflect the level of emission reductions achieved by the vehicle. The Act also specifies fleet purchase requirements in terms of a percentage of new vehicle purchases rather than in terms of a number of vehicles. Thus, each fleet owner will have a different CFFV purchase requirement depending upon the total number of vehicles that the fleet owner purchases.

In the NPRM, EPA anticipated that states would adopt a round-off procedure to determine the required vehicle purchases when the calculated percentage of a fleet operator's purchases is not a whole number, i.e., when a fraction of a vehicle is involved. EPA proposed that credit tracking should only be required to the hundredth's place. EPA also proposed that the round-off procedures treat credits as equivalent to actual vehicle purchases in demonstrating compliance with the purchase requirements. That is, just as purchasing one extra vehicle gains one credit that could be used to comply with the purchase requirements, purchasing a vehicle which is 1.25 times as clean as the base LEV should count as a purchase of 25 percent of an additional vehicle, whether used immediately or as a credit. No substantive arguments were received against either of these proposals and EPA is finalizing them today.

a. *Pollutant Applicability.* On the basis of the CAA provisions and the California standards, EPA will use the emission standards listed in Table 3 for the purpose of credit calculations, with the understanding that any changes in the standards subsequent to issuance of this final rule will be accounted for via an amendment to this rulemaking. Table 3 does not contain all of the emission standards that CFFVs will need to meet, but only those on which credit calculations depend. The full CFFV standards will be proposed in the upcoming NPRM on standards, conversions and general provisions. To simplify the credit calculations, only the 50,000 mile (new vehicle) standards are used, not the 100,000/120,000 mile standards or some combination of the two. This approach was the one proposed, and no comments were received objecting to this method.

TABLE 3.—EMISSION STANDARDS FOR DETERMINING CREDIT WEIGHTINGS—TABLE 3.1.—LIGHT-DUTY VEHICLE AND TRUCK EMISSION LEVELS FOR CREDIT CALCULATION (G/MI.)

	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
Tier I Gasoline Vehicle:					
NMHC[1]	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5.0
NO_X	0.4	0.7	0.4	0.7	1.1
LEV:					
NMOG	0.075	0.1	0.125	0.16	0.195
CO	3.4	4.4	3.4	4.4	5.0
NO_X	0.2	0.4	0.4	0.7	1.1
ULEV:					
NMOG	0.04	0.05	0.075	0.1	0.117
CO	1.7	2.2	1.7	2.2	2.5
NO_X	0.2	0.4	0.2	0.4	0.6
ZEV:					
NMOG	0.0	0.0	0.0	0.0	0.0
CO	0.0	0.0	0.0	0.0	0.0
NO_X	0.0	0.0	0.0	0.0	0.0

[1] For the purposes of credit calculation, NMHC is assumed to be equal to NMOG.

TABLE 3.2.—HEAVY-DUTY ENGINE EMISSION LEVELS FOR CREDIT CALCULATION (G/BHP-HR)

	HDV 8501–26,00 GVWR
Conventional Vehicle:	
$HC+NO_X$[1,2]	5.3
CO	15.5
LEV:	
$NMHC+NO_X$	[3]3.5
CO	15.5
ULEV:	
$NMHC+NO_X$	2.5
CO	7.2
ZEV:	
$NMHC+NO_X$	0.0
CO	0.0

[1] For the purposes of credit calculation, HC is assumed to be equal to NMHC.
[2] The conventional HDE standard is not a combined standard.
[3] EPA expects to propose a 3.5 g/BHP-hr standard in the upcoming standards rule instead of the statutory 3.15 g/BHP-hr that was included in the NPRM for this rule.

As the fleet program is primarily an ozone reduction program, the pollutants of special concern in most affected nonattainment areas are the primary ozone precursors: the non-methane organic gases (NMOG) and oxides of nitrogen (NO_X). However, the relative importance of these two pollutants in contributing to the air quality nonattainment varies from area to area.

Therefore, EPA is promulgating the two credit weighting bases for LDV and LDT purchases that it proposed. The first is based only on the NMOG emission reductions in the CFFV standards, and the second is based on the simple sum of the NMOG and NO_X emission reductions. Table C94–1 in the regulations is based on NMOG-only emission reductions and Table C94–2 is based on NMOG + NO_X emission reductions. As proposed, credit calculations are to be based on the NMOG reductions in the standards, but states have the option, subject to EPA approval, of selecting the NMOG + NO_X basis through the SIP process. EPA recommends that each state make its selection based on the relative importance of hydrocarbons and NO_X in controlling ozone for each individual nonattainment area. States must indicate in their SIP revision if the NMOG + NO_X basis is selected for a covered nonattainment area. EPA expects that states in a multi-state nonattainment area will coordinate with one another to use the same basis for credit weighting. Both sets of credit weightings are finalized in today's regulations.

The CAA also requires that certain carbon monoxide (CO) nonattainment areas be included in the fleet program. At this time, only one area qualifies for inclusion in the program solely because of CO nonattainment: the Denver-Boulder, Colorado area. The LEV CO standards are no more stringent than the conventional vehicle CO standards, therefore, LEVs would have little impact on reducing ambient CO levels, unless there is a change to a fuel or technology which is inherently low in CO emissions. Only the ULEV and ZEV CO standards will be more stringent than conventional vehicle CO standards. To encourage the purchase of CO-reducing ULEVs and ZEVs, EPA has developed another credit weighting basis for light-duty vehicles and truck for covered areas which are in the program only for CO air quality problems.

b. *Calculation of Credits for Light-Duty Clean-Fuel Fleet Vehicles.* The weighting and normalization procedure of the NPRM proposed to attribute one full credit to the purchase of one LDV LEV in place of one conventional LDV. This procedure reflects the fact that if a fleet owner purchases one more LEV than required, then that LEV would replace the purchase of a conventional vehicle and would provide emission benefits accordingly. Similarly, to reflect the relative emission reduction of vehicles which meet more stringent standards than required, such as a ULEV or ZEV, EPA proposed to compare the emission reduction to that achieved by purchasing a LEV.

Today's rule finalizes the proposed approach that all LDV and LDT credit values be normalized to the emission reduction required for LDVs. The normalization is done to facilitate credit exchanges between and among LDVs and the five LDT subclasses and to simplify credit weighting. The term "vehicle-equivalent" refers to the emission reduction calculated for a LDV certified to the LEV standards. For example, one credit is equal to one vehicle-equivalent and will satisfy the purchase requirement for one LDV or LDT less than 6000 lbs. GVWR.

Standards affect the credit weightings in two ways. First, the LEV, ULEV and ZEV standards vary relative to each other within a vehicle weight subclass, and these variations must be reflected in the credit weightings. Each of these standards may also vary across vehicle weight subclasses, and this variation must also be reflected in the credit normalization since cross-subclass trading is allowed.

The actual determination of credits requires two different approaches: one for early or extra vehicle purchases exceeding the purchase requirements

and one for vehicles which meet the purchase requirement but also meet more stringent emission standards than required. In the first case, the equation used to calculate normalized credits for early/extra purchases of LEVs, ULEVs, or ZEVs is:

Equation (1)—LDV and LDT, early/extra purchases:

$$\text{ncredit} = \frac{S_{CV}{}^{y} - S_{x}{}^{y}}{S_{CV}{}^{LDV} - S_{LEV}{}^{LDV}}$$

where:

ncredit=normalized credit.

$S_x{}^y$=value of vehicle emission standard. (Subscript refers to the emission standard the vehicle meets, and superscript refers to vehicle weight subclass designation.)

As described above, this calculation yields one full credit for the purchase of an early/extra light-duty LEV and a larger value if the vehicle purchased is a ULEV or ZEV. Likewise, if the vehicle purchased is in a subclass that has a greater or lesser reduction in emissions than the light-duty vehicle subclass, its credit value will be accounted for accordingly.

In the second case, when a ULEV or ZEV is purchased instead of a LEV to demonstrate compliance with the LEV purchase requirements, the equation is:

Equation (2)—LDV and LDT, purchase of ULEVs or ZEVs:

$$\text{ncredit} = \frac{S_{LEV}{}^{y} - S_{x}{}^{y}}{S_{CV}{}^{LDV} - S_{LEV}{}^{LDV}}$$

In equation (1) or (2), the numerator (top) of the equation represents the additional emission reduction the purchased vehicle is certified to, and the denominator (bottom) represents the required emission reduction for LDVs. The quotient of the two is the normalized credit. Because the fleet program measures compliance based either on vehicles purchased or credits redeemed, the emission reductions must be expressed in terms of vehicles or vehicle equivalents. Since trading of LDV or LDT credits is only permitted among LDVs and LDTs, state regulations need to require that credits be designated as LDV/LDT to distinguish them from heavy-duty vehicle credits (see discussion of heavy-duty credits below).

The numerical credit values for LDVs and LDTs that result from equations (1) and (2) are presented in Tables C94–1 and C94–2 in the regulations following this preamble. By incorporating these values into their credit programs, states will be able to clearly specify how many credits will be generated for each early/extra LEV purchase and each ULEV/ZEV purchase, as well as how many credits must be redeemed in order to supplant a LEV purchase.

As described above for areas which have an attainment problem for CO but not for ozone, EPA has developed an alternate set of credit values intended to encourage the purchase of CFFVs which achieve CO emission reductions. Different equations were necessary to determine the credit values under the CO basis because the statutorily required reduction is nothing. The normalized CO credit computation is performed according to Equations (3) and (4).

Equation (3)—LDV and LDT, early/extra purchases:

$$\text{ncredit}_{CO} = \frac{S_{CV}{}^{y} - S_{x}{}^{y}}{S_{CV}{}^{LDV} - S_{ULEV}{}^{LDV}} + 1$$

Equation (4)—LDV and LDT, purchase of ULEVs or ZEVs:

$$\text{ncredit}_{CO} = \frac{S_{ULEV}{}^{y} - S_{x}{}^{y}}{S_{CV}{}^{LDV} - S_{ULEV}{}^{LDV}} + 1$$

Based on Equation (3), the purchase of a light-duty ULEV is considered equivalent to the purchase of two light-duty LEVs and the purchase of a light-duty ZEV equivalent to the purchase of three light-duty LEVs. This weighting system gives credit to ULEVs and ZEVs beyond the result which would be obtained by applying equation (1) or (2), reflecting the fact that these vehicles, unlike LEVs, achieve a CO reduction over conventional vehicles.

c. *Credit Program for Heavy-Duty Clean-Fuel Fleet Vehicles.*

(1) Eligibility. Heavy-duty vehicles (HDVs) up to 26,000 lbs GVWR are included in the statutory CFFV purchase requirement and, as with LDVs and LDTs, they may generate credits for early/extra purchases or ULEV/ZEV purchases. In addition, this rule provides states the potential to achieve further emission reductions by allowing some heavier CFFVs to also generate credits. EPA proposed in the NPRM that states be required to make CFFVs which are single-unit heavy heavy-duty vehicles (HHDVs) eligible for generating credits, but to exclude combination HHDVs (tractor-trailers) from eligibility. This proposal was based on the premise that single-unit HHDVs are predominantly operated in the area where registered. Commenters claimed that some combination HHDVs are centrally fueled and primarily used within a single metropolitan area.

EPA has decided to address this issue by requiring that states also allow combination-type HHDVs to be eligible to generate credits, provided that they have been issued a fuel tax sticker for only the state (or states) which contain the covered area for which credits are to be granted. This approach should eliminate vehicles used for long-haul interstate operations, although it would be possible for vehicles which travel often outside the covered area but within the state to technically qualify for credit generation. Because of this fact, and because some states may prefer not to become involved with distinguishing combination HHDVs which may generate credits from those which may not, states may propose in their SIPs not to permit any combination HHDVs to generate credits.

As proposed in the NPRM, urban buses, including single-unit and articulated designs, will be treated as all other single-unit HHDVs and thus may generate credits. However, the situation may arise where fleets which would also be required to purchase low polluting fuel buses under section 219(c) of the Act may also receive windfall NMOG credits for the same buses under the fleet program. This does not appear likely at this time, but in the event that future developments suggest that this may occur, EPA would re-evaluate this part of the fleet credit program.

(2) Calculation of credits. Unlike the standards on which LDV and LDT CFFV credit values are based, in which each pollutant has a separate standard, the expected heavy-duty LEV, ULEV and ZEV standards involve a combined non-methane hydrocarbon (NMHC) and NO_x standard. (NMHC is similar to NMOG, but it does not include components such as alcohols, which must be adjusted for reactivity.) Thus, it is not appropriate to establish credit values based on NMHC alone; EPA has developed heavy-duty credit values based on the NMHC+NO_x standard.

Another fact distinguishing the process of developing credit values for heavy-duty CFFVs from that of LDV/LDT CFFVs is that heavy duty credits are not normalized. The Act specifies only one set of heavy-duty standards for the three heavy-duty weight subclasses (light, medium, and heavy heavy-duty vehicles, or LHDVs, MHDVs and HHDVs). Thus, unlike the case for LDVs and LDTs, differences in anticipated emission performance among the subclasses are not incorporated into the standards. As a result, there is a single set of heavy-duty credit values for all HDV subclasses.

As with the development of light-duty credits, the determination of credits for heavy-duty CFFVs requires two different approaches: one for early or extra vehicle purchases and one for the purchase of ULEVs and ZEVs to meet the purchase requirement. Equations (5) and (6) represent these two approaches, based on the amount of emission reduction offered by a heavy-duty LEV compared to a conventional HDV and the anticipated heavy-duty NMHC+NO_X standards in Table 3 above. Equation (5) is used to calculate credits for early/extra purchases of heavy-duty LEVs, ULEVs, or ZEVs:

Equation (5)—HDV, early/extra purchases:

$$\text{credit} = \frac{S_{CV} - S_X}{S_{CV} - S_{LEV}}$$

credit=non-normalized credit.
S_X=value of vehicle emission standard. (Subscript refers to the emission standard the vehicle meets.)

This calculation yields one credit for the purchase of an early or extra heavy-duty LEV and a larger value for the purchase of an early or extra ULEV or ZEV. Similarly, when a ULEV or ZEV is purchased instead of a LEV to demonstrate compliance with the LEV purchase requirements, the equation is:

Equation (6)—HDV, purchase of ULEVs or ZEVs:

$$\text{credit} = \frac{S_{LEV} - S_X}{S_{CV} - S_{LEV}}$$

The credit values resulting from equations (5) and (6) are presented in Table C94–4 of the regulations finalized today.

In equations (5) and (6), the numerator of the equation represents the additional emission reduction to be expected from the purchased vehicle, and the denominator represents the required emission reduction based on the difference between the heavy-duty conventional and CFFV standards.

As mentioned above, the heavy-duty vehicle LEV standards are no more stringent than the conventional vehicle CO standards, and thus, a special CO credit system is necessary if an incentive to buy heavy-duty vehicles with lower CO emission levels is to exist. Therefore, as for LDVs and LDTs, areas which are covered by the fleet program as a result of CO nonattainment may choose to use credit values based on CO reductions. The equations used are similar to those used for LDVs except that the HDV credits are again not normalized for the three HDV weight subclasses. Equations (7) and (8) are used to calculate the CO credits for HDVs.

Equation (7)—HDV, early/extra purchases:

$$\text{credit}_{CO} = \frac{S_{CV} - S_X}{S_{CV} - S_{ULEV}} + 1$$

Equation (8)—HDV, purchase of ULEVs or ZEVs:

$$\text{credit}_{CO} = \frac{S_{ULEV} - S_X}{S_{CV} - S_{ULEV}} + 1$$

The resulting credit values are presented in Table C94–5 of the regulations following this preamble.

d. *Credits for Vehicles Which Can Operate On More Than One Fuel.* Three types of vehicles are able to use more than one fuel: Dual-fuel vehicles which can operate on either of two fuels, flexible-fuel vehicles which can operate on a mixture of two fuels, and hybrid electric vehicles which operate on electricity for motion but which also have a combustion engine to extend driving range, or to power auxiliary components. If a vehicle which can operate on more than one fuel certifies to the CFFV emission standards on only one of its fuels, then there is a statutory requirement that the vehicle operate on only that fuel in the covered area (CAA section 246(b). For this reason, EPA will calculate credits based on the standard met when operating on the clean fuel.

Some vehicles may meet different clean fuel standards on each of their fuel alternatives (or mixtures). For example, a vehicle could meet both the LEV and ULEV standards, depending on which fuel the vehicle was using. In these cases, states may grant credits commensurate with the emission reductions of the cleaner fuel, but the SIP must require the fleet owner/operator to use only that fuel in the vehicle while it is within the covered area. The vehicle must operate on the fuel on which it was certified to the standard to meet the purchase requirement or to generate credits. Since there are no hybrid electric vehicles currently available and no EPA certification procedure yet exists, EPA is not finalizing credits for them at this time, but plans to do so when appropriate. Finally, if a vehicle does not use clean fuel in the covered area as required, a suitable penalty would be forfeiture of any credits earned by that vehicle.

III. Exemptions From Transportation Control Measures

As is described in more detail below, EPA is finalizing two different sets of Transportation Control Measure (TCM) exemptions today. The first exempts eligible clean-fuel fleet vehicles from temporal-based (e.g., time-of-day or day-of-week) restrictions. The second provides expanded TCM exemptions to clean-fuel fleet vehicles which have inherently low emissions in ozone precursors. EPA believes this approach is consistent with the spirit and intent of the clean-fuel fleet provisions of the Act.

As described in the Summary and Analysis of Comments Document, many fleet owners requested expanded TCM exemptions for all vehicles, while affected states wanted to be allowed to determine which exemptions would be granted in their localities. EPA acknowledges the fleet owners' desire to receive business incentives from TCM exemptions; however, EPA also understands that states may need to be able to use TCMs to control emissions. As a compromise, therefore, EPA proposed a program which grants exemptions from temporal-based TCMs for all CFFVs and allows fleet owners to be eligible for expanded TCM exemptions so long as they purchase significantly lower emitting vehicles (inherently low-emission vehicles, or ILEVs). This program is finalized today and discussed further below.

A. TCM Exemptions for CFFVs

As required by CAA section 246(h), these regulations exempt clean-fuel fleet vehicles from time-of-day, day-of-week and other similar temporal-based transportation control measures established wholly or partially for air quality reasons. Therefore, eligible clean-fuel fleet vehicles would be exempt from measures which forbid vehicle transit only during certain hours of the day, days of the week, days of the month, or during any other defined period of time, except as noted in the next paragraph. While transportation control measures are often put into place for reasons other than or in addition to air quality, it is TCMs which have an air quality element, as accounted for in the state implementation plan, that CFFVs would be exempt from. All eligible clean-fuel fleet vehicles (LEVs, ULEVs and ZEVs) would be equally exempt from the temporal-based TCMs.

The rule finalized today does not exempt fleet CFFVs from TCMs where the temporal element is secondary to some other control element. For

example, TCMs which create high-occupancy vehicle (HOV) traffic lanes during certain times of day do not qualify as temporal-based TCMs. However, EPA does not intend that this stipulation be interpreted as a loophole to deny CFFVs the temporal-based TCM exemptions they are otherwise entitled to under the Act. For example, even though time-based TCMs which restrict access of certain types of vehicles to certain areas or locations would have beneficial effects with respect to quality of life, these would be considered temporal-based TCMs, and are therefore subject to the fleet CFFV exemption. In addition, fleet CFFVs are not exempt from temporal-based TCMs for which such exemptions would create a clear and direct safety hazard. An example of this would be streets or highways which are designated as one way during certain periods of the day to ease commuter traffic flow.

TCM exemptions may not be traded or transferred to another vehicle and are not effective outside of the covered nonattainment areas to which the SIP revision applies. However, states may extend TCM exemptions to other areas to offer incentives to fleets to purchase CFFVs. TCM exemptions for which a vehicle qualifies may only be exercised with that vehicle and may not be transferred to another vehicle within the same fleet or as part of a credit transaction. Unlike credits, TCM exemptions are not marketable. TCM exemptions which apply to a qualifying vehicle will be effective only as long as the vehicle remains in compliance with the emission performance standards and other program requirements. Non-covered fleet vehicles which states have made eligible and which are generating credits for covered fleet vehicles must be granted the appropriate exemptions as well. Once a vehicle leaves a covered fleet it is no longer eligible for the temporal TCM exemptions unless the state provides for these exemptions to be extended to non-fleet vehicle owners.

Although the purchase requirements of the program do not go into effect until 1998 model year vehicles are available, states are required to grant temporal TCM exemptions to qualifying CFFV purchases in the period after SIP approval, but before the 1998 model year implementation date. As discussed above, if a state grants retroactive credits for purchases of CFFVs made before SIP approval, it does not need to exempt such purchases from temporal-based TCMs.

B. Expanded TCM Exemptions for ILEVs

1. The ILEV Concept

The major purpose of the CAA fleet program is to provide additional reductions in ozone precursor emissions (notably NMOG) for the worst ozone nonattainment areas. Emissions from CFFVs will be significantly lower than those of their conventional-fuel counterparts, and fleet owners purchasing CFFVs (or conversions meeting CFFV requirements) will receive exemptions from air-quality based temporal TCMs as an incentive for their participation in the program.

As a broader matter, EPA believes that use of incentive programs as a means to achieve air quality goals is a highly desirable regulatory approach. Society benefits by receiving emission reductions which are earlier and perhaps greater than would otherwise occur; the industry involved participates voluntarily because the incentive available is viewed as a meaningful return (for business or other reasons) on the cost of achieving the emission reduction. It is in the spirit of this approach and the desire to move away from a regulatory strategy based solely on mandated programs that EPA is today establishing an innovative new program for covered fleets.

This program provides expanded TCM exemptions for covered fleet vehicles which have even lower ozone precursor emissions than other CFFVs. These vehicles are termed inherently low-emission vehicles (ILEVs) as will be explained below, and the program with accompanying expanded TCM exemptions is referred to as the ILEV program.

This special group of CFFVs is being established to recognize that there are certain technologies and clean fuels which have inherently lower emissions of ozone precursors than others, and to encourage their use in return for expanded TCM exemptions. EPA is granting certain additional TCM exemptions to vehicles in covered fleets which meet the ILEV qualification criteria. This federal program will go into effect 30 days after this rule is finalized, although the additional TCM exemptions will not be available until ILEV vehicles are made available.

Section 246(h) requires that the Administrator ensure certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle. This section authorizes the Agency to tailor which CFFVs are entitled to exemption from which TCMs (so long as each sub-set of CFFV is exempt from some vehicle usage restrictions and every CFFV is exempt from time-of-day and day-of-week restrictions).

In keeping with the focus of the fleet program on ozone reduction, EPA's approach for expanded TCM exemptions aims at substantial reductions in the primary ozone precursors: hydrocarbons and oxides of nitrogen. The focus for additional hydrocarbon reductions from ILEVs is on evaporative emissions. As can be seen in Table 3 earlier in this section, the LEV exhaust emission standards for hydrocarbons (NMOG) are lower than those for conventional vehicles in all vehicle classes, and it is not clear how much more meaningful, from an in-use perspective, it would be to further reduce the tailpipe NMOG emission standard. However, evaporative emissions are not specifically covered by the clean-fuel vehicle emission standards despite the fact that they constitute a significant portion of the hydrocarbon emission inventory on high ambient temperature days when ozone levels are highest. Current-technology gasoline-powered vehicles require a degree of fuel volatility to facilitate cold starting. The volatile fuel necessitates equipment to capture and then burn fuel vapors. Nevertheless, evaporative emissions constitute a large majority of emissions from current vehicles both because of conditions which overload the evaporative canister and because of in-use failures of various components of the evaporative control system (e.g., leaking vapor hoses, and malfunctioning purge valves). An ILEV is a vehicle which, because of the inherent properties of the fuel or the fuel system design, will not have significant evaporative emissions, even if its evaporative emission control system has failed. Thus, to the degree that ILEVs replace conventional-fuel vehicles, in-use evaporative hydrocarbon emissions will decrease.

Reductions in NO_x emissions are an important consideration in the control of ozone precursor emissions, however, the LEV requirements do not include a more stringent NO_x emission standard for all vehicle classes. In order to achieve additional NO_x reductions for ozone control and to encourage low NO_x technology development, the NO_x standards for ILEVs involve reductions from conventional vehicle NO_x standards for all of the vehicle classes and subclasses. The ILEV NO_x standard is the same as the ULEV NO_x standard.

2. ILEV Qualification Criteria

The ILEV program includes light-duty vehicles, light-duty trucks, and heavy-

duty vehicles/engines which a manufacturer is certifying to meet the clean-fuel fleet vehicle emission standards. Vehicle categories exempted from mandatory participation in the fleet program under section 241(5) of the 1990 CAA may be included in the ILEV program. Heavy-duty vehicles/engines over 26,000 lbs. GVWR and DOD exempt vehicles are not included.

Vehicle models which manufacturers wish to certify as ILEVs must meet two primary criteria. First, the vehicle's engine/fuel systems must be certified to meet the ILEV NMOG evaporative emissions standard, and second, the vehicle must meet the ILEV exhaust emission standards.

The ILEV evaporative emission standard of five grams per test must be met without the use of any auxiliary emission control devices to reduce or control evaporative emissions (e.g., carbon canister, purge system, etc.). In order to prevent a slow fuel leak from continuing over time, a manufacturer must certify in its application for certification that the vehicle meets the requirements for closed fuel systems. For closed fuel systems, which are often pressurized, the design must be such that a leak (to the atmosphere) anywhere within the fuel system would render the vehicle inoperative through a relatively quick loss of fuel supply. This requirement recognizes the contribution of leaks to emissions, but also recognizes that substantial fuel loss makes repair necessary for continued operation, thus reducing the likelihood that emissions from leaks would go unrepaired for a substantial amount of time. These test criteria for ILEVs ensure that even if the vehicle develops an evaporative control system malfunction in use, production of evaporative hydrocarbon emissions in total (hot soak, diurnal, and running loss) by ILEVs will be at a level substantially below the average of its non-ILEV counterparts.

The ILEV qualification test has four potential components: hot soak, diurnal, running loss and resting loss. At this time, there are certification standards and test procedures for hot soak and diurnal evaporative emissions only. However, EPA has proposed a series of changes in the test procedures that are used for evaporative emissions certification (55 FR 49914, December 3, 1990), one of which would add a test sequence designed to measure running loss emissions. EPA is also considering whether to propose to include resting loss emissions control.

The ILEV qualification test would be performed in accordance with the evaporative emissions certification test procedures in use at the time ILEV qualification is sought, with two exceptions. One, if the evaporative emissions certification test procedures involve more than one high-temperature diurnal, only one such diurnal would be utilized for purposes of ILEV qualification. Two, the evaporative emission control system, if any, would be completely deactivated for the entire ILEV qualification test.

Of course, ILEVs must also earn general vehicle certification before they may be certified as ILEVs. In order to be certified as an ILEV, the vehicle must pass both the section 202 evaporative emission standards of 2.0 grams per test over the full test procedure and the ILEV evaporative emission standard of 5.0 grams per test over the abbreviated procedure. If the test vehicle meets the 2.0 grams per test over the full evaporative test procedure without a control system, it would meet both the section 202 requirements and the ILEV evaporative requirements. Otherwise, in order to meet the ILEV evaporative requirement, the vehicle would have to be tested separately to demonstrate compliance with the section 202 evaporative standard (using a control system if necessary) and the 5.0 grams per test ILEV evaporative standard without a control system. Any test vehicle which failed the 5.0 gram per test evaporative standard over the abbreviated ILEV test could not qualify as an ILEV regardless of its evaporative emission rates with a control system over the full evaporative test.

As was mentioned above, the sum of measured evaporative emissions during the hot soak, diurnal, running loss and resting loss tests may not exceed the ILEV evaporative standard of five total grams per test. In the NPRM, EPA proposed an ILEV qualification standard between two and five grams. EPA has chosen the level of five grams because it will achieve the goals of the program while offering the most flexibility to vehicle manufacturers. Testing by EPA indicates that the uncontrolled evaporative hot soak, diurnal, running loss and resting loss emissions from conventional gasoline vehicles are on the order of 100 to 200 grams. Thus, an ILEV standard of five grams would yield reductions of a minimum of 95 percent relative to an uncontrolled conventional-fuel vehicle. On the other hand, based on limited data, EPA projects that the five gram level will permit vehicles which operate on very low-volatility fuels (such as pure ethanol and pure methanol) as well as pressurized gaseous fuels (natural gas (CNG), liquefied petroleum gases (LPG), and hydrogen) to potentially qualify as ILEVs. In addition, it is expected that dedicated electric vehicles would meet the ILEV evaporative emissions standard. Vehicles operating on some formulations of petroleum fuels may also meet the ILEV standard and would therefore qualify as ILEVs.

The second ILEV qualification criterion is that ILEVs in all vehicle classes must also meet lower exhaust emission standards for NO_X as compared to conventional vehicles. As can be seen from Table 3 above, in order to achieve a NO_X reduction in all vehicle classes relative to the conventional standards, the ILEV NO_X standard must be set at the ULEV NO_X levels. In the case of heavy-duty engines, a lower $NMHC+NO_X$ standard applies, because the clean-fuel HDV standards do not include a separate NO_X standard. For other pollutants, the exhaust emission standards for ILEV certification will match the LEV CFFV standards.

The ILEV exhaust emission standards are shown in Table C93–6 of the regulations. It should be noted that the heavy-duty engine emission standards shown are based on the State of California LEV program standards. As discussed above, these, as well as the light-duty ILEV standards, are subject to change if the final federal CFFV standards are different from these values. These vehicles or engines must also comply with all requirements of Title II of the Clean Air Act, as amended, which are applicable in the case of conventional gasoline, methanol-fueled, or diesel vehicles or engines of the same vehicle class and model year, unless otherwise determined.

The ILEV program is limited to dedicated-fuel vehicles and dual-fuel vehicles which are certified as ILEVs on both fuels. Due to the critical role of the fuel in the emissions of the vehicle, and the difficulty of enforcement, flexible-fuel and dual-fuel vehicles which do not qualify as an ILEV on all possible fuels and fuel combinations cannot be considered ILEVs.

Given the fuels and technologies expected, it is possible that some vehicle models will meet the ULEV or ZEV emission standards and also qualify as ILEVs. In that circumstance, as well as in the case of "extra" ILEV purchases, the vehicles involved will be eligible to receive expanded TCM exemptions and the fleet owner will earn purchase credits. Because the ILEV qualification standard does not include a reduction in exhaust NMOG, vehicles that are acquired to meet the purchase requirement, which only meet the ILEV requirements, will receive no purchase

credits if the area they are a part of uses the NMOG-only credit weighting basis.

3. Program Roles and Benefits

Given the nature of the fleet program, EPA, the auto industry, the affected fleet operators and the various states all will have a role in its implementation. The latter three entities listed will all derive benefits from the program to varying degrees.

First, the ILEV concept is a Federal program to be administered either directly by EPA or through EPA oversight of other entities. EPA will develop the program requirements and administer the ILEV certification program and other regulatory provisions related to the program. EPA is also responsible for identifying and implementing the incentives which will encourage the purchase of these vehicles by the fleets.

As an incentive for fleet owners and operators, section 246(h) provides that certain TCMs shall not apply to cleanfuel vehicles that meet the requirements of section 246. Unlike most other portions of section 246, which directs the States to implement various aspects of the fleet program through the applicable SIP revisions, section 246(h) directs EPA to implement the TCM exemption through a federal rule to be issued one year after enactment. Section 246(h) provides that the TCM exemption applies notwithstanding Title I of the Act.

Title I addresses nonattainment areas, and section 182(c) of that title sets forth requirements for SIPs in serious ozone nonattainment areas. These SIPs must include, inter alia, a clean-fuel vehicle support program that contains measures necessary to ensure the effectiveness of the clean-fuel vehicle program established under Title II. Section 182(c)(4)(B), however, allows a State to opt out of "all or a portion" of the clean-fuel vehicle program if, within 24 months of enactment, it submits a substitute SIP revision that will achieve long-term reductions in ozone-producing and toxic emissions equal to those achieved by the clean-fuel vehicle program (or the portion of the program for which the revision is a substitute). A certain tension exists between the opt-out authority under section 182(c)(4)(B) of Title I and the requirement in section 246(h) that clean-fuel fleet vehicles be exempt from TCMs notwithstanding Title I.

Section 246 directs an affected State to implement almost every aspect of the fleet program through a SIP revision. In contrast, the TCM exemption is to be implemented by federal rule. Moreover, section 246(h) requires EPA to issue the TCM exemption rule within one year of enactment, whereas a SIP revision opting out of the fleet program is not due for 24 months (section 182(c)(4)(B)), and a SIP revision implementing the fleet program is not due for 42 months (section 246(a)(1)). Both the plain language of section 246(h) and its legislative history suggest that the TCM exemption rule is to become effective prior to the effective date of the SIP revisions.[2] Taken together, these structural features suggest that the TCM exemption operates independently from any State SIP and from any State decision to opt out of the fleet program.

There is a further requirement that must be met in order for a vehicle to qualify for the transportation control measure exemption under section 246(h): it must be not only a "clean-fuel vehicle," but it must also be a clean-fuel vehicle "meeting the requirements of this section." The section generally requires SIP revisions in certain nonattainment areas. Obviously, if a state opts out of the program, there will be no SIP revision. However, EPA believes that it may give effect to the evident purpose of section 246 and Part C of Title II generally to limit the benefits of the exemption to covered fleet vehicles by reading the phrase "meeting the requirements of this section" as requiring the vehicles to be "covered fleet vehicles" as defined in section 241(6). Section 246 is entitled "Centrally Fueled Fleets," and contains numerous references that show it was intended to apply only to "covered fleet operators" and "covered fleet vehicles." E.g., section 246 (b), (d), (e). Failure to adopt such a limitation would mean that private owners of non-fleet vehicles would qualify for the exemption, a result Congress could not have intended.

EPA believes that an interpretation giving pre-emptive effect to section 246(h) even in opt-out states, to be reasonable because it provides a strong incentive to fleets to use ILEVs even in areas in which they are not required to do so, thereby producing environmental benefits consistent with the overall purpose of the Clean Air Act. The relevant provisions reflect two competing congressional concerns, namely that qualifying fleet vehicles not be subject to TCMs designed to regulate more polluting vehicles, and that States be allowed some flexibility in deciding whether to implement the clean-fuel vehicle program as part of its attainment strategy. Because the Clean Air Act embodies competing congressional goals, EPA may fashion "a reasonable accommodation of [the] differing policy objectives." *Natural Resources Defense Council* v. *EPA*, 882 F.2d 104, 117 (D.C. Cir. 1987). The proposed reading is a reasonable accommodation of these conflicting policies, for it allows States to avoid the purchase requirements imposed upon fleets under section 246, but it retains the TCM exemption incentive for fleets in opt-out States where those fleets voluntarily choose to use ILEVs.

Second, with regard to the auto industry, the program is largely voluntary. Manufacturers will seek ILEV qualification only if demand for such vehicles is sufficient. If so, they will need to comply with EPA certification program requirements, including ILEV identification on the engine label. As is discussed further below, auto industry fleet representatives and dealers involved in marketing vehicles to fleets will have a small role in the proper dissemination of ILEV labels for vehicle identification to the public.

The third key participant in the program is the fleet industry. The ILEV program is entirely voluntary for the fleet owners and operators. As will be discussed further below, ILEVs will receive the temporal-based TCM exemptions available to all CFFVs and will also be eligible for expanded TCM exemptions such as the HOV lane requirement exemption contained in the proposal. Fleets have operational requirements which make it difficult for them to increase the occupancy of vehicles. HOV lanes have been established to encourage car-pooling and thus decrease emissions by reducing the number of vehicles being operated. Through the ILEV program, certain fleets will be able to qualify for HOV lane access by purchasing and operating ILEVs and thus contributing much more to air quality improvement than would a fleet vehicle mired in congested traffic. Fleet owners will decide whether the expanded TCM exemptions available with ILEVs provide a business advantage over purchasing a basic CFFV which could be somewhat lower in purchase price and/or operating cost. After a fleet purchases an ILEV either directly from a manufacturer or through a conversion, it will need to comply with the regulations implementing the program related to labeling.

Finally, the states involved in the CAA fleet program would be involved in the ILEV program. Future state SIP actions will need to incorporate the ILEV program, expanded TCM exemptions, etc., and states will receive SIP credits commensurate with the

[2] See 136 Cong. Rec. E3695 (daily ed. Nov. 2, 1990) (speech of Representative Lent).

emission reductions anticipated from the use of ILEVs relative to other CFFVs.

4. TCM Exemptions Available to ILEVs

Since ILEVs would be CFFVs within the definition of the fleet program, they would qualify for the general (temporal) TCM exemptions discussed above. However, ILEVs would also be eligible for expanded TCM exemptions. At the outset, ILEVs are exempt from restrictions on high-occupancy vehicle lanes ("HOV restrictions"), although the exemption does not include bus-only HOV lanes. At the present time only about one-half of the 22 covered areas in the fleet program either have or plan HOV lanes. Thus a broader set of TCM exemptions will be needed to provide greater incentive to purchase ILEVs and thus maximize the air quality benefits. In the future, EPA intends to exempt ILEVs, to the extent practicable, from all other existing and future TCMs that are not safety related in order to provide further incentive for their purchase and use. However, because the specific TCMs to be adopted in the covered areas are yet to be determined, the only expanded exemption granted to ILEVs in today's rule is the exemption from HOV lane restrictions. As proposed in the NPRM, EPA expects to grant further TCM exemptions for ILEVs through future regulatory actions with full opportunity for all interested parties to participate. As a first step in that process, additional TCM exemptions/incentives for ILEVs, such as credit for employee trip reduction programs and relief from tolls/fees designed to reduce air pollution from motor vehicles by limiting their use in designated areas, will be considered in a proposal to be published later this year.

The purpose of HOV lanes is to maintain mobility in congested highway corridors by attracting riders to buses, carpools and vanpools. This is accomplished by offering travel time savings and assured free flow. Lower emissions and fuel conservation are additional benefits. Based on data analysis for several cities, EPA does not believe that this incentive for the purchase of ILEVs will increase HOV lane congestion significantly. In fact, by removing vehicles from general purpose lanes, ILEVs could reduce overall congestion.

However, EPA does not intend for ILEVs to be the cause of congested conditions in HOV lanes, which would reduce the attractiveness for their use, and which could have a detrimental impact on air quality. Therefore, under certain circumstances, a waiver from the HOV lane exemption requirement may be granted for a specific HOV lane or lane segment. The state's governor could petition EPA for such a waiver, which would need to document two conclusions. First, the petition would need to clearly document, based on sound highway design criteria, that the presence of ILEVs in an HOV lane or lane segment is or is projected to be the cause of significant congestion. Second, the petition must demonstrate that the congestion cannot feasibly be alleviated by adding an additional HOV/CAV lane, further increasing vehicle occupancy requirements, reducing use of the lane by non-eligible vehicles, or through other measures.

C. Labeling of Clean-Fuel Fleet Vehicles

In order to successfully implement the TCM exemptions, clean-fuel fleet vehicles making use of the exemptions must be clearly identified as such, and ILEVs must be specially identified. Because most CFFVs are expected to look very much like conventional vehicles, it is important to avoid public misunderstanding about why these vehicles are being operated in places and at times in which apparently identical vehicles are prohibited. Furthermore, law enforcement officials should have a clear indication that these vehicles are not violating TCM ordinances.

For the labeling of CFFVs which are not ILEVs but which qualify for the general temporal-based TCM exemptions, the states will design and administer their own labeling programs. These programs should be defined in the appropriate SIP submittals. Special license plates, license plate tabs, windshield or side panel decals, or other distinctive markings may be used. Either text or a logo would be appropriate. As discussed further below, EPA believes that because the implementation of time-of-day or day-of-week TCMs are likely to be highly publicized state projects, individual states can best make the decision of how large or small a label is needed and what information should be on it. Of course, states that are part of a multi-state covered nonattainment area should work together to develop a unified labeling system for that area. Additionally, because EPA does not believe there will be very many such TCM ordinance programs, there should not be serious problems arising from inconsistent requirements around the country. EPA may establish a consistent federal CFFV labeling requirement, if deemed necessary, in the future.

Because the ILEV concept is a federal program, EPA will administer the labeling process for ILEVs. Manufacturers certifying their vehicles as ILEVs must identify the vehicle as such in the Vehicle Emission Control Identification (VECI) sticker (placed under the engine hood in light-duty vehicles). (See 40 CFR 86.0XX–35 for labeling requirements—where "XX" refers to the standard for a given model year.) Additionally, manufacturers, or their agents, must install nontransferable "Clean Air Vehicle" labels or decals (described below) on ILEVs at the time of sale to qualifying fleet owners. Fleet owners must show proof of ownership of ten or more covered fleet vehicles, and the manufacturer, or its agent, must confirm this through vehicle registration forms or some other means and maintain such proof for possible review by EPA.

Three labels are required for each ILEV. Labels are to be placed on each side of the vehicle and on the rear of the vehicle in such a way that they are clearly visible. ILEV owners are required to remove and dispose of the labels when selling or transferring the ILEV or offering it for lease or long-term loan, unless the person who is receiving the vehicle is qualified to take advantage of the expanded TCM exemptions. No unauthorized person is permitted to install an ILEV label or any facsimile of an ILEV label on any vehicle. A state may expand ILEV eligibility and allow ILEV labels to remain on vehicles sold to non-fleet persons. States may wish to do this for reasons such as promotional purposes or to allow non-fleet operators to gain access to the expanded TCM exemptions available to ILEVs.

As is prescribed in more detail in the attached regulations, the ILEV labels must be at least twelve inches high by eighteen inches wide with "CLEAN AIR VEHICLE" written in large block capital letters. In addition, the words "INHERENTLY LOW-EMISSION VEHICLE" must be on the label in smaller lettering. The label's lettering must be in a contrasting color to the background, and while background graphics or a manufacturer logo may be included, nothing may be added to the label which impairs readability. Labels must include a serialized identification number. Label designs to be used must be approved by EPA as part of the certification for that manufacturer's ILEV family(ies). If vehicle design prohibits placement of a twelve by eighteen-inch rear label, a four inch high by 24 inch wide label meeting the same color contrast and message requirements, but with smaller letter size as laid out in the regulations, would be acceptable. However, vehicles which have space on the rear for the larger label must use it.

EPA also encourages states to develop programs using unique license plate numbering, colors or tabs to further distinguish ILEV vehicles. This would aid in enforcement of the labeling program by connecting the ILEV designation to the vehicle registration program. As a result, counterfeiting would be more difficult and overall enforcement of HOV lane restrictions and future further exemptions would be facilitated. To the degree that states may want to track the number of ILEVs that are being used in an area, they may require the manufacturer or the manufacturer's agent to report the number of vehicles that have been labeled as ILEVs to the appropriate state agency. To aid enforcement, a state may wish to also require reporting of VIN numbers of ILEVs sold and the serial number of the label that was affixed to the vehicle.

IV. Provisions for Federal Fleets and Facilities

Subpart C of the CAA contains several provisions which apply to certain fleets and facilities owned or operated by an agency, department, or instrumentality of the United States. The federal fleet provisions are described in section 248 and a federal obligation to make clean fuel available to the public is contained in section 246(g). Section 248(a) provides that covered federal fleets are subject to the general provisions of the fleet program, in addition to the special requirements for federal fleets. Thus, each federal fleet must comply with the requirements of the fleet program as it exists in the nonattainment area where such a fleet operates. Whether a federal fleet is a covered fleet will be determined for each area independently.

Section 246(g) provides that federal facilities where covered fleets are refueled shall make clean alternative fuel available to the public during reasonable business times, subject to national security concerns, if such fuel is not commercially available for retail sale to the public in the vicinity of the facility. EPA proposed regulations interpreting these provisions of the Act. However, after considering comments received on the NPRM from affected federal agencies, EPA has decided to issue guidance rather than promulgate regulations regarding section 246(g). EPA notes that section 246(g) is self-effectuating and does not require implementing regulations.

EPA believes that federal facilities will make fuel available if other facilities providing the same fuel are not available, not only because of the requirements of section 246(g) of the CAA, but because the Alternative Motor Fuels Act (AMFA) also requires federal facilities to make clean fuels available to the public after 1994. However, as part of this rulemaking, EPA has considered the requirements of section 246(g) and the public comments, and several guidelines which EPA would encourage such federal fleets to follow are described below. As discussed above, all state fleet program provisions will apply to federal fleets, including credits and TCM exemptions.

Vicinity. As a general rule, federal facilities should consider the density of other refueling facilities in the covered nonattainment area as a guide for determining when fuel should be provided to the public. One way to view the definition of vicinity is from the concept of fuel availability. If a clean fuel is already "reasonable available" in the covered area, then there would be no need for the federal facility to offer the fuel. To assess this concept, EPA performed an analysis of the number of gasoline refueling facilities in several metropolitan statistical areas. This analysis showed that, on average, there were approximately 0.8 refueling facilities per square mile. (This also can be expressed as an average distance of 0.6 miles from one refueling facility to the nearest other facility.) For a vicinity definition of a five mile radius (which contains 78 square miles), this analysis would project that there would be 63 refueling facilities. Similar calculations for ten and 15 mile radii yield 252 and 568 facilities, respectively.

EPA believes that gasoline can generally be considered to be conveniently available in metropolitan areas. To match this level of availability, the applicable radius to another refueling facility can be back-calculated using the same methods discussed in the previous paragraph. Thus, the necessary radius to provide the same level of availability as gasoline would be 0.6 miles from the main gate of a federal facility. Convenient availability is presently too stringent a requirement for clean fuels. (However, this does not apply to reformulated gasoline in areas mandated to use that fuel.) Several studies have indicated that diesel fuel is available at approximately one in four to one in five commercial facilities. Therefore, it has 20 to 25 percent of the availability of gasoline. This could be considered reasonable availability. To provide availability at this level would require a radius of approximately 1.3 to 1.4 miles from the main gate of a federal facility. Even this is a fairly stringent requirement for clean fuels.

As part of its LEV program, Southern California is initially requiring 90 (and increasing in three years to 300) clean fuel facilities out of the approximately 9,000 service stations in the area for their LEV program. This one to three percent availability compared to gasoline can be considered as the lower limit for reasonable availability. A 3.6 to 6.3 mile radius from the main gate of a federal facility would provide approximately this range of availability.

Based on this analysis, EPA recommends that federal facilities which utilize clean-fuel vehicles make clean fuel available to the public if there is not a commercial facility offering the same type of clean fuel within a five mile radius.

Reasonable business times. With regard to the times when clean fuel would be made available to the public, EPA proposed that federal facilities which have clean-fueled fleets should make those facilities available to the public eight hours per business day. After additional consideration and consultation with other federal agencies and departments, EPA believes it is not necessary for eight hours of public access to be provided in all cases. In many cases, federal fuel facilities are only open for several hours per day, or are not staffed. In order for federal facilities to aid in the introduction of clean-fuel vehicles to the general public, this fuel should be reasonably available in terms of the times when it can be purchased. EPA recommends that a federal clean-fuel facility be open to the public for refueling during the hours that it is normally staffed, and otherwise by prior arrangement with that facility.

V. Consultation With DOE and DOT

As per section 250(d) of the Clean Air Act, this rulemaking has coordinated with the Department of Energy and the Department of Transportation. Interagency review documents are contained in sections II–H and IV–H of this rulemaking's docket.

VI. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by sections 110, 118, 241, 246, 248, and 301(a) of the CAA (42 U.S.C. 7410, 7418, 7581, 7586, 7588, and 7601(a)).

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an effect on the economy of $100 million or more, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase for the affected product.

This rule, covering fleet credit programs and TCM exemptions, is significant in that it promulgates important provisions of the overall fleet program prescribed in sections 246 and 248 of the 1990 CAA Amendments. However, it is not "major" according to the established criteria. The CAA requires that the general fleet program be implemented through revisions to State Implementation Plans (SIPs) at a later date. The credit program finalized today will actually help to reduce the costs of compliance with the base fleet program. In addition, the TCM exemptions provide, at least directionally, an opportunity for reduction in the operating costs of the affected fleets. The ILEV program is voluntary. The regulations will have either neutral or salutary effects on competition, investment, employment, and innovation. Therefore, this rule does not constitute a major regulation. EPA will perform a detailed economic assessment of the Clean Fuel Fleet Program as a whole when the remaining provisions of the program are promulgated later this year.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to OMB comments are in section IV–H of the public docket for this rulemaking.

IX. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small business entities. As already mentioned, none of the provisions of this regulation levy additional requirements on small entities, and, in fact, the credit programs and the TCM exemptions would be expected to have salutary effects on fleet owners. Thus I certify that this rule will not have a significant adverse impact on a substantial number of small entities. A Regulatory Flexibility Analysis for the Clean Fuel Fleet Program as a whole will be performed in conjunction with the aforementioned rulemaking on clean-fuel fleet emission standards, conversions and general provisions.

X. Information Collection Requirements

Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Public reporting burden for this collection of information is estimated to be 4,100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street, SW., (PM–223Y); Washington, DC, 20460, marked, "Attention: Desk Officer for EPA".

List of Subjects in 40 CFR Part 88

Administrative practice and procedures, Air pollution control, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR part 88 is amended as follows:

PART 88—CLEAN-FUEL VEHICLES

1. The authority citation for part 88 is revised to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

2. Subpart C is added to part 88 to read as follows:

Subpart C—Clean-Fuel Fleet Program

Sec.
88.301–93 General applicability.
88.302–93 Definitions.
88.303–93 Abbreviations.
88.304–94 Clean-fuel fleet vehicle credit program.
88.305 [Reserved].
88.306 [Reserved].
88.307–94 Exemption from temporal transporation control measures for CFFVs.
88.308 [Reserved].
88.309 [Reserved].
88.310–94 Applicability to covered federal fleets.
88.311–93 Emissions standards for Inherently Low-Emission Vehicles.
88.312–93 Inherently Low-Emission Vehicle labeling.
88.313–93 Incentives for the purchase of Inherently Low-Emission Vehicles.
Tables to Subpart C of Part 88

Subpart C—Clean-Fuel Fleet Program

§ 88.301–93 General applicability.

(a) The requirements of this subpart apply to the following:

(1) State Implementation Plan revisions at 40 CFR part 52 made pursuant to sections 110 and 246 of the CAA (42 U.S.C. 7410 and 7586) hereafter referred to as the "SIP revision".

(2) All agencies, departments and instrumentalities of the United States that are subject to the fleet programs established by a state's SIP revision.

(b) The requirements of §§ 88.302–93, 88.303–93, 88.311–93, 88.312–93, and 88.313–93 of this part apply to fleets which voluntarily purchase and operate Inherently Low-Emission Vehicles (ILEVs).

§ 88.302–93 Definitions.

The definitions in 40 CFR part 86 of this chapter also apply to this subpart. The definitions in this section apply to this subpart.

Combination heavy-duty vehicle means a vehicle with a GVWR greater than 8,500 pounds (3,900 kilograms) which is comprised of a truck-tractor and one or more pieces of trailered equipment. The truck-tractor is a self-propelled motor vehicle built on one chassis which encompasses the engine, passenger compartment, and a means of coupling to a cargo carrying trailer(s). The truck-tractor itself is not designed to carry cargo.

Inherently Low-Emission Vehicle means any LDV or LDT conforming to the applicable Inherently Low-Emission Vehicle standard, or any HDV with an engine conforming to the applicable Inherently Low-Emission Vehicle standard. No dual-fuel or flexible-fuel vehicles shall be considered Inherently Low-Emission Vehicles unless they are certified to the applicable standard(s) on all fuel types for which they are designed to operate.

Partially-Covered Fleet pertains to a vehicle fleet in a covered area which contains both covered fleet vehicles and non-covered fleet vehicles, i.e., exempt from covered fleet purchase requirements.

Single-unit heavy-duty vehicle means a self-propelled motor vehicle with a GVWR greater than 8,500 pounds (3,900 kilograms) built on one chassis which encompasses the engine, passenger compartment, and cargo carrying function, and not coupled to trailered equipment. All buses, whether or not they are articulated, are considered single-unit vehicles.

§ 88.303–93 Abbreviations.

The abbreviations in subpart A of this part and in 40 CFR part 86 apply to this subpart. The abbreviations in this section apply to this subpart.

ILEV—Inherently Low-Emission Vehicle.

§ 88.304–94 Clean-fuel fleet vehicle credit program.

(a) *General.* (1) The SIP revision shall provide for a CFFV credit program to enable covered fleet owners/operators to meet the fleet vehicle purchase requirements of the CAA both by purchasing clean-fuel vehicles (CFVs) directly and by trading and banking CFFV credits for vehicle purchases.

(2) All credit-generating vehicles must meet the applicable emission standards and other requirements contained in 40 CFR part 88, subpart A.

(b) *Program administration.* (1)(i) Each state in which there is all or part of a covered area, as defined in CAA section 246(a)(2), shall promulgate regulations as necessary for implementing this requirement.

(ii) The state shall submit a SIP revision before May 15, 1994 to the Administrator stipulating the specific mechanism by which the CFFV program is to be administered and enforced. The credit program shall commence upon EPA approval of the SIP in accordance with CAA section 246(f)(5).

(2) A fleet owner who purchases/leases a CFFV only to generate CFFV credit shall be subject to the same requirements of the state's CFFV program as a covered fleet owner who purchases/leases a CFFV to demonstrate compliance with covered fleet purchase requirements.

(3) While in the covered area, a dual-fuel/flexible-fuel vehicle which a fleet owner purchases to comply with covered fleet purchase requirements must be operated at all times on the fuel(s) on which it was certified as a CFFV. If the fleet owner receives credit for a dual-fuel/flexible-fuel vehicle purchase, the vehicle must be operated at the same emission level for which the vehicle generated CFFV credit.

(c) *Credit generation.* (1) States shall grant CFFV credits to a covered fleet owner for any of the following qualifying CFFV purchases:

(i) Purchase of a CFFV during any period subsequent to the approval of the SIP revision but prior to the effective date for commencement of a state's CFFV purchase requirement if the purchase meets all other CFFV requirements applicable to such purchases, including the statutory requirement to use only the fuel on which the vehicle was certified as a CFFV;

(ii) Purchase of a greater number of CFFVs than is required under the SIP revision;

(iii) Purchase of a CFFV which meets more stringent emission standards than required under the SIP revision; or

(iv) Purchase of a CFFV in an exempt or non-covered vehicle category by the owner/operator of a covered or partially-covered fleet.

(2) A state may retroactively grant CFFV credit(s) to a fleet owner for the purchase of a CFFV prior to the approval of the state's SIP revision if the purchase met all CFFV credit program requirements applicable to such purchases, including:

(i) The vehicle purchased would have to have been certified to CFFV emission standards;

(ii) The vehicle purchased would have to have been a dedicated-fuel vehicle;

(iii) If the vehicle purchased was not a dedicated-fuel vehicle, then the fleet owner would have to show that the vehicle had been operated only on the clean alternative fuel on which the vehicle had been certified as a CFFV.

(3) For LDVs and LDTs, credit values shall be determined in accordance with Table C94–1. The state shall use Table C94–1 exclusively in determining LDV and LDT CFFV credit values. Table C94–1.1 applies to paragraphs (c)(1) (i), (ii) and (iv) of this section; Table C94–1.2 applies to paragraph (c)(1)(iii) of this section.

(4) In lieu of determining credit values in accordance with Table C94–1, a state may specify in its SIP revision that Table C94–2 will be used to determine LDV and LDT CFFV credit values in one or more affected nonattainment areas. Any state choosing to do so must provide adequate justification, based on air quality benefits, at the time the SIP revision is submitted. If the use of Table C94–2 is approved by EPA, the State shall use Table C94–2 exclusively in determining LDV and LDT CFFV credit values for vehicles in the subject area or areas. Table C94–2.1 applies to paragraphs (b)(1) (i), (ii) and (iv) of this section; Table C94–2.2 applies to paragraph (b)(1)(iii) of this section.

(5) In lieu of determining credit values in accordance with Table C94–1, a state containing a carbon monoxide nonattainment area(s) having a design value above 16.0 parts per million may specify in its SIP revision that Table C94–3 will be used to determine LDV and LDT CFFV credit values in one or more affected nonattainment areas. Any state choosing to do so must provide adequate justification, based on air quality benefits, at the time the SIP revision is submitted. If the use of Table C94–3 is approved by EPA, the state shall use Table C94–3 exclusively in determining LDV and LDT CFFV credit values for vehicles in the subject area or areas. Table C94–3.1 applies to paragraphs (b)(1) (i), (ii) and (iv) of this section; Table C94–3.2 applies to paragraph (b)(1)(iii) of this section.

(6) For HDVs, credit values shall be determined in accordance with Table C94–4. The state shall use Table C94–4 exclusively in determining heavy-duty vehicle CFFV credit values. Table C94–4.1 applies to paragraphs (c)(1) (i), (ii) and (iv) of this section, and Table C94–4.2 applies to paragraph (c)(1)(iii) of this section.

(7) In lieu of determining credit values in accordance with Table C94–4, a state containing a carbon monoxide nonattainment area(s) having a design value above 16 parts per million may specify in its SIP revision that Table C94–5 will be used to determine heavy-duty vehicle CFFV credit values in one or more affected nonattainment areas. Any state choosing to do so must provide adequate justification, based on air quality benefits, at the time the SIP revision is submitted. If the use of Table C94–5 is approved by EPA, the State shall use Table C94–5 exclusively in determining heavy-duty vehicle CFFV credit values for vehicles in the subject area or areas. Table C94–5.1 applies to paragraphs (b)(1) (i), (ii) and (iv) of this section; Table C94–5.2 applies to paragraph (b)(1)(iii) of this section.

(8) Credit values shall be rounded to two decimal places.

(9) *Heavy heavy-duty vehicles.* (i) States must allow purchase of any clean-fuel single-unit or combination HDV with a GVWR greater than 26,000 pounds (11,800 kilograms) to generate CFFV credit for the fleet vehicle purchaser.

(ii) States must exclude from generating CFFV credit the purchase of any combination HDV with a GVWR greater than 26,000 pounds (11,800

kilograms) which pays all or a portion of its fuel taxes, as evidenced by fuel tax stickers on the combination HDV, to a state(s) which is not part of that covered nonattainment area.

(10) *Light-duty CFFV credits.* Credits generated by the purchase of a qualifying clean-fuel fleet LDV or a LDT shall be designated at the time of issuance as light-duty CFFV credits.

(11) *Heavy-duty CFFV credits.* Credits generated by the purchase of a qualifying clean-fuel fleet HDV shall be designated at the time of issuance as heavy-duty CFFV credits. Further, credits generated by the purchase of a light heavy-duty or a medium heavy-duty qualifying CFFV shall be designated at the time of issuance as light heavy-duty and medium heavy-duty CFFV credits, respectively.

(d) *Credit use.* (1) All credits generated in accordance with these provisions may be freely traded or banked for later use, subject to the provisions contained in this subpart, without discount or depreciation of such credits.

(2) A covered fleet owner or operator desiring to demonstrate full or partial compliance with covered fleet purchase requirements by the redemption of credits shall surrender sufficient credits as established in this paragraph. In lieu of purchasing a CFFV, a fleet owner or operator shall surrender credits equal to the credit value for the corresponding vehicle class and credit calculation method used in that area from either Table C94–1.3, C94–2.3, C94–3.3, C94–4.3, or C94–5.3 of this subpart.

(3) Credits earned within the boundaries of a covered nonattainment area may be traded within those boundaries whether or not that area encompasses parts of more than one state.

(4) Credits issued as a result of CFFV purchase requirements in one nonattainment area may not be used to demonstrate compliance in another nonattainment area, even if a state contains more than one covered nonattainment area.

(5) Credit allocation. (i) Credits generated by the purchase of LDVs and LDTs of 8,500 pounds (3,900 kilograms) GVWR or less may be used to demonstrate compliance with covered fleet purchase requirements applicable to LDVs or LDTs of 8,500 pounds (3,900 kilograms) GVWR or less.

(ii) Credits generated by the purchase of vehicles of more than 8,500 pounds (3,900 kilograms) GVWR may not be used to demonstrate compliance with the covered fleet purchase requirements for vehicles weighing 8,500 pounds (3,900 kilograms) GVWR or less.

(iii) Credits generated by the purchase of vehicles of 8,500 pounds (3,900 kilograms) GVWR or less may not be used to demonstrate compliance with requirements for vehicles of more than 8,500 pounds (3,900 kilograms) GVWR.

(iv) Credits generated by the purchase of a HDV of a particular weight subclass may be used to demonstrate compliance with required heavy-duty vehicle purchases for the same or lighter weight subclasses. These credits may not be used to demonstrate compliance with required HDV purchases for vehicles of heavier weight subclasses than the weight subclass of the vehicle which generated the credits.

§ 88.305 [Reserved].

§ 88.306 [Reserved].

§ 88.307–94 Exemption from temporal transportation control measures for CFFVs.

(a) States with covered areas shall exempt any CFFV required by law to participate in the clean-fuel fleet program or any vehicle generating credits under § 88.304–94(c) from transportation control measures (TCMs) existing wholly or partially for air quality reasons included in an approved state implementation plan which restrict vehicle usage based primarily on temporal considerations, such as time-of-day and day-of-week exemptions. However, CFFVs shall not qualify for TCMs where the temporal element is secondary to some other control element and, in no case, shall such exemptions apply if they create a clear and direct safety hazard. This exemption does not include access to high occupancy vehicle (HOV) lanes, except as provided in § 88.313–93.

(b) States shall also grant temporal TCM exemptions to qualifying CFFVs being operated after SIP approval, but prior to the effective date for commencement of a state's CFFV credit program.

(c) Temporal TCM exemptions provided for in paragraph (a) of this section are not effective outside of the areas for which states can be required to establish CFFV credit programs.

(1) Such exemptions shall remain effective only while the subject vehicle remains in compliance with applicable CFFV emissions standards and other CFFV credit program requirements.

(2) CFFV TCM exemptions shall not be transferred between vehicles within the same fleet nor shall they be sold or traded.

§ 88.308 [Reserved].

§ 88.309 [Reserved].

§ 88.310–94 Applicability to covered federal fleets.

(a) *Compliance by Federal vehicles.* As per section 258(a) of the Act, fleets owned or operated by any agency, department, or instrumentality of the United States shall comply with the applicable state regulations concerning CFFVs established in the SIP revision. Such fleets shall be treated in the same manner as private or other government fleets under the applicable state regulations.

(1) Federal agencies shall obtain CFFVs from original equipment manufacturers, to the extent possible, as required under section 248 of the CAA.

(2) The Secretary of Defense may exempt any vehicle(s) from the provisions of any CFFV credit program established in the SIP revision by certifying to the Administrator in writing that inclusion of the specified vehicle(s) in such a program could have an adverse impact on the national security. The Secretary of Defense shall also provide a copy of this statement of exemption to the state agency administering the CFFV credit program in the covered area in which the specified vehicle(s) is registered/operated.

(b) [Reserved].

§ 88.311–93 Emissions standards for Inherently Low-Emission Vehicles.

(a) *Certification.* (1) Emissions Testing Procedures. A vehicle shall be certified as an ILEV if that vehicle satisfies the following conditions:

(i) The vehicle shall be certified under the appropriate exhaust emissions standards from paragraph (c) or (d) of this section depending on the vehicle's weight classification.

(ii) The vehicle shall be certified as having fuel vapor emissions which are five or less total grams per test as measured by the current Federal Test Procedure (FTP), modified for ILEV certification, from 40 CFR part 86, subpart B for LDVs and LDTs and from 40 CFR part 86, subpart M for HDVs.

(A) After disabling any and all auxiliary emission control devices (canister, purge system, etc.) related to control of evaporative emissions, the fuel vapor emissions shall be measured using the FTP regulations in effect at the time the vehicle is to be certified as an ILEV. For purposes of this section, the vehicle's fuel vapor emissions shall consist of the total grams of diurnal, hot soak, running loss, and resting loss emissions, as appropriate, for the particular fuel/vehicle/engine

combination to be tested. In determining ILEV evaporative emissions, the diurnal emissions measurement procedure shall consist of a single diurnal heat build using an ambient or fuel temperature range of 72°–96 °F (22°–36 °C), as appropriate for the applicable FTP regulations (40 CFR part 86).

(B) Conventional Federal Test Procedure. A vehicle with no evaporative emissions control system components may have its evaporative emissions certified for its particular GVWR weight class/subclass if it passes the conventional evaporative emissions FTP from 40 CFR part 86, subpart B for LDVs and LDTs or from 40 CFR part 86, subpart M for HDVs, as applicable.

(iii) The vehicle must meet other special requirements applicable to conventional or clean-fuel vehicles and their fuels as described in any other parts of this chapter, including 40 CFR parts 86 and 88 (e.g., fuel venting provisions for gaseous fuel vehicles during refueling).

(2) Vehicles which have a closed or sealed fuel system may be certified at the administrator's option by engineering evaluation in lieu of testing. These vehicles will be certified as ILEVs only if a leak in the fuel system would result in the vehicle becoming inoperative due to loss of fuel supply, or if half the fuel escapes within 24 hours.

(b) *Identification.* In the application for a vehicle's certification as an ILEV, the manufacturer or the manufacturer's agent shall provide for positive identification of the vehicle's status as an ILEV in the vehicle's Vehicle Emission Control Information (VECI) label in accordance with 40 CFR 86.094–35 and 86.095–35. The label shall contain a highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards for ILEV exhaust and evaporative emission standards.

(c) *Light-duty vehicles and light-duty trucks.* ILEVs in LDV and LDT classes shall have exhaust emissions which do not exceed the exhaust emission standards in grams per mile listed in Table C93–6.1, as measured under the applicable Federal Test Procedures in 40 CFR part 86, subpart B. An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable to conventional gasoline-fueled, methanol-fueled or diesel-fueled LDVs/LDTs of the same vehicle class and model year.

(d) *Heavy-duty vehicles.* ILEVs in the HDV class shall have exhaust emissions with combined non-methane hydrocarbon and oxides of nitrogen exhaust emissions which do not exceed the exhaust emission standards in grams per brake horsepower-hour listed in Table C93–6.2, as measured under the applicable Federal Test Procedures in 40 CFR part 86, subpart M. An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable in the case of conventional gasoline-fueled, methanol-fueled or diesel-fueled HDVs of the same weight class and model year.

(e) *Applicability.* State actions to opt out of the clean-fuel fleet program under section 182(c) of the Act do not affect the applicability of the ILEV program in the affected states.

§ 88.312–93 Inherently Low-Emission Vehicle labeling.

(a) *Label design.* (1) Label design shall consist of a white rectangular background, approximately 12 inches (30 centimeters) high by 18 inches (45 centimeters) wide, with "CLEAN AIR VEHICLE" printed in contrasting block capital letters at least 4.3 inches (10.6 centimeters) tall and 1.8 inches (4.4 centimeters) wide with a stroke width not less than 0.5 inches (1.3 centimeters). In addition, the words "INHERENTLY LOW–EMISSION VEHICLE" must be present in lettering no smaller than 1 inch (2.5 centimeters) high. Nothing shall be added to the label which impairs readability. Labels shall include a serialized identification number.

(2) The ILEV label shall be fabricated or affixed to a vehicle in such a manner that its removal from the vehicle cannot be accomplished without defacing or destroying the label in whole or in part.

(3) Along with the manufacturer's application to certify a particular ILEV engine class, the manufacturer or the manufacturer's agent shall submit to EPA ILEV labels or reasonable facsimiles of the types which may be mounted on a certified ILEV vehicle of that class.

(b) *Eligibility.* Vehicle manufacturers or their agents must install ILEV labels on a certified ILEV vehicle at the time of its sale to an eligible fleet owner if the vehicle is to be eligible for expanded TCM exemptions. An eligible fleet owner is one who is in a covered area and owns a total of at least ten motor vehicles (including the ILEV(s) being purchased) which operate in the owner's fleet. All of the following shall be provided to demonstrate eligibility: Photocopies of no less than nine motor vehicle registrations indicating registration in the ILEV purchaser's name, a signed statement by the ILEV purchaser that these vehicles are operational in the purchaser's fleet and that the ILEV being purchased will also be operated in this fleet, and a signed statement by the ILEV purchaser that the ILEV labels will be removed and disposed of when the vehicle is sold, given, leased (except as part of a daily rental fleet), or offered for long-term loan to someone who has not demonstrated eligibility for expanded TCMs available to ILEVs according to these criteria.

(c) *ILEV Label installation.* (1) Except as provided for in this paragraph (c), no person shall attach an ILEV label or any facsimile of an ILEV label to any vehicle.

(2)(i) The manufacturer or the manufacturer's agent shall attach three labels on the vehicle in plain sight: One on the rear of the vehicle and one on each of two sides of the vehicle. Each label shall conform to the specifications of paragraph (a) of this section.

(ii) In the case that an ILEV label of the proportions specified in paragraph (a) of this section cannot be attached to the rear of the ILEV, the manufacturer or the manufacturer's agent shall attach to the rear of the vehicle an ILEV label of the following proportions. The label shall consist of a white rectangular background, approximately four inches (10 centimeters) high by 24 inches (60 centimeters) wide, with "CLEAN AIR VEHICLE" printed in contrasting block capital letters at least 2.8 inches (7 centimeters) tall and 1.3 inches (3.3 centimeters) wide with a stroke width not less than 0.3 inches (0.8 centimeters). In addition, the words "INHERENTLY LOW-EMISSION VEHICLE" must be present in lettering no smaller than 0.6 inch (1.5 centimeters) high. Nothing shall be added to the label which impairs readability. Labels shall include a serialized identification number.

(d) *Label removal.* Fleet ILEV owners shall remove and dispose of the ILEV labels on a vehicle before selling or transferring ownership of an ILEV or offering it for lease (unless the ILEV is part of a daily rental fleet) or long-term loan. This provision shall not apply if the person who is receiving the vehicle demonstrates eligibility for expanded TCM exemptions under the federal ILEV program as described in paragraph (b) of this section, or is otherwise qualified under state regulations which expressly expand ILEV label eligibility.

(e) *Label replacement.* (1) The manufacturer shall make replacement ILEV labels available to the fleet owner

of a qualifying ILEV to replace any ILEV label which has been lost or removed due to vehicle damage, repair, sale, or lease. The fleet owner's request shall include proof of ownership of the ILEV in question and proof of the fleet owner's eligibility for ILEV TCM exemptions, as outlined in paragraph (c) of this section. Each label shall be imprinted with the same serial number as initially assigned to the damaged/missing ILEV label(s) for that vehicle. Any portion of a damaged label remaining on the ILEV shall be removed from the vehicle and submitted with the request as proof of loss.

(2) Upon receipt of the replacement ILEV label(s), the fleet owner shall attach the new ILEV label(s) only to the vehicle for which replacement ILEV label(s) were requested.

§ 88.313–93 Incentives for the purchase of Inherently Low-Emission Vehicles.

(a) *Administration.* (1) The incentives granted to ILEVs provided in this section are not effective outside of nonattainment areas for which states are required to establish CFFV programs under section 246 of the CAA, unless specifically added by states for qualifying vehicles.

(2) Incentives for purchasing ILEVs shall not be transferred between vehicles within the same fleet nor shall they be sold or traded.

(3) No vehicle over 26,000 pounds (11,800 kilograms) GVWR shall be eligible for the following ILEV incentives.

(b) *Exemption from temporal TCMs.* A fleet vehicle which has been certified and labeled as an ILEV according to the provisions of this section and which continues to be in compliance with applicable emissions standards and other ILEV program requirements shall be exempted from TCMs existing for air quality reasons included in approved state implementation plans which restrict vehicle usage based primarily on temporal considerations, such as time-of-day and day-of-week exemptions.

(c) *Exemption from high-occupancy vehicle lane restrictions.* (1) A fleet vehicle which has been certified and labeled as an ILEV according to the provisions of §§ 88.311 and 88.312 and which continues to be in compliance with applicable emissions standards and other ILEV program requirements shall be exempt from TCMs which restrict a vehicle's access to certain roadway lanes based on the number of occupants in that vehicle, usually known as high-occupancy vehicle (HOV) lanes. These exemptions shall not apply if they would create a clear and direct safety hazard.

(2) In a state containing a covered area, or areas, the governor may petition the Administrator for a waiver from the exemption from HOV lane restrictions for ILEVs for any section of HOV lane in the covered area(s) that can be shown to be congested primarily due to the operation or projected operation of ILEVs. The waiver application shall demonstrate the infeasibility of other means of alleviating HOV/CAV lane congestion, such as adding an additional HOV/CAV lane, further increasing vehicle occupancy requirements and reducing the use of the lane by noneligible vehicles.

Tables to Subpart C of Part 88

TABLE C94–1.—FLEET CREDIT TABLE BASED ON REDUCTION IN NMOG. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS—TABLE C94–1.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.29	1.47
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE C94–1.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.29	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

TABLE C94–1.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	1.00	1.26	0.71	0.91	1.11

TABLE C94–2.—FLEET CREDIT TABLE BASED ON REDUCTION IN NMOG+NO_x. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS—TABLE C94–2.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

NMOG+NO_x	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	1.00	1.39	0.33	0.43	0.52

TABLE C94–2.—FLEET CREDIT TABLE BASED ON REDUCTION IN $NMOG+NO_X$. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS—TABLE C94–2.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE—Continued

$NMOG+NO_x$	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
ULEV	1.09	1.52	1.00	1.39	2.06
ZEV	1.73	2.72	1.73	2.72	3.97

TABLE C94–2.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

$NMOG+NO_x$	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.09	0.13	0.67	0.96	1.54
ZEV	0.73	1.34	1.40	2.29	3.45

TABLE C94–2.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

$NMOG+NO_x$	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	1.00	1.39	0.33	0.43	0.52

TABLE C94–3.—FLEET CREDIT TABLE BASED ON REDUCTION IN CARBON MONOXIDE. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS—TABLE C94–3.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

CO	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	1.00	1.00	1.00	1.00	1.00
ULEV	2.00	2.29	2.00	2.29	2.47
ZEV	3.00	3.59	3.00	3.59	3.94

TABLE C94–3.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

CO	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	1.00	1.00	1.00	1.00	1.00
ZEV	2.00	2.29	2.00	2.29	2.47

TABLE C94–3.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

CO	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 TW	LDT >6000 GVWR, >3750 TW ≤5750 TW	LDT >6000 GVWR, >5750 TW
LEV	1.00	1.00	1.00	1.00	1.00

TABLE C94–4.—FLEET CREDIT TABLE BASED ON REDUCTION IN NMHC+NO_X. VEHICLE EQUIVALENTS FOR HEAVY-DUTY VEHICLES—TABLE C94–4.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

NMHC+NO_X	Light HDV	Medium HDV	Heavy HDV
LEV	1.00	1.00	1.00
ULEV	1.87	1.87	1.87
ZEV	3.53	3.53	3.53

TABLE C94–4.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

NMHC+NO_X	Light HDV	Medium HDV
LEV	0.00	0.00
ULEV	0.87	0.87
ZEV	2.53	2.53

TABLE C94–4.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

NMHC+NO_X	Light HDV	Medium HDV
LEV	1.00	1.00

TABLE C94–5.—FLEET CREDIT TABLE BASED ON REDUCTION IN CO. VEHICLE EQUIVALENTS FOR HEAVY-DUTY VEHICLES—TABLE C94–5.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

CO	Light HDV	Medium HDV	Heavy HDV
LEV	1.00	1.00	1.00
ULEV	2.00	2.00	2.00
ZEV	3.00	3.00	3.00

TABLE C94–5.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

CO	Light HDV	Medium HDV
LEV	0.00	0.00
ULEV	1.00	1.00
ZEV	2.00	2.00

TABLE C94–5.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

CO	Light HDV	Medium HDV
LEV	1.00	1.00

TABLE C93–6.—ILEV EXHAUST EMISSION STANDARDS—TABLE C93–6.1.—LIGHT-DUTY ILEV EXHAUST EMISSION STANDARDS

Vehicle/engine class/subclass[1,2]	Miles[3]	NMOG (g/mi)	CO (g/mi)	NO_X (g/mi)	PM[4] (g/mi)	HCHO (g/mi)
Light-duty vehicles	50,000	0.075	3.4	0.2	.....	0.015
	100,000	0.090	4.2	0.3	0.08	0.018
LDTs, 0–6000 lbs. GVWR, 0–3750 lbs. LVW	50,000	0.075	3.4	0.2	.....	0.015
	100,000	0.090	4.2	0.3	0.08	0.018
LDTs, 0–6000 lbs. GVWR, 3751–5750 lbs. LVW	50,000	0.100	4.4	0.4	.....	0.018
	100,000	0.130	5.5	0.5	0.08	0.023
LDTs, over 6000 lbs. GVWR, 0–3750 lbs. TW	50,000	0.125	3.4	0.2	.....	0.015
	120,000	0.180	5.0	0.3	0.08	0.022
LDTs, over 6000 lbs. GVWR, 3751–5750 lbs. TW	50,000	0.160	4.4	0.4	.....	0.018
	120,000	0.230	6.4	0.5	0.10	0.027
LDTs, over 6000 lbs. GVWR, 5751–8500 lbs. TW	50,000	0.195	5.0	0.6	.....	0.022
	120,000	0.280	7.3	0.8	0.12	0.032

TABLE C93–6.2.—HEAVY-DUTY ILEV EXHAUST EMISSION STANDARDS

Vehicle/engine class/subclass	Miles	NMHC+NO_X (g/BHP-hr)	CO (g/BHP-hr)	PM[4] (g/BHP-hr)	HCHO (g/BHP-hr)
Heavy-duty engines[1]	See 40 CFR 86.090–2	2.5	14.4	0.10	0.05

[1] Exhaust emission standards, as measured under the applicable Federal Test Procedures in 40 CFR part 86. These vehicles/engines shall also comply with all requirements of 40 CFR part 86 which are applicable to conventional gasoline-fueled, methanol-fueled or diesel-fueled vehicles/engines of the same vehicle/engine class and model year, unless otherwise determined.
[2] LDT-light duty truck, LVW-loaded vehicle weight, TW-test weight, GVWR-gross vehicle weight rating.
[3] Standards are applicable up to the indicated number of miles/years.
[4] Standards for particulate matter (PM) apply only to diesel-fueled vehicles.

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federal register

Monday
March 1. 1993

Part III

Department of Agriculture

Cooperative State Research Service
Agricultural Research Service

7 CFR Part 3515
Biotechnology Risk Assessment Research Grants Program; Administrative Provisions; Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Research Service

7 CFR Part 3515

Biotechnology Risk Assessment Research Grants Program; Administrative Provisions

AGENCIES: Cooperative State Research Service and Agricultural Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would establish a new chapter XXXV and part 3515 of title 7, subtitle B, of the Code of Federal Regulations, for the purpose of administering within the Cooperative State Research Service (CSRS) and the Agricultural Research Service (ARS) a Biotechnology Risk Assessment Research Grants Program (program) to be conducted under the authority of section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). This proposed rule will establish the procedures to be followed annually in the solicitation of grant preproposals and proposals, the evaluation of such proposals, and the award of research grants under this program. However, it should be noted that the Department is currently developing a single rule that will establish the general procedures involved in the solicitation of proposals, the evaluation of such proposals, and the award of grants under this and other grant programs administered by the Cooperative State Research Service.

DATES: Comments are invited from interested individuals and organizations and must be received on or before March 31, 1993.

ADDRESSES: Comments should be sent to Terry J. Pacovsky, Director, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 322, Aerospace Center, Washington, DC 20250–2200.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky at (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The Office of Management and Budget has approved the information collection requirements contained in these regulations at 7 CFR part 3515 under the provisions of 44 U.S.C. chapter 35 and OMB Document No. 0524–0022 has been assigned. The information collection requirements of the proposed rule at 7 CFR part 3515 will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980. The public reporting burden for the information collections contained in these regulations is estimated to vary from ½ hour to 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Document No. 0524–0022), Washington, DC 20503.

Classification

This rule has been reviewed under Executive Order No. 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographical regions. It will not have a significant economic impact on competitive employment, investment productivity, innovation, or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Catalog of Federal Domestic Assistance

The Biotechnology Risk Assessment Research Grants Program will be listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921), the Secretary of Agriculture is authorized to make grants for environmental assessment research concerning the introduction of genetically engineered organisms into the environment to any public or private research or educational institution or organization. 7 CFR 2.106(a)(38) and 7 CFR 2.107(a)(37), as amended (57 FR 9649, March 20, 1992), delegate this authority to the Administrators of CSRS and ARS. The Secretary shall withhold from outlays of the Department for research on biotechnology, as defined and determined by the Secretary, at least one percent of such amount for the purpose of making grants under this section for research on biotechnology risk assessment.

The administrative regulations governing the grant program authorized by section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 are proposed to be established as follows:

List of Subjects in 7 CFR Part 3515

Grant programs—agriculture, Grants administration.

It is proposed to establish a new chapter XXXV in 7 CFR subtitle B, consisting at this time of part 3515, to read as follows:

CHAPTER XXXV—COOPERATIVE STATE RESEARCH SERVICE AND AGRICULTURAL RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3515—BIOTECHNOLOGY RISK ASSESSMENT RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.

3515.1 Applicability of regulations.
3515.2 Definitions.
3515.3 Eligibility requirements.
3515.4 How to apply for a grant.
3515.5 Evaluation and disposition of applications.
3515.6 Grant awards.
3515.7 Use of funds; changes.
3515.8 Other Federal statutes and regulations that apply.
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Authority: 7 U.S.C. 5921.

Subpart A—General

§3515.1 Applicability of regulations.

(a) The regulations of this part apply to research grants awarded under the authority of section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990, (7 U.S.C. 5921). Grants awarded under this section will support biotechnology risk assessment research to help address concerns about the effects of introducing certain biotechnology products into the environment and to help regulators develop policies concerning the introduction of such products. Taking into consideration any determinations made through consultations with such entities as the Animal and Plant Health Inspection Service, the Forest Service, the Environmental Protection Agency, the Office of Agricultural Biotechnology, and the Agricultural Biotechnology Research Advisory Committee, the Administrators of CSRS and ARS shall determine and announce, through publication of a Notice in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, specific areas of research for which preproposals or proposals will be solicited and the extent that funds are available therefor.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§3515.2 Definitions.

As used in this part:

(a) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, through written evaluations of grant applications, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(b) *Administrator* means the Administrator of the Cooperative State Research Service (CSRS) and/or the Administrator of the Agricultural Research Service (ARS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(c) *Awarding official* means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify grant instruments has been delegated.

(d) *Biotechnology* means any technique that uses living organisms (or parts of organisms) to make or modify products, to improve plants or animals, or to develop microorganisms for specific use. The development of materials that mimic molecular structures or functions of living systems is included.

(e) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(f) *Department* means the Department of Agriculture.

(g) *Grant* means the award by the Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the program solicitation.

(h) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(i) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(j) *Principal investigator* means a single individual who is responsible for the scientific and technical direction of the project, as designated by the grantee in the grant application and approved by the Administrator.

(k) *Project* means the particular activity within the scope of one or more of the research program areas identified in the program solicitation that is supported by a grant under this part.

(l) *Project period* means the total time approved by the Administrator for conducting the proposed project as outlined in an approved grant application.

(m) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(n) *Methodology* means the project approach to be followed to carry out the project.

§3515.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any public or private research or educational institution or organization shall be eligible to apply for and to receive a grant award under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including by proposed subagreements);

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants or contracts from the Federal government;

(4) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such finding and the basis therefor.

§3515.4 How to apply for a grant.

(a) A program solicitation will be prepared and announced through publications such as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, as early as practicable each fiscal year. The Department may elect to solicit preproposals each fiscal year in order to eliminate from consideration proposed research that does not address narrowly focused program objectives. A preproposal will be limited in length (in comparison to a full proposal) to alleviate waste of time and effort by applicants in the preparation of proposals and USDA staff in the review of proposals. If the Department solicits preproposals through publication of the annual program solicitation, the Department does not anticipate publishing a subsequent solicitation for full proposals. The program solicitation will contain information sufficient to enable applicants to prepare preproposals or full proposals under this program and will be as complete as possible with respect to:

(1) Descriptions of the specific research areas that the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Eligibility requirements;
(3) Obtaining application kits;
(4) Deadline dates for submission of preproposal or proposal packages;
(5) Name and mailing address to send preproposals or proposals;
(6) Number of copies to submit; and
(7) Special requirements.

(b) *Application Kit.* An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant preproposals or proposals.

(c) *Format for preproposals.* As stated above, the Department may elect to solicit preproposals under this program. Unless otherwise indicated by the Department in the annual program solicitation, the following general format applies for the preparation of preproposals:

(1) *Application Cover Page.* All preproposals submitted by eligible applicants should contain an Application Cover Page, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. The title of the proposal must be brief (80-character maximum), yet represent the major thrust of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" and "research on" should not be used.

(2) *Project Summary.* Each preproposal must contain a project summary, the text of which may not exceed three (3) single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration a preproposal in which the project summary page limit is exceeded. The project summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and supporting objectives;
(ii) Plans to accomplish project goal(s); and
(iii) Relevance or significance of the project to United States agriculture.

(3) *Budget.* A budget detailing requested support for the proposed project period must be included in each preproposal. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3515.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(4) *Special Requirements.*

(i) The annual program solicitation will describe any special preproposal submission requirements, such as paper size or type pitch to be used in the preparation of preproposals. The solicitation will also describe special program requirements, such as conference attendance or electronic project reporting, for which applicants may allocate funds when preparing proposed budgets.

(ii) By signing the Application Cover Page identified under § 3515.4(c)(1) in its submission of a preproposal, the applicant is certifying compliance with the restrictions on the use of appropriated funds for lobbying set out in 7 CFR part 3018.

(5) *Evaluation of preproposals.* Preproposals shall be evaluated to determine whether the substance of the proposed project is appropriate to the objectives of this program as set out in the annual program solicitation. Subsequently, the Administrator shall request full proposals from those applicants proposing projects deemed appropriate to the objectives of this program as set out in the annual program solicitation. Such proposals shall conform to the format for full proposals set out below and shall be evaluated in accordance with § 3515.5 through § 3515.15 of this part.

(d) *Format for full proposals.* Unless otherwise indicated by the Department in the annual program solicitation, the following general format applies for the preparation of full proposals under this program:

(1) *Application Cover Page.* All full proposals submitted by eligible applicants should contain an Application Cover Page, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major thrust of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(2) *Project Summary.* Each full proposal must contain a project summary, the length of which may not exceed three (3) single- or double-spaced pages. This summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and supporting objectives;
(ii) Plans to accomplish project goal(s); and
(iii) Relevance or significance of the project to United States agriculture.

(3) *Project Description.* The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration proposals in which the project description exceeds this page limit. The project description must contain the following components:

(i) Introduction. A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published work in the field under consideration, including the work of key project personnel on the current application, should be reviewed. The current status of research in the particular scientific field also should be described. All work cited, including that of key personnel, should be referenced.

(ii) Progress Report. If the proposal is a renewal of an existing project supported under this program, include a clearly marked performance report describing results to date from the previous award. This section should contain the following information:

(A) a comparison of actual accomplishments with the goals established for the previous award;

(B) the reasons established goals were not met, if applicable; and

(C) a listing of any publications resulting from the award. Copies of reprints or preprints may be appended to the proposal if desired.

(4) *Rationale and Significance.* Present concisely the rationale behind the proposed project. The objectives' specific relationship and relevance to the area in which an application is submitted and the objectives' specific relationship and relevance to potential regulatory issues of United States biotechnology research should be shown clearly. Any novel ideas or contributions that the proposed project offers also should be discussed in this section.

(5) *Experimental Plan.* The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly. Specifically, this section must include:

(i) A description of the investigations and/or experiments proposed and the sequence in which the investigations or experiments are to be performed;

(ii) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;

(iii) Results expected;

(iv) Means by which experimental data will be analyzed or interpreted;

(v) Pitfalls that may be encountered;

(vi) Limitations to proposed procedures; and

(vii) Tentative schedule for conducting major steps involved in these investigations and/or experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personnel (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(6) *Facilities and equipment.* All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(7) *Collaborative arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(8) *Personnel support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages each in length, excluding the publication lists. The Department reserves the option of not forwarding for further consideration a proposal in which the vitae exceed the two-page limit; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(9) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3515.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(10) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Application Kit, identified above in § 3515.4(b), contains a form which is suitable for such certification of compliance.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in § 3515.4(b), contains a form which is suitable for such certification.

(iii) *Experimental vertebrate animal care.* The responsibility for the humane care and treatment of any experimental vertebrate animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.)* and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The Application Kit, identified above in

§ 3515.4(b), contains a form which is suitable for such certification.

(11) *Current and pending support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit, identified above in § 3515.4(b), contains a form which is suitable for listing current and pending support.

(12) *Additions to project description.* Each project description is expected by the Administrator, the members of peer review groups, and the relevant program staff to be complete while meeting the page limit established in § 3515.4(d)(3). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), the number of copies submitted should match the number of copies of the application requested in the program solicitation. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(13) *Organizational management information.* Specific management information relating to an applicant shall be submitted on the *one-time basis prior to the award of a grant* identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. The Department will contact an applicant to request organizational management information once a proposal has been recommended for funding.

§ 3515.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants and postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the areas covered by the applications received and whose general roles are defined in § 3515.2. Specific evaluations will be based upon the criteria established in subpart B, § 3515.15, unless CSRS and/or ARS determine that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, or for specific types of projects to be supported, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of these evaluations is to provide information upon which the Administrator may make an informed judgment in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Administrator will approve support using currently available funds, defer support due to lack of funds or a need for further evaluations, or disapprove support for the proposed project in whole or in part. With respect to approved projects, the Administrator will determine the project period (subject to extension as provided in § 3515.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3515.6 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official of CSRS or ARS shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSRS or ARS under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (part 3015 and part 3016 of this title).

(b) *Grant award document and notice of grant award.*

(1) *Grant award document.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(vii) Legal authority(ies) under which the grant is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(ix) Other information or provisions deemed necessary by CSRS or ARS to carry out their respective granting activities or to accomplish the purpose of a particular grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to

the grantee that is not included in the grant award document.

(c) *Types of grant instruments.* The major types of grant instruments shall be as follows:

(1) *New grant.* This is a grant instrument by which CSRS or ARS agrees to support a specified level of effort for a project that generally has not been supported previously under this program. This type of grant is approved on the basis of peer review recommendation.

(2) *Renewal grant.* This is a grant instrument by which CSRS or ARS agrees to provide additional funding for a project period beyond that approved in an original or amended award. When a renewal application is submitted, it should include a summary of progress to date from the previous granting period. A renewal grant shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Supplemental grant.* This is an instrument by which CSRS or ARS agrees to provide small amounts of additional funding under a new or renewal grant as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature normally will not require additional peer review.

(d) *Funding mechanisms.* The two mechanisms by which CSRS or ARS may elect to award new, renewal, and supplemental grants are as follows:

(1) *Standard grant.* This is a funding mechanism whereby CSRS or ARS agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) *Continuation grant.* This is a funding mechanism whereby CSRS or ARS agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants also will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSRS or ARS, a grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original grant application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

(e) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant commits or obligates the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion thereof.

§ 3515.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.*

(1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the awarding official of CSRS or ARS, as appropriate, for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the awarding official of CSRS or ARS, as appropriate, *prior to effecting such changes.* Normally, no requests for such changes that are outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSRS or ARS, as appropriate, *prior to effecting such changes.*

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the awarding official of CSRS or ARS, as appropriate, *prior to effecting such changes,* unless prescribed otherwise in the terms and conditions of a grant.

(c) *Changes in project period.* The project period determined pursuant to § 3515.5(b) may be extended by the awarding official of CSRS or ARS, as appropriate, without additional financial support, for such additional period(s) as the appropriate awarding official determined may be necessary to complete, or fulfill the purposes of, an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the appropriate awarding official, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe the circumstances under which written approval must be requested and obtained from the awarding official of CSRS or ARS, as appropriate, prior to instituting changes in an approved budget.

§ 3515.8 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant preproposals or proposals considered for review or to grants awarded under this part. These include but are not limited to:

7 CFR 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 520—ARS implementation of the National Environmental Policy Act;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of

31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended;

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3407—CSRS implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504–Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3515.9 Other conditions.

(a) The Administrator may elect to use a portion of available funding each fiscal year to support an Annual Conference, the purpose of which will be to bring together scientists and regulatory officials relevant to this program. At the Annual Conference, the participants may offer individual opinions regarding research needs, update information and discuss progress, or may offer individual opinions on areas of risk assessment research appropriate to agricultural biotechnology. The annual program solicitation will indicate whether funds are available to support an Annual Conference and, if so, will include instructions on the preparation and submission of proposals requesting funds from the Department for support of an Annual Conference. The Department may also elect to require principal investigators whose research is funded under this program to attend an Annual Conference and to present data on the results of their research efforts. Should attendance at an Annual Conference be required, the annual program solicitation will so indicate, and principal investigators may include attendance costs in their proposed budgets.

(b) The Administrator may, with respect to any grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Administrator's judgment, such conditions are necessary to ensure or protect advancement of the approved project, the interest of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3515.10 Establishment and operation of peer review groups.

Subject to § 3515.5, the Administrator shall adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3515.14.

§ 3515.11 Composition of peer review groups.

(a) Peer review group members and *ad hoc* reviewers will be selected based upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(1) The level of formal scientific or technical education by the individual and the extent to which an individual is engaged in relevant research activities;

(2) The need to include as peer reviewers experts from various areas of specialization within relevant scientific or technical fields;

(3) The need to include as peer reviewers experts from a variety of organizational types (e.g., universities, Federal laboratories, industry, private consultant(s)) and geographic locations; and

(4) The need to maintain a balanced composition of peer review groups related to minority and female representation and an equitable age distribution.

§ 3515.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in title 18 of the United States Code relating to criminal activity, Departmental regulations governing employee responsibilities and conduct (part 0 of this title), and Executive Order No. 11222, as amended.

§ 3515.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental regulations (part 1 of this title).

§ 3515.14 Proposal review.

(a) All grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of application to announced program area). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(b) All applications will be carefully reviewed by the Administrator, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the program solicitation.

(c) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding officials of CSRS and ARS.

§ 3515.15 Evaluation factors.

In carrying out its review under § 3515.14, the peer review group will take into account the following factors unless, pursuant to § 3515.5(a), different evaluation criteria are specified in the program solicitation:

(a) Scientific merit of the proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness and originality; and

(7) Appropriateness to regulation of biotechnology and risk assessment.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in

the proposal, and performance record and/or potential for future accomplishments;

(2) Time allocated for systematic attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation

(c) Relevance of project to solving biotechnology regulatory uncertainty for United States agriculture.

(1) Scientific contribution of research in leading to important discoveries or significant breakthroughs in announced program areas; and

(2) Relevance of the risk assessment research to agricultural and environmental regulations.

Done at Washington, DC, this 18th day of February, 1993.

Bruce Stillings,

Acting Assistant Secretary, Science and Education.

[FR Doc. 93–4254 Filed 2–26–93; 8:45 am

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federal register

Monday
March 1, 1993

Part IV

Department of Education

34 CFR Part 200
Chapter 1 Program in Local Educational Agencies; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA69

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (chapter 1). These regulations implement a statutory amendment to chapter 1 that provides flexibility to local educational agencies (LEAs) in meeting one of the fiscal requirements governing schoolwide projects. Specifically, the amendment allows an LEA that has reduced its average per pupil expenditure districtwide to reduce the average per pupil expenditure in schoolwide project schools in proportion to the reduction in average per pupil expenditure for all schools in the LEA.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. However, the regulations will not become effective until after the information collection requirements contained in the regulations have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Paul S. (Sandy) Brown, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202–6132. 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 time.

SUPPLEMENTARY INFORMATION: Chapter 1 provides Federal financial assistance to LEAs to improve the educational opportunities of educationally deprived children by helping those children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills. One of the ways this purpose is accomplished is through schoolwide projects, in which chapter 1 funds may be used to upgrade the entire educational program in very high poverty schools.

To ensure that chapter 1 funds are not used in schoolwide projects merely to replace State and local funds, section 1015(b)(6)(B) of chapter 1 requires an LEA to continue to spend in each schoolwide project school at least the same amount of State and local funds per child as it spent in the preceding year in each school. In States and districts that have had to implement budget cuts, however, this requirement threatened the continued operation of schoolwide projects and the implementation of new ones. As a result, in Public Law 102–359, Congress amended section 1015(b)(6)(B) to afford some leeway to an LEA whose districtwide per pupil expenditure declines. Effective July 1, 1992, section 1015(b)(6)(B)(ii) permits an LEA to reduce its average per pupil expenditure in schoolwide project schools in proportion to the reduction in the average per pupil expenditure for all schools in the LEA. These final chapter 1 regulations add § 200.36(c)(2)(ii) to implement this change.

The chapter 1 program supports the six National Education Goals. The flexibility in these regulations supports these goals by making it easier for LEAs to implement school-based reform through chapter 1 schoolwide projects.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate a statutory change, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations merely incorporate a statutory change and do not impose excessive burdens or require unnecessary Federal supervision.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Section 200.36 contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)).

Section 1015(b)(6)(B) of chapter 1 requires LEAs operating schoolwide projects to maintain local and State fiscal effort in schoolwide project schools. The change being made to this section that implements a recent amendment to section 1015(b)(6)(B) of chapter 1 merely provides LEAs with some flexibility for determining whether they have maintained local and State fiscal effort in schoolwide project schools. The change does not, in any way, increase the total annual reporting and recordkeeping burden that was already approved by OMB. The annual public reporting and recordkeeping burden for collection of information for § 200.36, which included the burden associated with determining compliance with this fiscal requirement, is estimated to average 2 hours per response for 6,000 LEAs and 3 hours per response for 3,000 LEAs.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements, State-administered programs.

(Catalog of Federal Domestic Assistance Number: 84.010 Chapter 1 Program in Local Educational Agencies)

Dated: February 22, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

2. Section 200.36 is amended by redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii), paragraph (c)(2)(i) is amended by adding the phrase "and (iii)" after "(c)(2)(ii)", and by adding a new paragraph (c)(2)(ii) to read as follows:

§ 200.36 What are the requirements for schoolwide projects?

* * * * *

(c) * * *

(2) * * *

(ii) If the average per pupil expenditure of the LEA is less than its average per pupil expenditure in the previous fiscal year, the LEA may reduce the average per pupil expenditure in schoolwide project schools in the exact proportion to the average reduction in the expenditures for all schools in the LEA.

* * * * *

[FR Doc. 93–4504 Filed 2–26–93; 8:45 am]

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federal register

Monday
March 1, 1993

Part V

Department of Education

34 CFR Part 50

Exchange Visitor Program; Request for Waiver of Residence Requirement; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 50

RIN 1801–AA07

U.S. Exchange Visitor Program; Request for Waiver of the Two-Year Foreign Residence Requirement

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend part 50 of title 34 of the Code of Federal Regulations (CFR) relating to requests for waivers of the two-year foreign residence requirement under the U.S. Exchange Visitor Program. The amended regulations would simplify the language and format of provisions establishing procedures, criteria, and other policies used by the Department of Education in requesting waivers for exchange visitors with respect to areas in which the Department serves as an interested agency. These areas are education and rehabilitative services.

DATES: Comments must be received on or before April 15, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Chairman, Exchange Visitor Waiver Review Board, U.S. Department of Education, 400 Maryland Avenue, SW., room 3047, FOB–6, Washington, DC 20202–3721.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Jean Pedersen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3047, FOB–6, Washington, DC 20202–3721. Telephone: (202) 401–0430. 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 time.

SUPPLEMENTARY INFORMATION: Section 212(e) of the Immigration and Nationality Act, as amended, provides that an exchange visitor who enters the United States under the Mutual Educational and Cultural Exchange Program must subsequently meet a two-year foreign residence requirement as a condition of eligibility for an immigrant visa, permanent residence, or a nonimmigrant visa under the Act. Under this section the Attorney General is authorized to waive the two-year foreign residence requirement "upon the favorable recommendation of the Director of the United States Information Agency (USIA) pursuant to the request of an interested United States Government Agency" (8 U.S.C. section 1182(e) (1988)). The Department of Education serves as an interested agency in education and rehabilitative services.

There has been established within the Department an Exchange Visitor Waiver Review Board (Board) to evaluate applications submitted to the Department for a waiver of the two-year foreign residence requirement and, as appropriate, to make requests through USIA regarding these applications. The regulations in 34 CFR part 50 establish the procedures, criteria, and other policies that the Board uses in carrying out these functions. An applicant has the responsibility of showing that an application satisfies these criteria and policies. This document proposes to amend part 50 in order to simplify and reorganize the regulatory language and to reflect the experience of the Board in administering these functions since the establishment of the Department.

The regulations would provide for the circumstances under which the Board requests a waiver for members of an exchange visitor's family. However, the proposed regulations would not retain a provision in the current part 50 to the effect that a waiver may be requested if the non-exchange visitor spouse of an exchange visitor meets certain criteria. In other respects, the proposed regulations would not differ substantively from the current regulations.

Applicants should be aware that the Board does not consider a request for a waiver based on personal hardship or on possible persecution in an exchange visitor's country of nationality or last residence or a request for extension of a visa. These requests are within the jurisdiction of the Immigration and Naturalization Service (INS) of the United States Department of Justice or of USIA. Moreover, the Board does not consider a request for a waiver based on notification that an exchange visitor's country has no objection to a waiver. This type of request is within the jurisdiction of USIA.

If an application for waiver meets the requirements of part 50 and if the Board is prepared to make a request to the USIA with respect to the application, the Board will submit the request before the exchange visitor is required to file with the INS documentation that may affect the visitor's status.

In considering the national or international interest under these regulations, the Board focuses upon the extent to which the applicant's program serves these interests in the field of education.

In considering the impact of a waiver on the country to which the exchange visitor could return, the proposed regulations call for the Board to consider the Exchange Visitor Skills List. This is a list of fields designated in April 1972 by the Secretary of State, and amended in June 1984 and September 1986 by the Director, U.S. Information Agency, which lists fields of specialized knowledge or skills, and those countries that clearly require the services of persons engaged in one or more of those fields.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Among the entities affected are small institutions of higher education and other small organizations that apply for waivers under these regulations. The regulations amend provisions for requesting waivers of the two-year foreign residence requirement for exchange visitors. They would not have a significant economic impact on the institutions of higher education or other organizations affected.

Paperwork Reduction Act of 1980

Sections 50.4 and 50.5 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Institutions of higher education, other educational organizations, and organizations providing rehabilitative services are eligible to apply for waivers under these regulations. The Department needs and uses the information to consider applications for waivers. Annual public reporting burden for this collection of information is estimated to average 8 hours per response for 25 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the

information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3047, FOB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 50

Cultural exchange programs, Education Department, Foreign residence requirements, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: February 22, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 50 to read as follows:

PART 50—U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

Sec.

50.1 What is the purpose of these regulations?
50.2 What definitions apply?
50.3 What is the Exchange Visitor Waiver Review Board?
50.4 What are the procedures for submitting an application?
50.5 What criteria does the Board apply?
50.6 How does the Board render a decision?
50.7 Under what circumstances does the Board request a waiver for members of an exchange visitor's family?

Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474; 22 U.S.C. 2451 *et seq.*, unless otherwise noted.

§ 50.1 What is the purpose of these regulations?

(a) The regulations in this part provide the Department's procedures and criteria for carrying out its responsibilities as an "interested United States Government agency" under section 212(e) of the Immigration and Nationality Act, as amended (the Act).

(b) Under the Act the Department is authorized to submit requests to the United States Information Agency (USIA) for recommendation to the Attorney General with respect to the waiver of the two-year foreign residence requirement for exchange visitors who enter the United States under the Mutual Educational and Cultural Exchange Program.

(c) The Department serves as an interested agency in education and rehabilitative services.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474; 22 U.S.C. 2451 *et seq.*)

§ 50.2 What definitions apply?

The following definitions apply to this part:

Applicant means an institution or organization that employs an exchange visitor and applies for a waiver under this part.

Board means the Exchange Visitor Waiver Review Board of the United States Department of Education.

Department means the United States Department of Education.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474; 22 U.S.C. 2451 *et seq.*)

§ 50.3 What is the Exchange Visitor Waiver Review Board?

(a) *Establishment.* The Secretary establishes within the Department an Exchange Visitor Waiver Review Board.

(b) *Membership.* (1) The Board consists of not more than five or less than three members, one of whom shall be the chairman.

(2) The Secretary appoints the chairman and the other members.

(c) *Functions.* The Board—

(1) Evaluates applications submitted to the Department for a waiver of the two-year foreign residence requirement described in § 50.1(b); and

(2) As appropriate, makes requests for waivers to USIA regarding the applications.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474; 22 U.S.C. 2451 *et seq.*)

§ 50.4 What are the procedures for submitting an application?

(a) An application for a waiver is normally submitted by an appropriate institution or organization that employs the exchange visitor for whom that institution or organization is seeking the waiver.

(b) The applicant may obtain an application form and information from the Executive Secretary of the Board.

(c) The applicant shall submit a completed and signed application, supporting documentation, and any other material the Board requests or the applicant considers germane to the Chairman, Exchange Visitor Waiver Review Board, International and Territorial Affairs Staff, Office of Intergovernmental and Interagency Affairs, United States Department of Education, Washington, DC 20202.

(d) The application must be signed by—

(1) The head of the department in which the exchange visitor is employed and

(2) Another senior official of the applicant institution, senior to the head of the department, who is authorized to sign the application.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3473; 22 U.S.C. 2451 *et seq.)*

§ 50.5 What criteria does the Board apply?

The Board evaluates each application for a waiver on the basis of the documentation presented by the applicant and each of the following criteria:

(a) *Significance of program or activity.* The Board reviews each application to determine the extent to which the program or activity of the applicant is—

(1) Of high priority and significance in an area of interest to the Department; and

(2) Of high priority to the public interest in its national or international aspects as it applies to the field of education.

(b) *Need for the exchange visitor.*

(1) The Board reviews each application to determine the need for the exchange visitor as an integral and continuing part of—

(i) The program or activity of the applicant; or

(ii) An essential component of that program or activity.

(2) The Board examines—

(i) The strength of relationship of the exchange visitor to the program or

activity, including the exchange visitor's particular contributions and responsibilities;

(ii) The sufficiency of the documentation, if any, that the loss of the visitor's services would seriously restrain the initiation, continuation, completion, or success of the program or activity; and

(iii) Documentation, if any, that the applicant has long-range plans and commitments respecting the exchange visitor.

(3) In applying this criterion the Board does not consider solely factors related to—

(i) Administrative or programmatic inconvenience to the applicant; or

(ii) A short-term recruitment problem or a local community or institutional personnel shortage.

(c) *Qualifications.* The Board reviews each application to determine the extent to which the exchange visitor—

(1) Has outstanding qualifications for the program or activity; and

(2) Demonstrates, based upon documentation of demonstrated accomplishment, a significant capability to make essential contributions to the program or activity and to American education or rehabilitative services over a long period.

(3) In applying this criterion the Board does not rely solely on information that the exchange visitor has specialized training or experience or is occupying a senior faculty or staff position.

(d) *Equity and quality in selection.*

(1) The Board reviews each application to determine the adequacy of the recruitment process with relation to equity and quality.

(2) The Board examines—

(i) The recruitment process for the position the exchange visitor holds, including the extent to which the applicant followed applicable equal opportunity procedures and standards in filling the position;

(ii) The qualifications of the exchange visitor as compared with those of other candidates for the position;

(iii) The reasons presented by the applicant as to why the exchange visitor was hired; and

(iv) Any reasons presented by the applicant as to why a U.S. citizen was not selected.

(e) *Impact on other country.* The Board assesses the impact of a waiver on the country to which the exchange visitor would return if the waiver were not granted, taking into consideration the Exchange Visitor Skills List.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474)

§ 50.6 How does the Board render a decision?

(a) No fewer than three members of the Board consider an application for a waiver.

(b) The Board may obtain expert advisory opinions from other sources.

(c) The Board requests a waiver only if the applicant strongly shows that a waiver is justified under the criteria and policies in this part.

(d) The Board transmits its decision, together with an explanation, to USIA.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474; 22 U.S.C. 2451 *et seq.*)

§ 50.7 Under what circumstances does the Board request a waiver for members of an exchange visitor's family?

If the Board decides to request a waiver for an exchange visitor who has a spouse or children subject to the foreign residence requirement, the Board also requests a waiver for the affected spouse or children.

(Authority: 8 U.S.C. 1182(e); 20 U.S.C. 3474; 22 U.S.C. 2451 *et seq.*)

[FR Doc. 93–4564 Filed 02–26–93; 8:45 am]

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federal register

Monday
March 1, 1993

Part VI

Department of Education

34 CFR Part 649
Patricia Roberts Harris Fellowship Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 649

RIN 1840–AB67

Patricia Roberts Harris Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Patricia Roberts Harris Fellowship Program. These amendments are needed to implement recently enacted changes made by the Higher Education Amendments of 1992. The proposed regulations would establish eligibility, selection criteria, and other terms and conditions for awarding grants to institutions of higher education to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented in these programs.

DATES: Comments must be received on or before March 31, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Jane Wrenn, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20202–5251.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Jane Wrenn. Telephone: (202) 708–9403. 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.

SUPPLEMENTARY INFORMATION: The Patricia Roberts Harris Fellowship Program supports National Education Goal 5 calling for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This program furthers Goal 5 objectives by enabling institutions of higher education to make available the benefits of master's level, professional, and doctoral education to women and individuals from minority groups underrepresented in these programs.

These proposed regulations would implement certain provisions of the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992.

The Secretary is proposing to revise existing regulations to conform to the applicable statutory changes and to make other changes to improve the administration and management of the program.

Institutional payment. These proposed regulations would provide for the statutory increase in the amount of the institutional payment to an institution of higher education in which a fellow is enrolled. The proposed regulations would clarify that the institutional payment, which is not considered part of the award to the individual fellow, is to cover full payment of the fellow's tuition and fees. This administrative change reflects the statutory reference to the National Science Foundation graduate fellowships, and the Secretary's determination that the proposed regulations governing the institutional payment should follow the National Science Foundation's policy regarding its graduate fellowship cost of education allowance.

Stipends. The proposed regulations would incorporate the statutory increase in the stipend paid to a fellow who is initially awarded a fellowship for the academic year 1993–1994 or any succeeding academic year. The stipend amount is to be paid at a level of support equal to that provided by the National Science Foundation graduate fellowships or the fellow's demonstrated level of financial need, whichever is less. The proposed regulations would provide that the stipend paid to a fellow who initially was awarded a fellowship prior to the academic year 1993–1994 remains at the level of funding authorized at the time of the initial fellowship award. (Note that the fellowship award plus the institutional payment equals the total "award", as defined in 34 CFR 77.1.) The statute does not provide for an increase for these fellows. The proposed regulations would clarify that the fellow's financial need is to be calculated under Part F of Title IV of the Higher Education Act (HEA) of 1965, as amended, in accordance with the statutory provision requiring that the fellow's demonstrated level of need be according to measurements of need approved by the Secretary.

Selection criteria. The proposed regulations contain new selection criteria that respond to the statutory changes requiring the Secretary to consider, in awarding grants, graduate preparation of underrepresented groups (the needs of underrepresented groups for specific training) and access to employment in the career fields in which they are underrepresented. Also, the new selection criteria would reflect the statutory changes creating two separate grant award competitions—one for master's level and professional study grant awards and a second for doctoral study grant awards.

Priorities. The proposed regulations contain new priorities as required by the statute. Preference would be given to applications from institutions of higher education that propose to give priority in awarding fellowships to (1) women and individuals from minority groups who are pursuing master's level or professional study and are underrepresented in the academic field for which the grant award is made; (2) women and individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest; and (3) women and individuals from traditionally underrepresented groups undertaking doctoral study. The Secretary also would establish and give an absolute preference to academic career fields of high national priority, selected from among the disciplines and subdisciplines listed in the appendix of the program regulations, or the resulting interdisciplines.

Fellowship conditions and components. The proposed regulations would provide for the tenure of fellowships for master's level and professional study to be the normal period for completing the degree, up to three years, with an additional 12-month period of support under special conditions, as required by the statutory changes. Also, the proposed regulations would incorporate the new statutory provisions governing a doctoral study fellowship. The statute provides for three years of fellowship support: two years for pre-dissertation study or research, to be followed by two years of institutional support, including one year of supervised teaching, and one year of fellowship support at the dissertation stage. During the two years of institutional support, the fellow may work on his/her dissertation. If the fellow completes the dissertation work during the period of institutional support, the fellow will not receive the third year of fellowship support. The proposed regulations would require that the two years of institutional financial support be in the amount of the fellow's financial need or in an amount equal to the stipend awarded in the last academic year of fellowship support, whichever is less.

Academic Year. The proposed regulations would provide that the grants are awarded for an academic year

and would define an academic year as the 12-month period commencing with the institution's fall instructional term. These changes reflect the current institutional practices that anticipate full-year, fulltime participation in graduate program activity by fellowship recipients.

Project. The proposed regulations would define "project" to include the activities necessary to support the fellows' successful completion of their designated educational programs. This proposed change reflects the expectation that the fellowships authorized in the institution's grant require recruitment, advisement, instruction, task assignment, program supervision and development, and other activities that constitute the project, all of which require support from grant and institutional resources toward achieving project objectives.

Careers that serve the public interest. The proposed regulations contain a new priority for institutions that propose to give priority in awarding fellowships to women and individuals from minority groups pursuing master's level study leading to careers that serve the public interest, as required by the statute. The proposed regulations would define careers that serve the public interest to include careers in government or in nonprofit community service organizations at the local, State, national, or international level. The proposed definition incorporates the concept of public service in government within a broader multilevel community-service base for careers that serve the public interest.

Minority. The proposed regulations would contain specific priorities for institutions that propose to give priority in awarding fellowships for master's level and professional study to women and individuals from minority groups, as required by the statute. The proposed regulations would define the term "minority" to include specific ethnic groups currently used for standard statistical purposes and allow the inclusion of any other ethnic group underrepresented in master's level, professional, or doctoral study, as documented on a case-by-case basis.

Traditionally underrepresented groups. The proposed regulations contain specific priorities for institutions that propose to give priority in awarding fellowships for doctoral study to women and individuals from traditionally underrepresented groups in doctoral study, as required by the statute. The proposed regulations would define "traditionally underrepresented groups" to include minorities and other groups that historically have been underrepresented in doctoral study.

Prohibition against discrimination. The proposed regulations would incorporate the standard Department policy prohibiting discrimination on the basis of race, color, national origin, religion, gender, age, or disabling condition from among the eligible project participants.

Individuals eligible for fellowships. The proposed regulations would clarify the eligibility requirements for individuals to whom the institution may award fellowships. The proposed regulations would incorporate the statutory requirement that only United States citizens are eligible to receive fellowships for doctoral study leading to an academic career.

Miscellaneous. The proposed regulations would modify some definitions, add new definitions, and clarify the procedures governing the institution's disbursement and return of grant funds to reflect statutory changes and to improve the administration and management of the program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small institutions of higher education. The regulations will impose only the minimal requirements necessary to ensure the proper expenditure of program funds. The regulations will not impose excessive regulatory burden and will not have a significant economic impact on the small entities affected.

Paperwork Reduction Act of 1980

Sections 649.10, 649.21, 649.31, 649.50, 649.51, and 649.64 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education are eligible to apply for grant awards under these regulations. The Department needs and uses this information to make grant awards. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3022, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there might be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 649

Colleges and universities, Education, Energy, Grant programs—education,

Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: February 16, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.094—Patricia Roberts Harris Fellowship Program.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 649 to read as follows:

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIP PROGRAM

Subpart A—General

Sec.

649.1 What is the Patricia Roberts Harris Fellowship Program?
649.2 Who is eligible for a grant?
649.3 What activities may the Secretary fund?
649.4 What funding reservations does the Secretary make for grants?
649.5 What regulations apply?
649.6 What definitions apply?

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

649.10 How does an institution of higher education apply for a grant?

Subpart C—How Does the Secretary Make a Grant for Master's Level and Professional Study Fellowships?

649.20 How does the Secretary evaluate an application?
649.21 What selection criteria does the Secretary use?
649.22 How does the Secretary establish priorities?

Subpart D—How Does the Secretary Make a Grant for Doctoral Study Fellowships?

649.30 How does the Secretary evaluate an application?
649.31 What selection criteria does the Secretary use?
649.32 How does the Secretary establish priorities?

Subpart E—How Are Fellows Selected?

649.40 How does an institution of higher education select fellows?
649.41 How does an individual apply for a fellowship?

Subpart F—What Are the Conditions and Components of a Fellowship?

649.50 What are the conditions and components of a fellowship for master's level or professional degree study?
649.51 What are the conditions and components of a fellowship for doctoral study?
649.52 What fellowship conditions apply?

Subpart G—What Are the Administrative Responsibilities of the Institution?

649.60 What is the amount of a stipend?
649.61 How does the Secretary make an institutional payment?
649.62 What are the Secretary's payment procedures?
649.63 How does the institution disburse and return funds?
649.64 What records and reports are required from the institution?

Appendix to Part 649—Academic Areas Priorities

Authority: 20 U.S.C. 1134, 1134d–1134g, unless otherwise noted.

Subpart A—General

§ 649.1 What is the Patricia Roberts Harris Fellowship Program?

(a) The Patricia Roberts Harris Fellowship Program provides, through institutions of higher education, grants to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented in these programs.

(b) Each individual recipient of a fellowship under this program is to be known as a Patricia Roberts Harris Graduate Fellow.

(Authority: 20 U.S.C. 1134d)

§ 649.2 Who is eligible for a grant?

Institutions of higher education, other than schools or departments of divinity, are eligible to receive grants under this program.

(Authority: 20 U.S.C. 1134, 1134e)

§ 649.3 What activities may the Secretary fund?

(a) The Secretary makes grants to institutions of higher education to enable the institutions to provide fellowships in master's level, professional, and doctoral education programs.

(b) In awarding fellowships, the institution must give priority to—

(1) Women and individuals from minority groups who are pursuing master's level or professional study in academic fields in which they are underrepresented;

(2) Women and individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest; and

(3) Women and individuals from traditionally underrepresented groups undertaking doctoral study.

(Authority: 20 U.S.C. 1134e)

§ 649.4 What funding reservations does the Secretary make for grants?

The Secretary reserves—

(a) Fifty percent of the funds appropriated for this program to make grants for master's level and professional study; and

(b) Fifty percent of the funds appropriated for this program to make grants for doctoral study.

(Authority: 20 U.S.C. 1134e)

§ 649.5 What regulations apply?

The following regulations apply to the Patricia Roberts Harris Fellowship program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 649.

(Authority 20 U.S.C. 1134, 1134d-g)

§ 649.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: Applicant, Application, Award, EDGAR, Grant, Nonprofit, Secretary.

(b) *Other definitions.* The following definitions also apply to this part:

Academic field means an area of study in a professional school, academic department, or similar organizational unit within an institution of higher education other than a school or department of divinity.

Academic year means the 12-month period beginning with the fall instructional term of the institution.

Careers that serve the public interest means careers in government or in nonprofit community service organizations at the local, State, national, or international level.

Department means any department, program, unit or any other administrative subdivision of an institution of higher education that—

(1) Directly administers or supervises post-baccalaureate instruction in a specific discipline; and

(2) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Doctoral study means a postbaccalaureate program of study leading to a degree in any academic field of graduate study that requires a dissertation and no less than one year of supervised teaching experience at the pre-dissertation stage of study.

Fellow means a recipient of a fellowship under this part.

Fellowship means an award made by an institution of higher education to an individual for master's level, professional, or doctoral study under this part.

Financial need means the fellow's financial need as determined under Part F of Title IV of the HEA, for the period of the fellow's enrollment.

HEA means the Higher Education Act of 1965, as amended.

Institution means an institution of higher education.

Institution of higher education means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Institutional payment means the amount paid to the institution of higher education in which the fellow is enrolled to be applied against the tuition and fees required of the fellow by the institution in support of the fellow's instructional program.

Inter-discipline means a course of study that involves academic fields in two or more disciplines.

Master's level study means a postbaccalaureate program of study leading to a master's degree in any academic field of graduate study.

Minority means Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Professional study means—

(1) A postbaccalaureate program of study leading to a degree required for admission to practice a profession; or

(2) Any post-master's or doctoral degree that does not require a dissertation and supervised teaching.

Project means the activities necessary to assist, whether from grant funds or institutional resources, the fellows in the successful completion of their designated educational programs.

Satisfactory progress means that the fellow meets or exceeds the institution's criteria and standards established for all graduate students' continued status as applicants for the graduate degree and in the academic field for which the fellowship was awarded.

School or department of divinity means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation, or to prepare them to teach theological subjects.

Stipend means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

Traditionally underrepresented groups means minorities and other groups that historically have been underrepresented in doctoral study.

Underrepresented means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population, as indicated by—

(1) The most current edition of the Department's *Digest of Educational Statistics;*

(2) The National Research Council's *Doctorate Recipients from United States Universities;*

(3) Other standard statistical references, as announced annually in the **Federal Register** notice inviting applications for new awards under this program; or

(4) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 1134, 1134d–g)

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

§ 649.10 How does an institution of higher education apply for a grant?

(a) To apply for a grant under this part, an institution of higher education must submit an application that responds to the appropriate selection criteria in §§ 649.21 and 649.31.

(b) The institution of higher education's application must describe how the institution will select eligible individuals to receive fellowships. This description must include procedures that ensure that—

(1) The selected individuals will have the capability to achieve the academic goals of the fellowship; and

(2) The institution will give priority to members of groups to which priority must be given under § 649.40.

(c) An institution of higher education may apply for a grant under this part for one or more of the following types of fellowships:

(1) Master's Level and Professional Study Fellowships, in the award of which priority must be given to—

(i)(A) Women underrepresented in the academic fields of study for which the institution is applying for a grant; or

(B) Individuals from minority groups underrepresented in the academic fields of study for which the institution is applying for a grant; or

(ii) Women and individuals from minority groups pursuing master's level study leading to careers that serve the public interest.

(2) Doctoral Study Fellowships, in the award of which priority must be given to women or individuals from traditionally underrepresented groups in doctoral study.

(d) An institution of higher education may submit no more than one application for new awards for Master's Level and Professional Study Fellowships and no more than one application for new awards for Doctoral Study Fellowships in a given application period.

(Authority: 20 U.S.C. 1134e)

Subpart C—How Does the Secretary Make a Grant for Master's Level and Professional Study Fellowships?

§ 649.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for master's level and professional study fellowships on the basis of the criteria in § 649.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1134e)

§ 649.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institution-wide criteria.*

(1) *Institutional commitment.* (20 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of the female students and students from minority groups it proposes to serve, including consideration of—

(i) Evidence that the institution's social and academic environment is supportive of the academic success of female students and students from minority groups;

(ii) The availability of other sources of financial aid and support for these students; and

(iii) The employment of women and minority individuals among the administrators and faculty in the institution.

(2) *Recruitment plan.* (10 points)

(i) The Secretary reviews each application for information that describes the applicant's recruitment plan.

(ii) The Secretary looks for information that shows—

(A) The applicant's active and aggressive efforts, previous and current, to identify and attract—

(*1*) Qualified women and individuals from minority groups traditionally underrepresented in the academic field for which the grant is sought; or

(*2*) Qualified women and individuals from minority groups pursuing master's level study leading to careers that serve the public interest;

(B) The applicant's previous and current efforts in successfully preparing female students and students from minority groups for careers in which women and these minority groups are underrepresented; and

(C) The applicant's success in providing students with access to careers in which women and minority groups are underrepresented.

(3) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the general institutional resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(4) *Grant management.* (5 points) The Secretary reviews each application to determine the applicant's ability to provide overall administration of the grant award, including providing assistance to and oversight of the project director.

(b) *Academic field criteria.*

(1) *Meeting the purpose of the authorizing statute.* (8 points) The Secretary reviews each application to determine how well the project will meet the purpose of the authorizing statute, including the extent to which—

(i) The applicant describes the general and specific objectives of the project that are realistic and measurable; and

(ii) The objectives of the project further the purposes of the authorizing statute by assisting in making available the benefits of master's level and professional education programs to women and individuals from minority groups who are underrepresented in these programs.

(2) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project will meet the specific graduate preparation and career-access needs of underrepresented groups recognized in the authorizing statute, including consideration of—

(i) The needs of the applicant addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (10 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) How well the project activities are described and the potential of those activities to achieve project objectives in a cost-effective manner;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition.

(4) *Quality of the academic program.* (7 points) The Secretary reviews each application to determine the quality of the current academic program for which a grant award is sought, including—

(i) The course offerings and academic requirements for the academic program; and

(ii) The focus on, and capability for, research or teaching.

(5) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs

(5)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan.

(ii) To determine personnel qualifications under paragraphs

(b)(5)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project in the academic field for which the grant is sought, including facilities, equipment, and supplies.

(7) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's evaluation methods—

(i) Relate to the specific goals and measurable objectives of the project;

(ii) List both process and product evaluation questions for each project activity and outcome, including those of the management plan;

(iii) Describe both the process and product evaluation measures for each project activity and outcome;

(iv) Describe the data collection procedures, instruments, and schedules for effective data collection;

(v) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis; and

(vi) Include a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks.

(Authority: 20 U.S.C. 1134e)

§ 649.22 How does the Secretary establish priorities?

(a) The Secretary gives an absolute preference to applicants proposing to provide fellowships in the award of which priority is given to women and individuals from minority groups who are pursuing master's level or professional study and are underrepresented in the academic field for which the grant award is made.

(b)(1) The Secretary gives a competitive preference of between three and five points, as announced annually in the **Federal Register** notice inviting applications for new awards under this program, to applicants proposing to provide fellowships in the award of which priority is given to women and individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

(2) These points are in addition to any points the application earns under the selection criteria for the program.

(c)(1) The Secretary gives an absolute preference to applicants proposing to provide fellowships in academic career fields of high national priority as established by the Secretary from among one or more of the general disciplines and subdisciplines listed as priorities in the appendix to this part or the resulting inter-disciplines.

(2) The Secretary announces the absolute preference annually in the Federal Register notice inviting applications for new awards under this program.

(Authority: 20 U.S.C. 1134d, 1134e)

Subpart D—How Does the Secretary Make a Grant for Doctoral Study Fellowships?

§649.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for doctoral study fellowships on the basis of the criteria in § 649.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1134e)

§649.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institution-wide criteria.*

(1) *Institutional commitment.* (20 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of the female students and students from minority groups it proposes to serve, including consideration of—

(i) Evidence that the institution's social and academic environment is supportive of the academic success of female students and students from minority groups;

(ii) The availability of other sources of financial aid and support for these students; and

(iii) The employment of women and minority individuals among the administrators and faculty in the institution.

(2) *Recruitment plan.* (10 points)

(i) The Secretary reviews each application for information that describes the applicant's recruitment plan.

(ii) The Secretary looks for information that shows—

(A) The applicant's active and aggressive efforts, previous and current, to identify and attract qualified women and individuals from minority groups traditionally underrepresented in doctoral study;

(B) The applicant's previous and current efforts in successfully preparing female students and students from minority groups for careers in which women and minority groups are underrepresented; and

(C) The applicant's success in providing students with access to careers in which women and minority groups are underrepresented.

(3) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the general institutional resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(4) *Grant management.* (5 points) The Secretary reviews each application to determine the applicant's ability to provide overall administration of the grant, including providing assistance to and oversight of the project director.

(b) *Academic field criteria.*

(1) *Meeting the purpose of the authorizing statute.* (8 points) The Secretary reviews each application to determine how well the project will meet the purpose of the authorizing statute, including the extent to which—

(i) The applicant describes the general and specific objectives of the project that are realistic and measurable; and

(ii) The objectives of the project further the purposes of the authorizing statute by assisting in making available the benefits of doctoral education programs to—

(A) Women who are underrepresented in these programs; and

(B) Individuals from groups traditionally underrepresented in these programs.

(2) *Extent of need for the project.* (5 points) The Secretary reviews each application to determine the extent to which the project will meet the specific graduate preparation and career-access needs of underrepresented groups recognized in the authorizing statute, including consideration of—

(i) The needs of the applicant addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (5 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) How well the project activities are described and the potential of those activities to achieve project objectives in a cost-effective manner;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition.

(4) *Quality of the academic program.* (7 points) The Secretary reviews each application to determine the quality of the current academic program for which a grant is sought, including—

(i) The course offerings and academic requirements for the academic program; and

(ii) The focus on, and capacity for, research or teaching.

(5) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(5)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan.

(ii) To determine personnel qualifications under paragraphs (b)(5)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Institutional support.* (10 points)

(i) The Secretary reviews each application to determine the adequacy of the applicant's plans to provide two academic years of support for each fellow, immediately following the second academic year of fellowship support, including at least one academic year of supervised teaching.

(ii) In reviewing the applicant's plan of support for the fellows, the Secretary considers—

(A) The applicant's financial support for each fellow; and

(B) The applicant's plan for the supervision of each fellow's teaching assignment.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to

devote to the project in the academic field for which the grant is sought, including facilities, equipment, and supplies.

(8) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the applicant's evaluation methods—

(i) Relate to the specific goals and measurable objectives of the project;

(ii) List both process and product evaluation questions for each project activity and outcome, including those of the management plan;

(iii) Describe both the process and product evaluation measures for each project activity and outcome;

(iv) Describe the data collection procedures, instruments, and schedules for effective data collection;

(v) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis; and

(vi) Include a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks.

(Authority: 20 U.S.C. 1134e, 1134f)

§ 649.32 How does the Secretary establish priorities?

(a) The Secretary gives an absolute preference to applicants proposing to provide fellowships in the award of which priority is given to women and individuals from traditionally underrepresented groups undertaking doctoral study.

(b)(1) The Secretary gives an absolute preference to applicants proposing to provide fellowships in academic career fields of high national priority as established by the Secretary from among one or more of the general disciplines and subdisciplines listed as priorities in the appendix to this part or the resulting inter-disciplines.

(2) The Secretary announces the absolute preference annually in the **Federal Register** notice inviting applications for new awards under this program.

(Authority: 20 U.S.C. 1134d, 1134e)

Subpart E—How Are Fellows Selected?

§ 649.40 How does an institution of higher education select fellows?

(a) In selecting individuals to receive fellowships, the institution of higher education shall give priority to individuals who are—

(1)(i) Women underrepresented in the academic fields of study for which the institution is applying for a grant; or

(ii) Individuals from minority groups underrepresented in the academic fields of study for which the institution is applying for a grant;

(2) Women and individuals from minority groups pursuing master's level study leading to careers that serve the public interest; or

(3) Women or individuals from traditionally underrepresented groups undertaking doctoral study.

(b) An institution of higher education shall provide master's level or professional study fellowships only to individuals who—

(1) Have been accepted for or are enrolled in a program of study leading to a master's level or professional degree in the academic field for which the institution received a grant;

(2) Plan to pursue an academic or professional career in the academic field of study for which the institution received the grant;

(3)(i) Are nationals of the United States;

(ii) Are in the United States for other than a temporary purpose and intend to become permanent residents; or

(iii) Are permanent residents of the Trust Territory of the Pacific Islands; and

(4) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(c) An institution of higher education shall provide fellowships for doctoral study, other than for doctoral study leading to an academic career, only to individuals who—

(1) Have been accepted for or are enrolled in a program of study leading to a doctoral degree in the academic field for which the institution received a grant;

(2) Plan to pursue a professional career in the academic field of study for which the institution received the grant;

(3)(i) Are nationals of the United States;

(ii) Are in the United States for other than a temporary purpose and intend to become permanent residents; or

(iii) Are permanent residents of the Trust Territory of the Pacific Islands; and

(4) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(d) An institution of higher education shall provide fellowships for doctoral study leading to an academic career only to individuals who—

(1) Have been accepted for or are enrolled in a program of study leading to a doctoral degree in the academic field for which the institution received a grant;

(2) Plan to pursue an academic career in the academic field of study for which the institution received the grant;

(3) Are citizens of the United States; and

(4) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(Authority: 20 U.S.C. 1134, 1134e, 1134f)

§ 649.41 How does an individual apply for a fellowship?

An individual must apply directly to an institution of higher education that has received a grant.

(Authority: 20 U.S.C. 1134e)

Subpart F—What Are the Conditions and Components of a Fellowship?

§ 649.50 What are the conditions and components of a fellowship for master's level or professional degree study?

(a)(1) An award for a fellowship for a master's level or professional degree program of study is for the normal period of time for completing the program or a total of three academic years, whichever is less.

(2) A fellow may apply to the Secretary for an additional period of fellowship support of up to 12 months. The fellow's application must include—

(i) The specific facts detailing the reasons why the additional period of support is necessary;

(ii) A certification by the institution that it is aware of the fellow's application and that the fellow has attained satisfactory progress in the fellow's academic studies; and

(iii) A recommendation from the institution that the additional period of fellowship support of up to 12 months is necessary.

(3) The institution shall request approval for the additional support in its third-year noncompeting continuation application, as required under 34 CFR 75.253 for multiyear project periods.

(Authority: 20 U.S.C. 1134f)

§ 649.51 What are the conditions and components of a fellowship for doctoral study?

(a) An award for a fellowship for a doctoral degree program of study is a total of three academic years, consisting of not more than two academic years of fellowship support for study or research, and not more than one academic year of support for dissertation work, provided that the fellow has attained satisfactory progress prior to the dissertation stage.

(b) Following the two academic years of fellowship support for study or research, the institution of higher

education shall provide two academic years of support, including—

(1) Financial support in the amount of the fellow's financial need, as defined in § 649.6(b), or in an amount equal to the stipend awarded in the last academic year of fellowship support, whichever is less;

(2) A waiver of tuition and fees or an allowance on behalf of the fellow as full payment of tuition and fees required of the fellow by the institution as part of the fellow's instructional program; and

(3)(i) Supervising for one academic year of teaching by the fellow; and

(ii) Teaching requirements for the fellow that equal those required of a half-time teaching assistant.

(c) Following two academic years of institutional support, the institution must include in its application for the third academic year of fellowship support for the fellow's dissertation work a certification that—

(1) The institution has provided two academic years of institutional support;

(2) The fellow satisfactorily completed one academic year of supervised teaching; and

(3) The fellow satisfactorily completed all predissertation requirements.

(Authority: 20 U.S.C. 1134f)

§ 649.52 What fellowship conditions apply?

To continue to receive payments under a fellowship, a fellow must—

(a) Maintain satisfactory progress;

(b) Devote essentially full time to study or research (including acting as a teaching or research assistant, as required as a condition for award of the degree) in the academic field for which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar types of activities approved by the Secretary.

(Authority: 20 U.S.C. 1134f)

Subpart G—What Are the Administrative Responsibilities of the Institution?

§ 649.60 What is the amount of a stipend?

(a) The institution annually shall calculate the amount of a fellow's financial need in the same manner that the institution calculates its students' financial need under part F of title IV of the HEA.

(b) For a fellowship initially awarded for an academic year prior to the academic year 1993–1994, the institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded for the academic year 1993–1994 or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need.

(Authority: 20 U.S.C. 1134f)

§ 649.61 How does the Secretary make an institutional payment?

(a) With respect to awards made for the academic year 1993–1994, the Secretary makes a payment of $9,000 to the institution of higher education for each individual awarded a fellowship for pursuing a course at the institution. The Secretary adjusts the institutional payment annually thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

(b) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution of higher education a pro rata share of the institutional payment, based on the period of the fellow's enrollment.

(c) An institution shall treat the institutional payment made by the Secretary on behalf of a fellow as full payment of tuition and fees required of the fellow by the institution as part of the fellow's instructional program.

(Authority: 20 U.S.C. 1134e)

§ 649.62 What are the Secretary's payment procedures?

(a) The Secretary pays to the institution of higher education the fellowship stipend and institutional payment for each individual awarded a fellowship under this program enrolled in the institution.

(b) If an institution of higher education is unable to use all of the amounts available under this program, the Secretary—on such dates each fiscal year as the Secretary determines—reallots the amounts not used to other institutions of higher education that can use the grants authorized under this program in the academic year following the reallotment.

(c) The Secretary does not award a fellowship under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134, 1134e)

§ 649.63 How does the institution disburse and return funds?

(a) If a fellow withdraws from an institution before completion of an academic term, the institution shall refund to the Secretary a prorated portion of the institutional payment that it received for that fellow. The institution shall return the funds to the Secretary at a time and in a manner as the Secretary requires.

(b) An institution shall disburse a stipend to a fellow in accordance with its regular payment schedule for graduate assistants, but shall not make less than one payment per academic term. If the fellowship is vacated or discontinued, the institution shall return unexpended funds to the Secretary at a time and in a manner as the Secretary requires.

(c) A fellow who withdraws from an institution before completion of an academic term for which he or she received a stipend installment shall return a prorated portion of the stipend installment to the institution at a time and in a manner as the Secretary requires.

(Authority: 20 U.S.C. 1134e, 1134f)

§ 649.64 What records and reports are required from the institution?

(a) An institution of higher education that receives a grant shall provide to the Secretary, prior to receipt of funds for disbursement to a fellow, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting essentially full time to study in the academic field for which the grant was made.

(b) An institution of higher education that receives a grant shall keep records as are necessary to establish the time and amount of all stipend disbursements.

(Authority: 20 U.S.C. 1134e, 1134f)

Appendix to Part 649—Academic Area Priorities

The Secretary may give an absolute preference to applicants proposing to provide fellowships in academic career fields listed as disciplines or subdisciplines below, or the resulting interdisciplines.

The list was derived from the *Classification of Instructional Programs* (CIP) developed by the Office of Educational Research and Improvement of the U.S. Department of Education. The code number to the left of each discipline and subdiscipline is the Department's identification code for that particular type of instructional program.

01. Agricultural Business and Production
01.01 Agricultural Business and Management
01.02 Agricultural Mechanization
01.03 Agricultural Production Workers and Managers
01.04 Agricultural and Food Products Processing

01.05 Agricultural Supplies and Related Services
01.06 Horticultural Services Operations and Management
01.07 International Agriculture
02. Agricultural Sciences
02.01 Agriculture/Agricultural Sciences
02.02 Animal Sciences
02.03 Food Sciences and Technology
02.04 Plant Sciences
02.05 Soil Sciences
03. Conservation and Renewable Natural Resources
03.01 Natural Resources Conservation
03.02 Natural Resources Management and Protective Services
03.03 Fishing and Fisheries Sciences and Management
03.04 Forest Production and Processing
03.05 Forestry and Related Sciences
03.06 Wildlife and Wildlands Management
04. Architecture and Related Programs
04.02 Architecture
04.03 City/Urban, Community, and Regional Planning
04.04 Architectural Environmental Design
04.05 Interior Architecture
04.06 Landscape Architecture
04.07 Architectural Urban Design and Planning
05. Area, Ethnic, and Cultural Studies
05.01 Area Studies
05.02 Ethnic and Cultural Studies
08. Marketing Operations/Marketing and Distribution
08.01 Apparel and Accessories Marketing Operations
08.02 Business and Personal Services Marketing Operations
08.03 Entrepreneurship
08.04 Financial Services Marketing Operation
08.05 Floristry Marketing Operations
08.06 Food Products Retailing and Wholesaling Operations
08.07 General Retailing and Wholesaling Operations and Skills
08.08 Home and Office Products Marketing Operations
08.09 Hospitality and Recreation Marketing Operations
08.10 Insurance Marketing Operations
08.11 Tourism and Travel Services Marketing Operations
08.12 Vehicle and Petroleum Products Marketing Operations
08.13 Health Products and Services Marketing Operations
09. Communications
09.01 Communications, General
09.04 Journalism and Mass Communications
09.05 Public Relations and Organizational Communications
09.07 Radio and Television Broadcasting
11. Computer and Information Sciences
11.01 Computer and Information Sciences, General
11.02 Computer Programming
11.04 Information Sciences and Systems
11.05 Computer Systems Analysis
11.07 Computer Science
13. Education
13.01 Education, General
13.02 Bilingual/Bicultural Education
13.03 Curriculum and Instruction
13.04 Education Administration and Supervision
13.05 Educational/Instructional Media Design
13.06 Educational Evaluation, Research, and Statistics
13.07 International and Comparative Education
13.08 Educational Psychology
13.09 Social and Philosophical Foundations of Education
13.10 Special Education
13.11 Student Counseling and Personnel Services
13.12 General Teacher Education
13.13 Teacher Education, Specific Academic, and Vocational Programs
13.14 Teaching English as a Second Language/Foreign Language
13.15 Teacher Assistant/Aide
14. Engineering
14.01 Engineering, General
14.02 Aerospace, Aeronautical, and Astronautical Engineering
14.03 Agricultural Engineering
14.04 Architectural Engineering
14.05 Bioengineering and Biomedical Engineering
14.06 Ceramic Sciences and Engineering
14.07 Chemical Engineering
14.08 Civil Engineering
14.09 Computer Engineering
14.10 Electrical, Electronic, and Communications Engineering
14.11 Engineering Mechanics
14.12 Engineering Physics
14.13 Engineering Science
14.14 Environmental/Environmental Health Engineering
14.15 Geological Engineering
14.16 Geophysical Engineering
14.17 Industrial/Manufacturing Engineering
14.18 Materials Engineering
14.19 Mechanical Engineering
14.20 Metallurgical Engineering
14.21 Mining and Mineral Engineering
14.22 Naval Architecture and Marine Engineering
14.23 Nuclear Engineering
14.24 Ocean Engineering
14.25 Petroleum Engineering
14.27 Systems Engineering
14.28 Textile Sciences and Engineering
14.29 Engineering Design
14.30 Engineering/Industrial Management
14.31 Materials Science
14.32 Polymer/Plastics Engineering
16. Foreign Languages
16.01 Foreign Languages and Literatures
16.03 East and Southeast Asian Languages and Literatures
16.04 East European Languages and Literatures
16.05 Germanic Languages and Literatures
16.06 Greek Languages and Literatures
16.07 South Asian Languages and Literatures
16.09 Romance Languages and Literatures
16.11 Middle Eastern Languages and Literatures
16.12 Classical and Ancient Near Eastern Languages and Literatures
19. Home Economics
19.01 Home Economics, General
19.02 Home Economics Business Services
19.03 Family and Community Studies
19.04 Family/Consumer Resource Management
19.05 Foods and Nutrition Studies
19.06 Housing Studies
19.07 Individual and Family Development Studies
19.09 Clothing/Apparel and Textile Studies
20. Vocational Home Economics
20.02 Child Care and Guidance Workers and Managers
20.03 Clothing, Apparel, and Textile Workers and Managers
20.04 Institutional Food Workers and Administrators
20.05 Home Furnishings and Equipment Installers and Consultants
20.06 Custodial, Housekeeping and Home Services Workers and Managers
22. Law and Legal Studies
22.01 Law and Legal Studies
23. English Language and Literature/Letters
23.01 English Language and Literature, General
23.03 Comparative Literature
23.04 English Composition
23.05 English Creative Writing
23.07 American Literature (United States)
23.08 English Literature (British and Commonwealth)
23.10 Speech and Rhetorical Studies
23.11 English Technical and Business Writing
24. Liberal Arts and Sciences, General Studies and Humanities
24.01 Liberal Arts and Sciences, General Studies and Humanities
25. Library Science
25.01 Library Science/Librarianship
25.03 Library Assistant
26. Biological Sciences/Life Sciences
26.01 Biology, General
26.02 Biochemistry and Biophysics
26.03 Botany
26.04 Cell and Molecular Biology
26.05 Microbiology/Bacteriology
26.06 Miscellaneous Biological Specializations
26.07 Zoology
27. Mathematics
27.01 Mathematics
27.03 Applied Mathematics
27.05 Mathematic Statistics
31. Parks, Recreation, Leisure and Fitness Studies
31.01 Parks, Recreation and Leisure Studies
31.03 Parks, Recreation and Leisure Facilities Management
31.05 Health and Physical Education/Fitness
38. Philosophy and Religion
38.01 Philosophy
38.02 Religion/Religious Studies
39. Theological Studies
39.01 Biblical and Other Theological Languages and Literatures
39.02 Bible/Biblical Studies
39.03 Missions/Missionary Studies and Misology
39.04 Religious Education
39.05 Religious/Sacred Music
40. Physical Sciences
40.01 Physical Sciences, General
40.02 Astronomy
40.03 Astrophysics
40.04 Atmospheric Sciences and Meteorology

40.05 Chemistry
40.06 Geological and Related Sciences
40.07 Miscellaneous Physical Sciences
40.08 Physics
42. Psychology
42.01 Psychology
42.02 Clinical Psychology
42.03 Cognitive Psychology and Psycholinguistics
42.04 Community Psychology
42.06 Counseling Psychology
42.07 Developmental and Child Psychology
42.08 Experimental Psychology
42.09 Industrial and Organizational Psychology
42.11 Physiological Psychology/Psychobiology
42.16 Social Psychology
42.17 School Psychology
43. Protective Services
43.01 Criminal Justice and Correctio ıs
43.02 Fire Protection
44. Public Administration and Services
44.02 Community Organizations, Resources and Services
44.04 Public Administration
44.05 Public Policy Analysis
44.07 Social Work
45. Social Sciences and History
45.01 Social Sciences, General
45.02 Anthropology
45.03 Archeology
45.04 Criminology
45.05 Demography/Population Studies
45.06 Economics
45.07 Geography
45.08 History
45.09 International Relations and Affairs
45.10 Political Science and Government
45.11 Sociology
45.12 Urban Affairs/Studies
50. Visual and Performing Arts
50.01 Visual and Performing Arts
50.02 Crafts, Folk Art and Artisanry
50.03 Dance
50.04 Design and Applied Arts
50.05 Dramatic/Theater Arts and Stagecraft
50.06 Film/Video and Photographic Arts
50.07 Fine Arts and Art Studies
50.09 Music
51. Health Professions and Related Sciences
51.01 Chiropractic (D.C., D.C.M.)
51.02 Communication Disorders Sciences and Services
51.03 Community Health Services
51.04 Dentistry (D.D.S., D.M.D.)
51.05 Dental Clinical Sciences/Graduate Dentistry (M.S., Ph.D.)
51.06 Dental Services
51.07 Health and Medical Administrative Services
51.08 Health and Medical Assistants
51.09 Health and Medical Diagnostic and Treatment Services
51.10 Health and Medical Laboratory Technologies/Technicians
51.11 Health and Medical Preparatory Programs
51.12 Medicine (M.D.)
51.13 Medical Basic Science
51.14 Medical Clinical Services (M.S., Ph.D.)
51.15 Mental Health Services
51.16 Nursing
51.17 Optometry (O.D.)
51.18 Ophthalmic/Optometric Services
51.19 Osteopathic Medicine (D.O.)
51.20 Pharmacy
51.21 Podiatry (D.P.M., D.P., Pod.D.)
51.22 Public Health
51.23 Rehabilitation/Therapeutic Services
51.24 Veterinary Medicine (D.V.M.)
51.25 Veterinary Clinical Services
51.26 Miscellaneous Health Aides
51.27 Miscellaneous Health Professions
52. Business Management and Administrative Services
52.01 Business
52.02 Business Administration and Management
52.03 Accounting
52.04 Administrative and Secretarial Services
52.05 Business Communications
52.06 Business/Managerial Economics
52.07 Enterprise Management and Operations
52.08 Financial Management and Services
52.09 Hospitality Services Management
52.10 Human Resources Management
52.11 International Business
52.12 Business Information and Data Processing Services
52.13 Business Quantitative Methods and Management Science
52.14 Marketing Management and Research
52.15 Real Estate
52.16 Taxation

[FR Doc. 93–4623 Filed 2–26–93; 8:45 am]
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federal register

Monday
March 1, 1993

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priority for Fiscal Years 1993 and 1994 for Rehabilitation Research and Training Center on Rehabilitation and Pediatric Trauma.

SUMMARY: The Secretary announces a funding priority for a Rehabilitation Research and Training Center (RRTC) on Rehabilitation and Pediatric Trauma under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on an area of national need. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, please call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3424, Switzer Building, Washington, DC 20202–2601. Telephone: (202) 205–8801. Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

SUPPLEMENTARY INFORMATION: NIDRR has published final priorities for other RRTCs and other programs for fiscal years 1993–1994. Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program, the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

This final priority supports the National Education Goals. In particular, this final priority supports National Education Goal 1, which calls for all children in America to be ready to learn when they start school. The RRTC will provide rehabilitation, special education, and related service system personnel with important information regarding the delivery of services to children who experience trauma and their families.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

The Department received 260 letters objecting to NIDRR's decision not to propose a priority on pediatric trauma. The letters presented effective arguments for such a priority and provided information on research needs. As a result of the comments received, the Secretary was persuaded to add an RRTC on pediatric trauma in fiscal year 1993. The timing of this decision requires the Secretary to issue a final priority without having issued a proposed priority in order to ensure that an award will be made before the end of the fiscal year.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. This specific priority was not published for public comment in the **Federal Register**, but the Department proposed other priorities and received numerous, detailed public comments concerning the need for a Center in pediatric trauma. The comments received regarding establishing such a priority provided sufficient information to enable the Department to develop a final priority. Moreover, as noted above, there is not adequate time to take further public comment and complete the grant-making process in the fiscal year. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary, impracticable, and contrary to the public interest.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in this issue of the **Federal Register**.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. They serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge that will improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities. RRTCs provide training (including graduate, pre-service, and in-service training) to assist individuals to more effectively provide rehabilitation services. RRTCs also provide training (including graduate, pre-service and in-service training) for rehabilitation research personnel and other rehabilitation personnel. RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs conduct research on designated rehabilitation problem areas and provide training to researchers, service providers, and consumers. They conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Each Center disseminates and encourages the use of new rehabilitation knowledge and publishes all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients of clinical and research training. In addition, NIDRR encourages all Centers to make their research relevant to all minority populations with disabilities to the maximum extent appropriate.

To achieve the goals specified in the priority, the Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronted by individuals with disabilities. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes. However, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community; (2) full employment; (3) independence and empowerment; (4) maximum human functioning and health; (5) improved vocational rehabilitation services; and (6) the translation of new knowledge and technology into practice. The priority established in this notice is intended to achieve one or more of these six outcomes.

The publication of this final priority does not obligate the Department of Education to fund projects in this area. Funding of particular projects depends on the availability of funds and the quality of the applications received. The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Priority—Rehabilitation and Childhood Trauma

Background

Trauma is the leading cause of both death and long-term disability among children. Annually approximately 50,000 children who are hospitalized have permanent impairments (National Pediatric Trauma Registry, October 1992). Impairments resulting from childhood trauma are associated with multiple fractures, brain and spinal cord injuries, traumatic amputations, severe burns, and injuries to multiple body systems.

The rehabilitation of injured children is fundamentally different than the rehabilitation of adults. Children experience significant residual impairments from trauma that affect their development and subsequent performance. A multidimensional approach that meets the needs of children is necessary to enhance habilitation, rehabilitation and health maintenance. Little is known about the effects of childhood trauma on developmental processes, and there is difficulty in measuring rehabilitation outcomes following treatment interventions since children are constantly changing and growing.

Priority

An RRTC on rehabilitation and pediatric trauma shall—

- Establish and analyze a comprehensive rehabilitation-oriented data base, including (1) the demographics of pediatric trauma; (2) the natural history of pediatric trauma recovery; (3) an evaluative assessment of clinical rehabilitation needs; and (4) long-term outcomes associated with the receipt of specific rehabilitation services;
- Develop and evaluate models of coordinated systems of care among medical, educational and vocational agencies;
- Develop pediatric rehabilitation interventions, including some that utilize assistive devices and other technologies and evaluate them, taking cost-effectiveness into consideration;
- Develop and evaluate early interventions designed to decrease secondary complications of pediatric trauma;
- Develop and evaluate models for case management or service coordination, including models involving parents;
- Identify factors influencing successful family adjustment and community reintegration; and
- Develop and evaluate effective strategies for transition from acute care to rehabilitation, education, vocational training and community living for children post-trauma.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

Dated: February 23, 1993.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–4642 Filed 2–26–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services: National Institute on Disability and Rehabilitation Research Applications for a New Award for a Rehabilitation Research and Training Center in Pediatric Trauma Rehabilitation for Fiscal Year (FY) 1993

Purpose of Program: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—which may include preservice, inservice, and graduate training—to researchers and rehabilitation service providers, and serve as informational and technical assistance resources to providers and to individuals with disabilities and their family members or other representatives. The final priority for this award is published in this issue of the **Federal Register.** Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications. Also, applicants must demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific

number of awards or funding levels, unless otherwise specified in statute.

This final priority supports the National Education Goals. In particular, this final priority supports National Education Goal 1, which calls for all children in America to be ready to learn when they start school.

Eligible Applicants: Those eligible for assistance under this program include States and public or private agencies and organizations, including institutions of higher education, and Indian tribes and tribal organizations. The recipient of assistance must be of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner consistent with appropriate State and Federal laws and also must demonstrate an ability to carry out the Center's training activities either directly or through another entity that can provide such training. The RRTC must be operated by or in collaboration with an institution of higher education or a provider of rehabilitation services or other appropriate services.

Deadline for Transmittal of Applications: April 27, 1993.

Applications Available: March 5, 1993.

Available Funds: $500,000.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 60 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 for this program in 34 CFR parts 350 and 352; and (d) the Notice of final priority published elsewhere in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Yvonne Fleming, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3418, Switzer Building, Washington, DC 20202. Telephone: (202) 205–8532. Deaf or hearing impaired individuals may call (202) 205–9136 for TDD services.

For Applications Contact: William Whalen, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–9141. Deaf or hearing impaired individuals may call (202) 205–9136 for TDD services.

Program Authority: 29 U.S.C. 760–762.

Dated: February 23, 1993.

Andrew Pepin

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–4643 Filed 2–26–93; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
March 1, 1993

Part VIII

Department of Justice

Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Final Program Priorities for Fiscal Year 1993; Notices

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act, Final Program Priorities for Fiscal Year 1993

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of final program priorities for FY 1993 research, demonstration projects, and service programs and merit selection criteria under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its Fiscal Year 1993 final program priorities for making grants and contracts under Section 405 of title IV (the Missing Children's Assistance Act) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5775, hereafter referred to as the JJDP Act.

ADDRESSES: All inquiries must be mailed or sent to: Director, Missing and Exploited Children Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Darlene Brown at the above address. Telephone: (202) 514–4622.

SUPPLEMENTARY INFORMATION: Responsibility for establishing priorities for annual research, demonstration projects, and service programs and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1993, four new programs and potentially 13 continuation programs will constitute all proposed section 405 priority funding areas. The Administrator is announcing these priorities, specifying merit and performance criteria to be applied in their review.

During FY 1993 other new programs, or continuations of currently funded programs, may also be funded under sections 404 and 408 of the Missing Children's Assistance Act. Solicitations to fund all new Title IV assistance awards in amounts exceeding $50,000 will be announced in the **Federal Register** and competitively awarded. Described below are discretionary programs being planned for funding under sections 404(b)(3), 405, and 408 of the Missing Children's Assistance Act followed by a listing of continuation programs currently funded under section 405, which are proposed as eligible to receive continuation funding during their currently existing project periods. Thereafter, OJJDP will publish in the **Federal Register** and make available a document including full program announcements of those programs labeled as "new programs" and the application kit.

Introduction

Through the Missing and Exploited Children Program, OJJDP funds and coordinates many diverse activities on behalf of missing and exploited children. The National Center for Missing and Exploited Children (NCMEC) serves as the national clearinghouse and resource center and utilizes the latest in advanced computer technology to assist in the timely collection and dissemination of leads and information on missing children's cases. NCMEC currently produces updated photos of missing children through computer age progression technology and will assist OJJDP in establishing five age progression laboratories in State missing children clearinghouses during FY 1993. OJJDP will continue ongoing training and technical assistance to a network of 42 state clearinghouses, numerous nonprofit organizations, prosecutors, law enforcement personnel, judges, and attorneys. Current research projects include a study of the risk factors in parental abduction cases, a study of the sexual exploitation of children and youth, and an examination of current and effective screening practices for child- and youth-serving agencies. The Missing and Exploited Children Comprehensive Action Program (M/CAP) assists communities in developing a multi-disciplinary approach to handling child victim cases through ongoing training and technical assistance. In FY 1993, OJJDP proposes to award a non-competitive grant to the University of Michigan to establish a missing and exploited children data archive. The University of Michigan houses the Inter-University Consortium for Political and Social Research. This center facilitates the wide dissemination of major data sets, including other data funded by OJJDP.

In recent years, OJJDP has funded a number of major research projects which have provided needed information on issues relating to missing and exploited children. The focus of both continuing and new programs is to continue to expand this knowledge base and to develop and provide practical training and technical assistance to the field.

New Programs

Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART II)

$1,500,000

The purpose of this project is to develop reliable national statistics on missing and exploited youth in America in order to understand better the extent, nature, and trends in the numbers of missing, abducted, runaway, and thrownaway youth in America, the characteristics of the events and the risk factors associated with these problems and other victimizations of children.

Section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5773(b)(3), requires OJJDP to conduct periodic national studies of the incidence of missing and abducted children. "Missing Abducted, Runaway and Thrownaway Children in America, First Report: Numbers and Characteristics" (NISMART I) was developed in 1990 in response to this statutory mandate. It addressed five distinct populations of concern to the study, encompassing those situations in which a child was missing or displaced in some way that might put the child at risk of harm. The five populations were:

1. Family Abductions (children abducted by parents or other family members),
2. Non-Family Abductions (children abducted by strangers and other nonfamily members),
3. Runaways,
4. Thrownaways, and
5. Lost or Otherwise Missing.

Subsequent analysis of the NISMART data revealed a substantial number of incidents of other forms of child victimization not captured by any other national data source. These incidents included children who had been physically or sexually assaulted by nonfamily members. These types of victimizations will also be studied under NISMART II. To assist in preparing for NISMART II, OJJDP awarded a planning grant to the Research Triangle Institute (RTI) to review NISMART I and make recommendations for NISMART II and subsequent periodic studies.

Based on the plan developed by RTI, NISMART II may:

- Develop valid and reliable national estimates of the numbers of children who were missing, abducted, runaway or thrownaway and the number reported to the police and/or known to be missing in the course of a given year as

well as the number of these children who are recovered;

- Establish profiles of missing children and characteristics of the episodes;
- Determine the extent and nature of changes in these estimates since 1988; and
- Develop reliable national estimates of the incidence of physical and sexual assault and exploitation of children and youth by nonfamily members.

While the detailed program strategy has not been developed, OJJDP anticipates that the program will require the following tasks, based on the specifications of the planning work and recommendations of RTI:

- Establish and convene advisory board meetings
- Inaugurate the study scope and definitions
- Develop appropriate research designs, methodologies, and data analysis plans
- Construct the sampling designs and procedures
- Develop and refine data collection instruments and protocols
- Establish quality control methods for the data
- Recruit, hire, and train data collectors
- Collect data and assure its quality
- Perform data "cleaning" and processing
- Construct an analysis file and provide appropriate documentation for it
- Analyze the data and compare findings to NISMART I, as appropriate
- Develop preliminary and final reports as specified in the solicitation
- Develop a dissemination plan for study results, and the data set.

Under the NISMART II planning project, RTI will provide a thorough review of NISMART I for OJJDP, identifying its substantive and technical strengths and weaknesses. RTI will also identify additional information needs for OJJDP in the policy making and program development areas, particularly for prevention and intervention. During the planning, RTI will identify additional sources of data, new or previously untapped, and determine how they may prove useful in producing or validating national estimates or in designing future studies. These additional data sources that may be utilized in NISMART II include:

- State Clearinghouses for Missing Children and Persons;
- The Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC) Missing Persons Files and Warrants files;
- FBI's National Incident Based Reporting System (NIBRS);
- The Bureau of Justice Statistics' National Crime Victimization Survey;
- National Center on Child Abuse and Neglect (NCCAN) National Study of the Incidence of Child Abuse and Neglect; and
- Office of Youth Development, Administration for Children and Family, Youth Information Forms from Federally-funded runaway shelters.

As necessary, RTI will test alternative methodologies or approaches to studying different populations. A detailed summary of the proceedings from a planning symposium, including any papers, discussion of findings, and recommendations will be developed and made available to all applicants interested in NISMART II. RTI will prepare a NISMART II Plan providing sufficient recommendations for OJJDP to develop a detailed solicitation for applications to conduct the core components of the NISMART II program, which is likely to include a household survey and a study of police records.

Investigative Case Management for Missing Children Homicides

$150,000

The purpose of this project is to improve the understanding and investigative procedures of abducted or runaway children in homicide cases in order to manage, conduct, and solve individual and serial child murder investigations more effectively.

The investigative procedures for missing child homicides involve some unusual factors. Children are particularly vulnerable victims and may be targeted for abduction and assault by repeat rapists or killers. A missing child may produce an intense community pressure on law enforcement for a quick, sure solution—especially if there is evidence that the child was the victim of a non-family abduction or the child's body is found. Such urgency can lead to hasty, unproductive utilization of investigative efforts that may hamper a successful investigation. Cases involving family members as suspects may increase confusion as well as the pressure for swift, quality investigations. More effective investigative and case management methods may improve the solution rate of difficult cases. Runaway and thrownaway youth are particularly vulnerable to exploitation, assault, abduction, and murder. Identification of murdered runaways and thrownaways can pose special difficulties for the law enforcement agencies investigating these cases.

Over the past twelve months, the National Center for Missing and Exploited Children (NCMEC), through its Case Management and Information Analysis Units, has received case profile information from local law enforcement agencies on over 150 cases of missing children who have been murdered over a ten year period. In most of these cases, NCMEC had been involved in assisting local authorities and parents to locate the missing child. Some cases, however, were brought to NCMEC after recovery of a child's body by local investigators seeking analysis services or other technical assistance.

There is a recognized need for an instructive investigative guide to missing children and child homicide cases. This program will develop such a guide for local law enforcement designed to provide an experience-based process to direct the investigative attention to priority data. This guide will be based upon an examination and analysis of previous abducted and/or murdered child cases and will include those elements which were the most definitive in leading to swift and successful solutions. The program will develop and provide investigative guidance in taking those vital first investigative steps. Issues to be addressed will include types of evidence to be sought and analyzed, the best information sources to employ, and effective utilization and deployment of investigative resources. Finally, the project will assist NCMEC and the Missing and Exploited Children Comprehensive Action Program (M/CAP) to implement a missing child homicide investigation training and technical assistance program for State and local law enforcement.

A Study of the Effectiveness of Private Investigators in Locating and Recovering Parentally Abducted Children

$100,000

The purpose of this project is to determine the use and effectiveness of private investigators by searching parents in parental abduction cases. The project will pay special attention to identifying the characteristics and procedures used by highly effective private investigators.

A recent study sponsored by OJJDP on the obstacles to the recovery and return of parentally abducted children indicated that private investigators are generally employed by parents with very limited financial resources. Parents who turned to private investigators for assistance were motivated by dissatisfaction with the level of investigative activity by the law

enforcement agencies responsible for their case. Private investigators were employed by one-fourth of the searching parents in this particular study. While satisfaction and results were generally very limited, in a small group of cases satisfaction was very high.

The issues of how these parents search for a private investigator, what criteria they use in deciding to retain the private investigator, and how investigators spend funds for actual child recovery are unknown at present. Families of abducted children and law enforcement agencies both would benefit from a clearer understanding of the extent and effectiveness of services provided by these private investigators.

Issues in Resolving International Child Abduction Cases

$200,000

Our society has become more mobile and the number of international and cross-cultural marriages has increased in recent years. The problems and obstacles encountered by searching parents in international child abduction cases are compounded by the frustration and difficulties of dealing with the multiple legal systems and cultural issues inherent in many cases. As of this date, 26 countries have adopted the Hague Convention on the Civil Aspects of International Child Abduction, a treaty designed to deter these abductions. While not every case has a successful resolution, State Department data reveals increasing effectiveness in recovering children abducted to countries in which the Hague Convention is operative.

The purpose of this project is to examine the issues and processes, institutional and cultural, encountered by searching parents in international abduction cases. Through surveys and interviews with families who have had a child abducted to another country, the project will explore the nature of these cases, the processes by which parents attempt to locate and recover their child, and the difficulties associated with accessing and dealing with the various systems in both the United States and the country to which the child has been taken. Although legal issues may also be examined, the focus of this project will not be on legal issues alone. The study sample will involve a variety of cases, including cases resolved under the Hague Convention and cases involving non-Hague Convention countries.

Criminal Justice Response to Parental Child Abduction Cases

$450,000

The purpose of this project is to examine the ways in which various criminal justice agencies and systems respond to parental abduction cases. NISMART estimated that there were 354,000 family abduction cases in the year 1988, 163,000 of which involved transporting a child across state line and/or making an effort to conceal the whereabouts of the child. In recent years, OJJDP sponsored several studies which examined various aspects of parental abduction cases, such as legal obstacles to recovery and return, psychological consequences of abduction of children and families, and reunification issues. The results of these studies indicate that although parental abduction is a felony crime in most states, response by the civil and criminal justice system is inconsistent with substantial variation in enforcement and prosecution policies and practices from state to state and even within states. For example, California is the only state which legislatively mandates and funds investigation and prosecution of parental child abductions within the district attorneys' offices. While the majority of parental abduction cases involve taking the child across state lines, Unlawful Flight to Avoid Prosecution Warrants (UFAPS) are obtained in fewer than 10% of these cases, thus precluding assistance from the FBI in locating and apprehending the abductor. For parents without the financial resources to hire private attorneys or private investigators, their children may simply be lost to them.

This project will examine organizational and structural issues in the response to parental child abduction by criminal justice agencies. These agencies will include local law enforcement, State law enforcement (including missing children's clearinghouses), prosecutors' offices, and Federal law enforcement. This study will explore the policies and procedures of these agencies, both formal and informal, as well as case management, record-keeping, legislation, locus of investigative responsibilities, functions, and penalties.

Little is known about the dispositional outcomes in parental child abduction cases in the criminal justice system in the United States. Some studies indicate that few abductors receive sentences of any kind, while other studies indicate a possible increase in prosecution and penalties in some jurisdictions. This project will also examine the variations in dispositions of parental abduction cases through assessing the attrition of cases from arrest to filings to disposition and sentencing.

Field-Initiated Programs

$300,000

In recent years, OJJDP has undertaken a number of major research programs addressing key issues related to missing and exploited children. These studies have formed a basis for program development, training and technical assistance and have also raised a number of specific and related issues which suggest further examination. The Field-Initiated Program invites innovative approaches from researchers and practitioners to the discretionary activities authorized by section 405(a) of the Act. Within the Field-Initiated Programs, OJJDP encourages eligible parties to develop ideas for study relevant to the mission of OJJDP's Missing and Exploited Children's Program and to specific priority areas on the subject of family abductions. These priority areas include but are not limited to:

- The impact of domestic violence on custody decisions and parental abductions;
- Post-recovery detention of abducted children by social services agencies, including case outcomes;
- Allegations of child abuse in parental abduction cases;
- Family members and friends who provide assistance to abductors;
- Parents who abduct their children and hold them hostage or murder them;
- The development of public service announcements for media aimed at public education and awareness of the psychological and legal consequences of parental abduction; and
- Additional/secondary analyses of existing data bases.

Multi-jurisdictional, Interagency Model for Investigating and Prosecuting Cases of Child Sexual Exploitation

$125,000 ($125,000 from OVC)

The Office for Victims of Crime (OVC) and OJJDP have established and set-aside for this program, however, it is under development and may or may not be funded in 1993. This is a joint project involving the Office of Justice Programs, the Federal Bureau of Investigation, and the participating U.S. Attorney. The goal of this program is to develop and implement a prototype multi-jurisdictional task force approach involving Federal, State, and local authorities that can effectively

investigate and prosecute cases involving sexual exploitation of children and juveniles and assist child and juvenile victims in crisis.

Estimates of the number of adolescents involved in prostitution range from 200,000 to 300,000 nationally. Many of these children are runaway or thrownaway children without secure homes who are extremely vulnerable to sexual exploitation. Juvenile prostitution is often paired with child pornography. The Attorney General's Commission on Pornography found widespread harm associated with child pornography. Production of the material often includes physical harm to the children. Research has shown a "modeling effect" can occur so that those who view materials portraying violence and degradation of children desire to recreate the acts furthering the victimization of children. Although the gravity of the problem has been acknowledged, pursuing these cases is time consuming and resource intensive.

This project will develop a prototype multi-jurisdictional task force to target child pornography and juvenile prostitution and implement centrally coordinated and managed investigations involving Federal, State, and local investigative agencies to identify and locate procurers who recruit juveniles, thus making information accessible to law enforcement agencies in a large geographic area to include the U.S. Postal Service, U.S. Customs, and the FBI; develop a model that involves child protective, social, and medical services in initiating the investigation and providing assistance and support to the child victim in crisis through adjudication to readjustment; provide training for law enforcement officials and others; and initiate a public awareness effort of the harms associated with child pornography and child prostitution. As this project will require the commitment of the U.S. Attorney, the FBI, and local law enforcement, only sites where Federal and local law enforcement officials agree to commit the resources to form a multi-jurisdictional effort will be considered. The funds for this project cannot be used for law enforcement efforts, but must be targeted to assisting child and youth victims in crisis and training and public awareness efforts.

Continuation Programs

National Resource Center and Clearinghouse (National Center for Missing and Exploited Children)

$3,600,000

The purpose of this program is to continue the management and maintenance of services by the national resource center and clearinghouse mandated by the Missing Children's Assistance Act. This statute requires the operation of a national resource center and clearinghouse designed to provide the following services:

(1) A central collection and dissemination point of information and technical assistance to State and local governments, individuals, parents and other agencies in locating and recovering missing children;

(2) The operation of a 24-hour national toll-free hotline for reporting information about missing children;

(3) Coordination of programs in the field that focus on reuniting missing children with their lawful custodians;

(4) Development, publication, and dissemination of information about programs, techniques and services responsive to missing children issues; and

(5) Technical assistance as well as training to law enforcement agencies, State and local government agencies, and others regarding prevention, investigation, reunification and treatment in missing and exploited children cases. New program responsibilities requested by OJJDP will focus on the following areas:

(1) Development of specialized personnel, technical assistance and materials related to reunification of missing children;

(2) Further development of informational networking capabilities between the national clearinghouse, State missing children clearinghouses, and law enforcement agencies;

(3) Further development of Project ALERT, a program to train and deploy retired law enforcement investigators to assist in missing child cases;

(4) Strategic assistance to missing children state clearinghouses through technology development, assistance in development of regional coalitions, ongoing training and technical assistance, and a program to develop and support the hosting of statewide law enforcement training courses by state clearinghouses;

(5) Expansion of publications development and dissemination; and

(6) Development and expansion of technical assistance services to law enforcement.

This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1993.

Prevention of Parent or Family Abduction Through Early Identification of Risk Factors

$300,000

The purpose of this three-phased program is to learn more about the circumstances likely to precipitate the abduction of a child by a parent or family member, with specific attention given to the impact of domestic violence, and to identify and document effective prevention and intervention strategies. The objectives of this program are to investigate and document the circumstances most likely to result in the abduction of a child by a parent or family member; and to identify, demonstrate, and evaluate current public and private programs that appear to be appropriate and effective interventions in preventing parental abductions. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1993.

Missing Children: Program To Increase Understanding of Child Sexual Exploitation

$400,000

The purpose of this project is to provide needed information about the nature of the crimes of sexual exploitation of children, the characteristics of the children and youth who become victims, and the response to these cases by social service and justice agencies. This project attempts to clarify definitions of child sexual exploitation and will examine the psychological and environmental factors which may render children vulnerable to exploitation. The objectives of this project are to conduct a thorough review of research literature on the subject of child sexual exploitation and missing children involved in prostitution and pornography, to describe the process by which children become involved, and to identify problems and obstacles faced by the criminal justice system in handling both offenders and victims of sexual exploitation. The project will also describe Federal and State statutes and pertinent case law used in the prosecution and punishment of offenders. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1993.

Effective Screening of Child Care and Youth Service Workers

$200,000

Adults (volunteers and paid personnel) who work in agencies and organizations that provide services to and for children and youths are responsible for the guidance, supervision, and general well-being of those under their care. While most such workers are conscientious individuals of high moral values, there have been instances in which employees have victimized children or young persons through sexual exploitation. The purpose of this program is to provide a comprehensive picture of what screening practices, including criminal records checks, are utilized by both the public and private sector and the effectiveness of these practices. Existing State laws and policies about criminal record screening will also be studied and annotated. This program will identify existing model programs used by child care and youth serving agencies and organizations and recommend steps for the development of a national screening model(s) for States to adopt, including, but not limited to, criminal record checks. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1993.

Training and Technical Assistance for Nonprofit Missing Children's Programs

$250,000

This program will provide technical assistance and training to improve the capacity of nonprofit community based missing children's organizations to engage in activities which will successfully prevent the abduction and sexual exploitation of children, assist in the recovery of children, and provide services to child victims and their families. The goal of this project will be to achieve a high level of skill, sophistication and expertise among the private nonprofit agencies and other appropriate organizations serving missing and exploited children through regional training workshops and the dissemination of relevant materials. Training and technical assistance will focus on internal structure and credibility, case protocol and documentation, victim assistance, coordination with law enforcement, reunification preparation, assistance and follow-up, issue and prevention education, community outreach, referrals, networking, information exchange, improving service delivery, and advocacy. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1993.

Grants and Cooperative Agreements To Support Public or Private Nonprofit Missing Children's Agencies Service Activities

This program provides grants for up to three years in amounts ranging from $25,000–$75,000 to support implementation of new or enhanced services to be provided by non-profit agencies, public agencies, or combinations thereof, in the following areas:

(1) Educating parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) Providing information to assist in the locating and return of missing children;

(3) Aiding communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) Assisting missing children and their families following the recovery of such children;

(5) Conducting activities to reduce the likelihood that individuals under 18 years of age will be removed from the control of their legal custodians without the custodian's consent; and

(6) Providing services that minimize the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation. The following nine programs constitute current funding support efforts for nonprofits.

Expansion of Mediation Project: Child Find of America, Inc.

Up to $75,000

This program is designed to expand mediation program services to prevent parental abductions by increasing the level of awareness of the problem through public service announcements and programs targeting human resources, social service, and health care professionals and the clergy. Additional training will be provided for core mediators and Child Find staff in dispute resolution processes.

Missing and Exploited Children Prevention and Services: Counseling Services of Addison County

Up to $75,000

The purpose of this project is to continue to expand and develop service to assist missing and exploited youth and their families in Addison County, Vermont. Project activities include community education programs on child safety issues, counseling, outreach and safe shelter services for runaway and thrownaway youth, training for law enforcement officers, and crisis counseling for families of missing children.

ECHO Program Expansion: Exploited Children's Help Organization

Up to $19,538

The purpose of this project is to enable the Exploited Children's Help Organization (ECHO) to expand existing services to missing and exploited children and their families. These services include community education and prevention, a quarterly newsletter providing information about missing and exploited children and the services available through ECHO, a parents support program, and the "Kids in Court" program. In cooperation with local police, ECHO will compile information about repeat runaways in order to develop a community runaway prevention program.

Project Nino Seguro: South Bay Community Services

Up to $45,258

This project serves both the English-speaking and Spanish-speaking communities by providing education, information, and services to parents, children, and the community designed to reduce the occurrence of missing, abducted and exploited children. Project Nino Seguro provides direct counseling to individuals, families, and peer units.

Reunification Services Project: Find the Children

Up to $30,000

The purpose of this project is to support Find the Children's activities and responsibilities as coordinators of a local multi-agency task force designed to be activated upon the recovery of a child. Find the Children coordinates interagency communication to evaluate a child's or family's needs at the time of recovery, assists them in obtaining access to available services, collects data, manages relevant treatment-intervention plans, and reports in conjunction with the Inter-Agency Council of Child Abuse and Neglect.

Prevention and Early Intervention and Mediation Project: Our Town Family Center

Up to $75,000

The purpose of this project is to enhance the range of services to missing, exploited, and abused children and their families. These services include a school-based prevention

program and home-based crisis intervention services. In addition, a new family mediation dispute resolution program seeks to reduce the negative impact of high conflict divorce and separation on children. The project will also provide training workshops for local juvenile justice and school personnel.

Community Action for Prevention of Missing and Exploited Children: Center for Child Protection and Family Support, Inc.

Up to $75,000

This project enables the Center for Child Protection and Family Support in Washington, DC, to expand its direct service activities to high-risk inner city youth, specifically teenage parents, through the development of a specialized education component designed to educate families on child safety, enhance their understanding of potential abduction and exploitation, and improve the systemic response to dealing with the issues of missing and exploited children. Project activities include direct family support, structured community-based education and agency collaboration with other youth serving organizations which are involved with missing and exploited children. This project will also develop a specialized prevention curriculum targeting urban and ethnic minority children and parents.

Prevention and Intervention Program: Paul & Lisa, Inc.

Up to $75,000

This project expands Paul & Lisa's school-based exploitation prevention program in Connecticut, New York, and New Jersey. Project activities include helping children develop ways to handle and discourage sexual advances, abduction, and exploitation by adults as well as providing school personnel and service providers with strategies for preventing and dealing with missing and exploited children. Training and technical assistance to organizations and coalitions in selected cities will also be provided.

Vanished Children's Alliance

Up to $70,500

This project enhances the capacity of Vanished Children's Alliance to provide effective and timely direct services to individuals, families, and communities impacted by missing and exploited children issues. Project activities focus on strengthening case management capacities, computerizing information system, providing specialized training for staff persons, and expanding counseling services and technical assistance to families following recovery of a missing child.

Discussion of Comments

In response to the **Federal Register** Notice of November 18, 1992, 57 FR 54471, OJJDP received three responses. Generally, the responses were favorable towards the overall program while making suggestions for improvements. OJJDP is very appreciative of these thoughtful comments and takes into account all suggestions and recommendations.

The following is a summary of the substantive comments and the responses by OJJDP. Unless otherwise indicated, each comment was made by a single respondent.

1. *Comment:* A respondent expressed concern that the Proposed Priorities should also focus attention on the relationship among law enforcement and the social service agencies (primarily private) that serve runaway, thrownaway, and homeless youth.

Response: The issues raised refer more generally to juvenile justice systems' operations as they affect a broad range of problem children, not just missing children. These issues are addressed in POLICY training and in OJJDP's technical assistance efforts. However, the issues are important and the Office will take them under consideration in developing its FY 1994 comprehensive plan.

2. *Comment:* One respondent indicated that the proposed program, "Study of the Effectiveness of Private Investigators in Locating and Recovering Parentally Abducted Children," would not be a priority for her State. From experience, private investigators were not successful in locating and recovering parentally abducted children in that State.

Response: This response points out the possible outcome which this research is designed to determine.

During Fiscal Year 1993, OJJDP will provide funding for 17 different program options in support of our Missing Children Legislation. Many of these programs directly provide training and technical assistance for law enforcement and social services personnel (public and private) who have to intervene on behalf of runaways, thrownaways, homeless, missing and exploited children and their families. Some of these projects will be producing training manuals on a variety of subject matters designed to educate, train and support all who come in contact with these individuals.

These manuals will be made available and disseminated to interested parties upon request.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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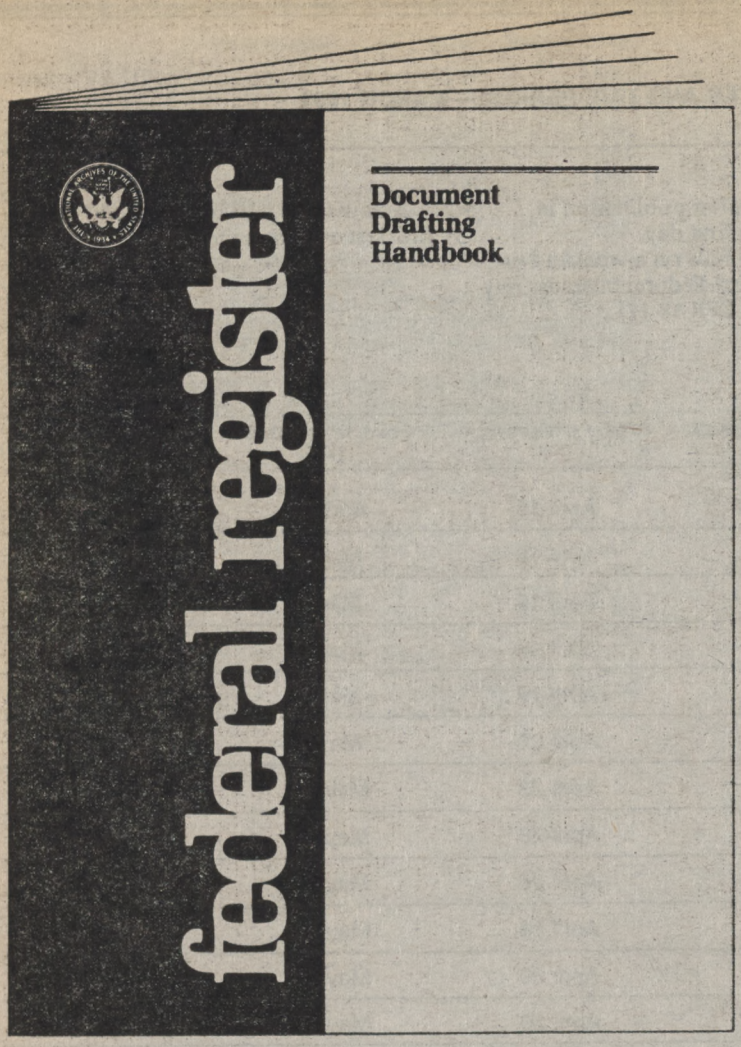
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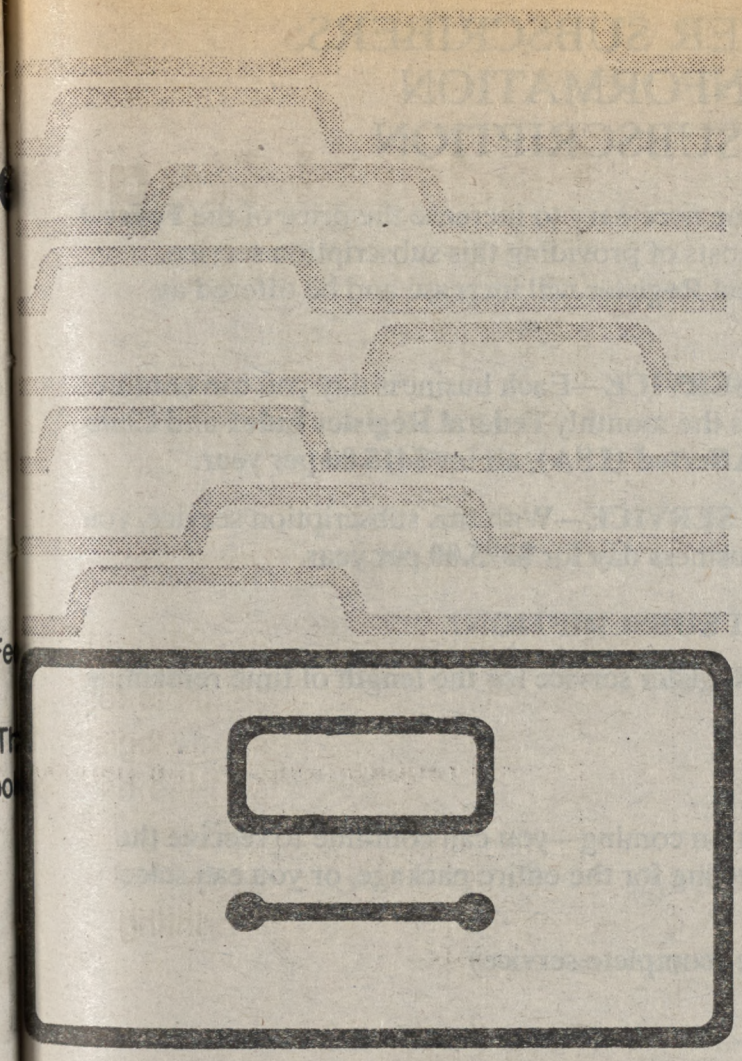
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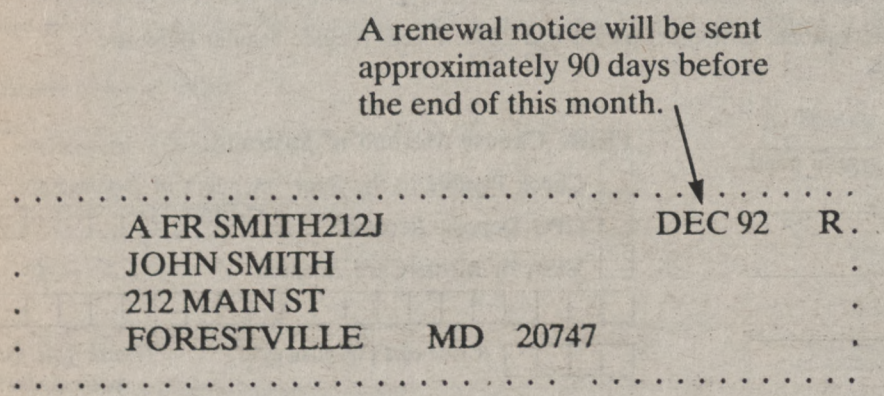
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